

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 20 October 2011

**Public Authority:** Historic Royal Palaces  
**Address:** Hampton Court Palace  
Surrey  
KT8 9AU

### Decision (including any steps ordered)

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1. The complainant has requested information relating to the dismissal of a senior employee of Historic Royal Palaces (HRP). HRP refused to disclose this information and cited the exemption provided by section 40(2) (personal data) of the FOIA.
2. The Commissioner's decision is that HRP applied this exemption correctly and so it is not required to disclose this information.

### Request and response

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3. On 3 February 2011, the complainant wrote to Historic Royal palaces (HRP) and requested information in the following terms:  

*"I wish to request all the information held by Historic Royal Palaces on the disciplinary hearing and/or dismissal of (named individual)."*
4. HRP responded on 28 February 2011. It stated that the request was refused, with the exemptions provided by the following sections of the FOIA cited:  
  - 40(2) (personal information)
  - 41(1) (information provided in confidence)
  - 42(1) (legal professional privilege)
  - 43(2) (prejudice to commercial interests)

5. Following an internal review HRP wrote to the complainant on 6 April 2011. It stated that the refusal of the request under the exemptions cited previously was upheld.

## Scope of the case

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6. The complainant contacted the Commissioner to complain about the way his request for information had been handled on 21 April 2011. The complainant argued that the public interest favoured the disclosure of the requested information.

## Reasons for decision

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7. Section 40(2) of the FOIA states that information that is the personal data of an individual other than the person who has made the request is exempt if the disclosure of this information would be in breach of any of the data protection principles. Consideration of this exemption involves two steps; first, the information must be the personal data of an individual aside from the requester. Secondly, disclosure of this information must be in breach of at least one of the data protection principles set out in the Data Protection Act 1998 (DPA).
8. Covering first whether this information does constitute the personal data of an individual aside from the requester, the definition of personal data is set out in section 1 of the DPA. This provides that for information to be personal data it must relate to an individual and that individual must be identifiable from that information.
9. The view of the Commissioner in this case is that all of the information constitutes the personal data of the individual named in the request. Clearly all of this information relates to that individual in that it concerns a disciplinary process involving that individual. Within much of the information this individual is named, meaning that it is also clear that he is identifiable from this information.
10. Other documents do not name this individual, so it could be argued that if these documents were looked at in isolation the individual in question would not be identified. However, the view of the Commissioner is that it is highly likely that it would be possible to identify this individual through the content of this information, combined with other information, such as media reports relating to this individual. The Commissioner finds, therefore, that all of this information is the personal data of the individual named in the request.

11. Turning to whether disclosure of this information would be in breach of any of the data protection principles, the Commissioner has focussed here on the first data protection principle, which requires that personal data be processed fairly and lawfully. The particular focus of the Commissioner here is on whether disclosure would be, in general, fair. In forming a conclusion on this issue, the Commissioner has considered the consequences of disclosure upon this individual, their reasonable expectations as to whether this information would be disclosed, and the legitimate interests of the public in this information.
12. The Commissioner believes that the consequences of disclosure upon the subject of this information could be significant. The issues recorded within this information have already been the subject of media interest and it is likely that disclosure would lead to further media interest. The view of the Commissioner is that this could result in consequences to the data subject in terms of distress and in possible damage to future employment prospects.
13. On the issue of the reasonable expectations of the subject of this information, the view of the Commissioner is that it is clear that the subject would expect this information to be held in confidence. In any situation where an individual is subject to disciplinary proceedings within their workplace, the Commissioner believes that it would be a commonly held expectation that the details of those proceedings would remain confidential between employer and employee. In this case the Commissioner believes that such an expectation would have been held by the subject of this information, and that this expectation would have been reasonable. Also, whilst the complainant may argue that some information relating to this disciplinary matter has been disclosed into the public domain as a result of media coverage, the Commissioner does not regard this as meaning that the expectation of privacy held by the subject of this information would be any less reasonable.
14. As to whether there is a legitimate public interest in the disclosure of this information, as mentioned above, the issue covered within the information in question has been the subject of media coverage. However, that there has been sufficient interest on the part of the public for these events to have been the subject of media coverage does not necessarily mean that disclosure of this information would further the public interest.
15. An argument could be advanced that there is a legitimate public interest in disclosure of information that relates to a senior employee who was paid from public funds. However, the Commissioner notes that the website of the public authority records that it does not receive public funds and instead generates funds through "*visitors, members, donors, volunteers and sponsors*". Given this, the Commissioner does not believe that any valid argument in favour of disclosure could be

advanced on the grounds that this information records decisions relating to the spending of public funds. Neither has the Commissioner found any other grounds upon which to conclude that there is a legitimate public interest in the disclosure of this information.

16. The Commissioner has found that the subject of the information in question would be likely to suffer negative consequences through the disclosure of this information and also would hold a reasonable expectation of privacy in relation to this information. He has also not found any legitimate public interest in the disclosure of this information. His overall conclusion is, therefore, that disclosure of this information would be unfair and in breach of the first data protection principle and so the exemption provided by section 40(2) of the FOIA is engaged. As a result HRP is not required to disclose this information.

## Right of appeal

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17. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

18. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Jon Manners  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
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