

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 December 2012

**Public Authority:** Brent Council

**Address:** Town Hall  
Forty Lane  
Wembley  
Middlesex  
HA9 9HD

#### Decision (including any steps ordered)

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1. The complainant requested details of the council's recruitment and interview results and asked other questions relating to the council's recruitment practices. The majority of the questions he asked were not requests for recorded information however and so would not constitute a valid request under the Act. However he also asked for the interview ratings awarded to the successful candidate which does constitute a valid request.
2. The council applied section 40(2) to the information because the requested information is personal data belonging to a third party.
3. The Commissioner's decision is that the council was correct to apply section 40(2) to the information.
4. The Commissioner has however decided that the council breached section 10(1) as its response was not issued until after the 20 working days required by that section of the Act.
5. The Commissioner does not require the council to take any steps.

#### Request and response

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6. On 30 March 2012, the complainant states that he wrote to the council and requested information in the following terms:

*"I would like to know the actual rating given to the successful applicant and myself for each question from each panel members including presentation. I am aware that the successful applicant who has been working for Brent Council on a temporary basis for few years since his retirement from [redacted identifier]."*

7. The request was much wider than this however the information requested was a mixture of personal data belonging to the applicant and statements of opinion in the form of questions. Where the request was for personal data this has been dealt with by the authority under the terms of the Data Protection Act 1998 and is not considered further within this notice.
8. The council has said that the original request on 30 March 2012 did not in fact include this request and that this was added subsequently. It states that it received the request in a later email which it received in 8 April 2012. Given that the council's response was delayed until 27 July 2012 however the actual date upon which it did receive the request is largely irrelevant. The Council's response exceeded the 20 working day requirement set by section 10(1) of the Act in any event.
9. The Commissioner is satisfied that it was only this particular request which falls under the Act to be considered for disclosure.
10. The council responded to that request on responded on 27 July 2012. It stated that the information was exempt from disclosure under section 40(2) of the Act.
11. No internal review was carried out after the Commissioner agreed with the council that this was not necessary in this case.

### **Scope of the case**

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12. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
13. The Commissioner considers that the complainant is that the information which he requested should have been disclosed to him.

### **Reasons for decision**

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14. Amongst other things, section 40(2) of the Act states that information which is the personal data of a third party (i.e. not the applicant) is exempt if a disclosure of the information would breach any of the data protection principles.

15. The Commissioner must therefore firstly consider whether the information is personal data. Secondly, if it is, he must consider whether that disclosure would breach any of the data protection principles of The Data Protection Act 1998.

Is the information personal data?

16. Personal data is defined in the DPA as information which

*“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”*

17. The information is a record of the opinions of the interviewers on an individual candidate for the position of Principal Engineer, Highways Delivery at Brent Council. The information is in the form of marks awarded against the candidate for the various questions or tasks which were required of him. They provide an indicator as to whether the individual failed, partly met or fully met the requirements of the interview panel for each question or section of the interview. There are no separate notes recording interviewers' personal comments on the applicant. Clearly however the notes refer to the individual's performance and it therefore relates to him. If the individual can be identified from the information then it is personal data for the purposes of the Act.
18. The Commissioner has considered whether it would be possible for the council to redact any identifying information from the information in order that the remainder, the ratings, could be disclosed. The council would not be able to redact the information in order to protect the identity of the person concerned. He was the successful candidate at interview and took up the post with the council.
19. Even if the council were to redact any identifiers colleagues, family, friends and professional associates of the individual would be able to

identify that the information would belong to him because it refers to the successful applicant for the role. Similarly friends and family would also be able to identify that the information belonged to the individual if they are see aware of his position within the council.

20. The Commissioner also recognises that as the individual was successful at interview his name may subsequently appear on documents produced by him as part of his position on the council. Internet searches on the job title for the authority would therefore be likely to identify the individual concerned, and this could then be tied to any information disclosed in response to this request. Information on the identity of the individual would therefore be likely to come into the possession of the data controller (i.e. in this case the general public).
21. The council also argues that the requester has indicated that the identity of the successful applicant is already known to him. Given that the request includes biographical information on the individual then this appears to be correct.
22. The Commissioner is therefore satisfied that the information is personal data and that the information cannot be redacted to protect the identity of individual concerned.
23. Having decided that the information is personal data, the next question which the Commissioner must consider is whether a disclosure of that information would breach any of the data protection principles of the Data Protection Act 1998.

Would a disclosure of the personal data breach any of the data protection principles?

24. The most relevant data protection principle in this instance is the first data protection principle. This requires that personal data must be processed (i.e. in this case disclosed) fairly and lawfully and that one of the criteria in schedule 2 of the DPA must be met.
25. The Commissioner must therefore decide whether a disclosure of the information would be 'fair'. If the disclosure would be fair and lawful then the Commissioner must then consider whether a condition for disclosing that information can be found within schedule 2 of the DPA.
26. In general, a disclosure of personal data will be fair where the individual concerned would have an expectation that that would occur. This might be because he or she was told that that was the case or because it would have been obvious to them the time they provided their

information. However the First-tier Tribunal in *Bolton v ICO* [EA/2011/0216] noted that the assessment of fairness does not rest entirely upon the data subject's expectation but also includes striking a balance between the reasonable expectation of the data subject with general principles of accountability and transparency. This overlaps with the considerations set out in Condition 6 of Schedule 2 DPA (which must also be met if disclosure is not to breach the first data protection principle). Condition 6 provides;

