

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 February 2013

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information relating to Christopher Monckton's period of employment as a special advisor at No. 10 Downing Street during Margaret Thatcher's premiership. He focussed on personnel information and excluded information relating to his daily work. The Cabinet Office refused to provide it citing section 40 (personal data exemption) as its basis for doing so and upheld this position at internal review. During the course of the Commissioner's investigation it made a further disclosure but withheld the remainder under section 40(2).
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 40(2) in relation to the requested information that remains withheld.
3. No steps are required.

Request and response

4. On 18 May 2012, the complainant requested information of the following description:

"This is a request for information under the Freedom of Information Act 2000 relating to Christopher Monckton.

The information

Please could you provide me with information relating to Christopher Monckton's employment at the Number 10 Policy Unit from his joining in

*1982 until his departure. This information would include any human resources records/personnel files including his application, his job description, any documentation relating to his promotion, his job title, salary and letter of resignation or reason for departure. The information I am requesting would **not** include his work", for example reports he had written or daily communications with other members of staff."*

5. The Cabinet Office responded on 22 June 2012. It refused to provide the information citing section 40(2) by virtue of section 40(3)(b) as its basis for doing so. This applies where disclosure of personal data would contravene of one of the data protection principles of the Data Protection Act (DPA).]
6. Following an internal review the Cabinet Office wrote to the complainant on 22 August 2012. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 11 September 2012 to complain about the way his request for information had been handled. He disputed the Cabinet Office's reliance on section 40(2).
8. During the course of the Commissioner's investigation, the Cabinet Office made a further disclosure (on 18 December 2012) [which provided the dates of Christopher Monckton's employment at the Number 10 Policy Unit and his job titles.] The complainant confirmed to the Commissioner on 7 January 2013 that he wished to pursue access to the remainder of the information caught within the scope of his request.
9. The Commissioner's investigation therefore looked at whether the Cabinet Office was entitled to rely on section 40(2) as a basis for withholding that information within the scope of the complainant's request which remains withheld from disclosure under FOIA.

Reasons for decision

10. Section 40(2) of FOIA states that personal data is exempt if its disclosure would breach any of the data protection principles contained

within the DPA. Section 40(2) can only apply to information that is personal data. This term is defined specifically in the DPA.¹

11. The Cabinet Office has argued that disclosure of the withheld information would be unfair and thus breach the first data protection principle which states that:

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

at least one of the conditions in Schedule 2 is met, and

in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'

12. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights;
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
- The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor, the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;
 - if so, the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?

¹ <http://www.legislation.gov.uk/ukpga/1998/29/contents>

13. Furthermore, notwithstanding the individual in question's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling legitimate interest in disclosure under FOIA.
14. In considering 'legitimate interests' in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the individual in question, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.
15. In determining whether information is personal data, the Commissioner has referred to his own guidance.² The Commissioner is satisfied that it is personal data. The information relates to a living individual. It is also biographically about that individual because it relates to his employment at the Policy Unit in No.10 Downing Street during Margaret Thatcher's premiership. Specifically (and as described in the wording of the request) it is information from his personnel file. He is also satisfied that it is information that is manually recorded and held in a relevant filing system.
16. Having concluded that the information is personal data, the Commissioner went on to consider whether disclosing that personal data would be fair. He also considered whether any of the conditions described in the relevant Schedules of the DPA would be met in order to allow disclosure.

The complainant's arguments

17. The complainant submitted detailed arguments as to why, in relation to this individual, it would be fair to disclose such information. The complainant made reference to a number of previous judgements issued by the First-tier Tribunal (Information Rights) and other courts which had taken into account an individual's high profile in the public eye and

² http://www.ico.gov.uk/for_organisations/data_protection/the_guide/key_definitions.aspx

public statements that the individual had made about himself or herself.^{3 4 5}

18. In the complainant's view, the various rulings identified a legitimate interest in challenging or seeking verification of such public statements which would be served by disclosure under the Act of information which might otherwise be considered to merit protection from disclosure.
19. He drew attention to the fact that Christopher Monckton is also a public figure in that he is now a leading figure of a national political party, the UK Independence Party.⁶ This added greater weight to the legitimate interest in checking the veracity of Christopher Monckton's public statements where they referred to his period of employment at the Policy Unit at No. 10 Downing Street. He argued that any damage or distress that might arise as a result of disclosure would not be significant and would not, in any event, be unwarranted. He noted that Christopher Monckton claimed to have had a significant influence on Margaret Thatcher as regards matters of scientific research, in particular, where the research considered changes to the global climate. He argued that if these claims as to his previous employment were borne out by disclosure of the requested information, this would serve to enhance rather than diminish Christopher Monckton's reputation.
20. He drew attention to his role as an investigative journalist and argued that the Tribunal's comments in *Cobain v IC and Crown Prosecution Service* (EA/2011/0112 & 0113) ("*Cobain*") (see Note 5) added weight to the legitimacy of his particular interest in disclosure.

The Cabinet Office's arguments

21. The Cabinet Office also submitted detailed arguments. These made specific reference to the content of the withheld information.

