

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 21 January 2008

Public Authority: House of Commons
Address: London
SW1A 0AA

Summary

The complainant requested a copy of the interview notes and CVs of the other candidates for a job for which he was unsuccessful. The House of Commons refused to disclose this information on the basis that it was the personal data of the other candidates and that disclosure would breach the first data protection principle; the House stated it was therefore exempt under section 40 of the Act. The Commissioner investigated and found that the House was correct in its application of section 40 as the information is personal data and disclosure would breach the first data protection principle.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant has advised that on the 20 July 2006, following an unsuccessful job application, he requested the following information from the House of Commons (the House);

"1. A photocopy of all interviewed applicants application forms (please delete their personal details and please indicate the selected candidate's application as 'selected')

2. A list of all questions that the panel asked me at the interview

3. A photocopy of the panel's comments and how they marked my response to their questions

4. A list of all the questions the panel asked the other candidate's at the interview (please state as 'selected' the questions asked to the selected candidate).

5. A photocopy of the panel's comments and how the panel marked the other candidate's responses to their questions? (Please state as 'selected' for the selected candidate's information)

6. A copy of your organisation's interview policy and procedure.

7. Guidance that your organisation provided to all members of interview panel to ensure compliance of the law in relation to unlawful disability discrimination and racial discrimination."

3. The House responded on 10 August 2007 providing the information requested in points 2, 3, 4, 6 and 7 but stating that the information in points 1 and 5 was exempt as it was third party personal data and therefore exempt under section 40(2) of the Act. The information withheld was a photocopy of the interviewed applicants' Curriculum Vitae (CVs); and a copy of the panel's comments and how the panel marked the other candidates' responses.
4. On 18 August 2007 the complainant requested an internal review of the decision to withhold the remaining requested information under section 40 of the Act.
5. The House conducted an internal review and communicated the outcome to the complainant on 29 September 2006. The review upheld the original decision to withhold the remaining information under section 40.

The Investigation

Scope of the case

6. On 25 October 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider that he had not requested the name of the other applicants and was therefore only interested in the general information about the questions, answers and marks given to other applicants.

Chronology

7. The Commissioner began his investigation by contacting the House on 2 November 2007 to request a copy of the withheld information and for further explanation regarding the application of the exemption.
8. The House responded on 28 November 2007 providing further explanation regarding the application of section 40(2) and with a copy of the information being withheld.

Findings of Fact

9. The House explained that applicants were not required to complete an application form but were instead asked to submit a CV. The information being withheld is therefore a copy of the other applicants CVs and the interview notes for the other applicants.

Analysis

Exemption Section 40(2) 'Personal Information'

10. Section 40(2) provides an exemption for information which is the personal data of any third party, where disclosure would contravene any of the data protection principles contained in the DPA.
11. In order to rely on the exemption provided by section 40, the information being requested must therefore constitute personal data as defined by the DPA. The DPA defines personal data as:

'...data which relate to a living individual who can be identified
a) from those data, or
b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.'
12. The Commissioner has viewed the information and agrees with the House that the information held is personal data. The complainant has indicated that he is happy for the information to be redacted as he is not interested in the names of the individuals however it is clear from the nature of the information that even by redacting the names it would be possible to identify the individuals with relative ease. The CVs show the educational background of the applicant; skills and qualifications; detailed work experience and hobbies. The interview assessment notes also contain biographical information on the individuals which could be used to identify them even with their names redacted.
13. The House have argued that disclosure of the CVs and interview notes would breach the first data protection principle. The first data protection principle has two components:
 1. Personal data shall be processed fairly and lawfully and
 2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

14. In considering whether disclosure of the CVs and interview notes would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
- The applicants' reasonable expectations of what would happen to their personal data;
 - Whether the applicants refused to consent to the disclosure of the requested information; and
 - Whether disclosure would cause any unnecessary or unjustified damage to the applicants;

15. The House's position is that the applicants would have a strong expectation that the information supplied would be held in confidence by the House and would only be used in connection with the recruitment process. They were not notified about processing other than for the job application itself. The House pointed the Commissioner to the Commissioner's guidance for employers which states:

"If information from the application form will be used for any other purpose than to recruit for a specific job or passed to anyone else, make sure that this purpose is stated on the application form."

16. The House argued that the personal data relates to the private life of individuals and there is a general and legitimate expectation that personal data submitted to a potential employer will be processed in confidence and only used for the purposes for which it was collected. The House considers that there is a clear expectation on the part of all job applicants when they apply for a job that the potential new employer will keep the fact of the application and the content of their application form confidential in order to safeguard their existing employment.

17. On the basis of the above the Commissioner accepts that the applicants would have had an expectation that information provided to the House in their CV and the interview notes about them would not be placed in the public domain. However, simply because an individual has an expectation that information held about them will not be disclosed, this does not necessarily mean that this expectation is a reasonable one. The Commissioner's guidance on section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private lives. Although the guidance acknowledges that there are no hard and fast rules it states that:

'Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned.'

18. The Commissioner considers that the applicants' information contained in the withheld information can reasonably be described as information about their personal life. Whilst the information contains details of their educational qualifications and work experience this is in relation to a job application rather

than an undertaking in an official or work capacity. The Commissioner also notes that the individuals have not consented to disclosure.

19. The House stated that in considering if disclosure would cause any unnecessary or unjustified damage or distress, the applicant in general would be distressed if their personal details were placed in the public domain. The CV, the House states, is essentially a person's life story and were this to be disclosed to other applicants or placed in the public domain it would cause considerable damage. The House point out that even if the names were redacted it would be clear to others such as their current employer who the individuals are, and this employer may not know of the applicant's intention to leave their current job.
20. The Commissioner is therefore satisfied that disclosure of the applicants CV's and the House's interview notes would breach the first data protection principle and is therefore exempt under section 40(2) of the Act.

The Decision

21. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

22. The Commissioner requires no steps to be taken.

Right of Appeal

23. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 21st day of January 2008

Signed

Steve Wood
Assistant Commissioner

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex

Personal information.

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Section 40(5) provides that –

“The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
 - (i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

- (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."

Section 40(6) provides that –

“In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.”

Section 40(7) provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act