*(1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.*

27. The tribunal considered that the word 'necessary' implies the existence of a "pressing social need" rather than something useful or desirable.
28. The Commissioner notes that the information would have been provided by the individuals in circumstances where they would have had no expectation that that information may subsequently be disclosed to any member of the public. They would, if asked, be likely to have considered that the ratings which they received for their interview performance would be retained by the council in confidence. Clearly in such circumstances there is a strong argument to suggest that it would be unfair to disclose information on an interviewee's performance to the world at large.
29. The records of each interviewee also provide a record of the interviewers' ratings of the individual. The information therefore provides marks as to that individual's performance during the interview. They are therefore a record of how that individual performed during the interview and a record of the interviewers' opinions of that performance. Marks are provided by interviewers based on the suitability of the individual for that role. It is therefore possible to understand how well or how badly that person performed during the interview stages.
30. The Commissioner considers that it may be highly embarrassing to some individuals to have such details disclosed to the world, and in particular to their friends, family or work colleagues. Clearly if the individuals had performed badly during the interviews it may cause a significant degree of distress to them to have ratings about their performance disclosed in this manner. The individual in this case was awarded the position in this case however and so his performance must at the least have been good enough for the position to be awarded to him. The Commissioner still

recognises however that the ratings provide very personal details about the strengths and weaknesses of his performance at interview and may therefore be embarrassing if disclosed.

31. The Commissioner must therefore consider whether there is any countering arguments which would outweigh such an intrusion. He must consider whether there is any pressing social need for the information to be disclosed which might outweigh the expectation that the information would not be disclosed and shift the balance towards it being fair to disclose that information.
32. The complainant has suggested that there was either racism or nepotism involved in the decision. He argues that when he first broached the possibility of applying for the position in a discussion with relevant staff he was told that there was already a very strong internal candidate for the position. He argues that that was an indicator of the council's pre-set decision to employ the internal candidate in the position rather than to carry out a fair interview process.
33. The Commissioner accepts that where there is evidence of improper conduct on an unfair process being carried out by an authority during the interview process this may strengthen arguments for the disclosure of some information. If for instance there was strong evidence of racism or sexual discrimination within the process then this may strengthen arguments for information to be disclosed to demonstrate candidates interview performances and ratings and allow greater transparency whether the recruitment procedures were fair. In effect the pressing social need for information to shed light on the process is increased in such circumstances.
34. The Commissioner has however seen no evidence from the withheld information that the interview process was unfair and there has been no wider public controversy that he has been made aware of.
35. Whilst the Commissioner accepts that the complainant in this case is convinced that he was the better person for the position, there is no wider suggestion from the withheld information that the interview process was unfair, nor that the complainant was treated in any way differently to the successful candidate. The Commissioner recognises however that he can only draw his conclusions from the information which has been withheld.
36. The Commissioner also recognises that the complainant may have a valid personal reason for obtaining the information himself. However the Commissioner must consider the request 'applicant blind'. He cannot take into account the complainant's personal reasons for requesting the

information but must consider whether any member of the public should receive that information.

37. The Commissioner also considers that a disclosure of the information would not, in any event be likely to provide the complainant with a means to question the interview process further. The information is only ratings. Unless the complainant was present during the other candidates interview he cannot know whether the ratings provided to the successful candidate were reflective of his actual performance or not.
38. The Commissioner also recognises that the information would not provide the general public with information which would allow it to consider whether the successful candidate was suitable for the role or not either.
39. There is also an argument that where an individual is employed within a senior decision making position with an authority there is a public interest in knowing that that individual is capable of carrying out the role, particularly when the role has a direct effect on the public.
40. In *Peter Bolton v ICO* the tribunal considered similar information regarding the appointment of the Chief Executive of the East Riding of Yorkshire council at that time. It took into consideration the following:

*"Where a data subject holds a senior public position, they must expect that their public actions will be subject to greater scrutiny than their private lives. The Tribunal accepts this principle but notes that the application for a job by the applicant is not the exercise of executive function on behalf of a local authority. Similarly whilst the interests of data subjects are not paramount where the data processed relates to their public lives the Tribunal draws a distinction between the application process leading to appointment and conduct once appointed."*

The council argues that the role, albeit a professional position, is a non-managerial and relatively junior role within the council.

41. The Commissioner finds that in the absence of any wider suggestion of unfairness over the council's interview processes, and therefore a wider public interest in the disclosure of the information there is little pressing social need for the disclosure of the information. A disclosure of this information would not in any event provide the general public with a means to understand whether the ratings provided were appropriate for the performance of the interviewee.

42. The Commissioner therefore considers that a disclosure of the information would be unfair for the purposes of the first data protection principle.
43. His decision is therefore that the council was correct to apply section 40(2) in this instance.

### **Procedural Matters**

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44. The Commissioner notes that the initial request was received at a point between 31 March 2012 and 8 April 2012. The council suggests that the request was not received on the date stated on the complaint made by the complainant. However it is clear that if it was not received on that date it was received shortly afterwards by 8 April 2012. The council did not however respond to the request issuing a refusal notice until an email dated 27 July 2012.
45. Section 10(1) of the Act requires public authorities to provide a refusal notice or to respond to a request under the Act within 20 working days. The council's response falls outside of this period.
46. The Commissioner's decision is therefore that the council breached section 10(1) of the Act.

## Right of appeal

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47. 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)

48. 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.
49. 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** .....

**Andrew White**  
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