³ <http://www.informationtribunal.gov.uk/dbfiles/Decision/i85/hoc3.pdf> *Corporate Officer of the House of Commons and IC v Leapman, Brooke and Thomas* (EA/2007/0060-62, EA/2007/0122-123, EA/2007/0131) (paragraph 74)

⁴ <http://www.bailii.org/ew/cases/EWHC/Admin/2008/1084.html> *Corporate Officer of the House of Commons vs The Information Commissioner, Brooke, Leapman and Ungood-Thomas* ([2008] EWHC 1084 (Admin) CO2888/2008) (paragraph 15)

⁵ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i669/20120208%20Decision%20EA20110112&3.pdf> *Cobain v IC and Crown Prosecution Service* (EA/2011/0112 & 0113) (paragraphs 35 - 36)

⁶ <http://www.ukip.org/page/key-party-roles>

Unfortunately, the Commissioner is unable to set out the detail in full on the face of this notice without disclosing the withheld information. However, he would summarise the arguments as follows:

- The information in question, while relating to a former public official, nevertheless pertains to personnel or human resources matters as described in the request.
- It is not within the reasonable expectations of any employee that such information would be published because it relates to their private relationship with their employer. There is a general presumption of confidentiality for such information.
- None of the information described in the request relates to the work undertaken by Christopher Monckton while employed at the Policy Unit and therefore could not serve the legitimate interest in verifying the statements public figures make about themselves and their previous employment.
- The Cabinet Office has confirmed the dates of Christopher Monckton's employment at the Policy Unit and his job title while employed there. This serves the legitimate interest identified above.

The Commissioner's position

22. The Commissioner acknowledges that there is a legitimate interest in checking the veracity of statements made by public figures regarding their previous employment and their connection with and influence over leading politicians of the day. He agrees that a public figure's expectation of privacy about their earlier life must be reduced somewhat where they seek to have influence on matters of national and international importance. However, this does not override the reasonableness of Christopher Monckton's expectation that personnel information held about him by his former employers should remain private.
23. This is an expectation shared by any person who is an employee and it is, in the Commissioner's view, wholly reasonable. While that person, particularly where they are in a senior role at a public authority, can now expect information about their pay bands to be disclosed, that does not necessarily mean it is fair or reasonable to disclose their precise salary, depending on the circumstances. In this case, the disclosure, for example, of the individual's salary would be fairly meaningless given the passage of time. The Cabinet Office acknowledged that there is a legitimate interest in knowing more about the history of the role of special advisors, including what salaries they may have received. However, it argued that disclosure some 20 years later of detailed salary

information would not be within the reasonable expectations of a person in that role at the time.

24. The Commissioner agrees that there is a legitimate interest in increasing public knowledge about the history of the role of special advisors, particularly with regard to any demands made by their role on the public purse and any influence they might have had on the nation's political leaders. However, he accepts that disclosure of a precise salary figure paid to one individual over 20 years ago would not add greatly to public knowledge of the subject described above and would give rise to an unwarranted intrusion into that person's private relationship with their employer.
25. The Commissioner also notes the detailed examples given by the complainant showing what information Christopher Monckton has put into the public domain about himself and his previous employment. However, he agrees with the Cabinet Office that the requested information specifically excludes "*for example reports he had written or daily communications with other members of staff*". Disclosure would not, therefore, shed any light on Christopher Monckton's work at the Policy Unit and any topics he covered or the content of any reports he may have submitted to the Prime Minister of the day, Margaret Thatcher. He agrees that disclosure would not, therefore, serve the legitimate interest identified by the complainant.
26. Given the reasonable expectations of confidentiality described above, the Commissioner agrees that disclosure of the requested information that remains withheld would give rise to an unfair and unwarranted intrusion on the individual's privacy in the circumstances of this case.
27. During the Commissioner's investigation, the Cabinet Office reviewed its previous position, acknowledged the legitimate interest that the complainant had identified in checking the veracity of statements made by public figures about their past employment and disclosed the dates of Christopher Monckton's employment at the Policy Unit and his job titles while working there.

Section 40(2) - Conclusion

28. The Commissioner has concluded that disclosure of the requested information would contravene the first principle of the DPA. Disclosure would be unfair because it would be wholly outside the reasonable expectations of the individual concerned. Disclosure is not necessary in order to serve the legitimate interest of checking the veracity of statements made by public figures who seek influence in matters of national and international importance because the information does not relate to matters covered in those statements. That legitimate interest

has been satisfied by the provision of further information by the Cabinet Office which confirms that the individual in question worked as a special adviser at No. 10's Policy Unit during the period he has publicly referred to. Disclosure of the other information described in the request would not serve that interest.

29. Finally, noting the complainant's reference to *Cobain*, it remains the Commissioner's view that disclosure under the FOIA is disclosure to the public at large. Except in narrow circumstances relating to the exemptions at section 14 (vexatious or repeated requests) and section 40(1) (personal data of the requester), the identity of the requester or their motive for making the request is not relevant – the FOIA section 1 right of access to official information is applicant blind.

Right of appeal

30. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

31. 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.
32. 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

Graham Smith
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