

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 February 2014

Public Authority: Department for International Development
Address: 1 Palace Street
London
SW1E 5HE

Decision (including any steps ordered)

1. The complainant has requested information relating to the Real World Broadcasting Project 2005-2007, undertaken by a third party but partly funded by the Department for International Development.
2. The complainant complains that the Department for International Development wrongly relied on section 40(2) to withhold some of the information.
3. The Commissioner's decision is that the Department for International Development correctly relied on section 40(2) to withhold requested information except as regards the names of organisations.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld names of organisations.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

6. The Department for International Development¹ ("DfID") is a government department; its stated goal is "to promote sustainable development and eliminate world poverty".
7. International Broadcasting Trust ("IBT") is a media and education charity.
8. In or around 2005 IBT made an application for funding to DfID in relation to a media research project (Real World Broadcasting Project 2005-2007) it wished to undertake.

Request and response

9. On 9 May 2013, the complainant wrote to DfID and requested information in the following terms:
 - Copies of all documents relating to the Real World Broadcasting Project 2005-2007, DfID's total funding was £67,404.
10. DFID responded on 7 June 2013. It provided some requested information but refused to provide the remainder. It cited the following exemptions as its basis for withholding the information:
 - Section 40(2) – personal data
 - Section 43(2) -commercial interests
11. The complainant requested an internal review on 2 July 2013. DfID sent him the outcome of its internal review on 30 July 2013. It revised its position by releasing some further information but still withheld the remainder by relying on the exemptions originally stated.

Scope of the case

¹ <https://www.gov.uk/government/organisations/department-for-international-development>

12. The complainant contacted the Commissioner on 9 August 2013 to complain about the way his request for information had been handled.
13. During the course of his investigation the Commissioner obtained and viewed the withheld information and also considered detailed submissions by both parties.
14. On 21 November 2013, DfID released a further small amount of previously withheld information to the complainant. This was information withheld under Section 40(2) and related to BBC personnel.
15. On 21 November 2013, the complainant informed the Commissioner that he did not take issue with redactions involving bank account numbers, email addresses and telephone numbers. He also accepted all of the redactions in the following documents:
 - F2013-154 Disclosure 2
 - F2013-154 Disclosure 3
 - F2013-154 Disclosure 4
 - F2013-154 Disclosure 5
16. On 7 January 2014, DfID released a further amount of previously withheld information to the complainant. This information comprised the personal data of BBC officials that, it said, the BBC had latterly released to the public.
17. The Commissioner therefore has to consider whether information was correctly withheld in "F2013-154 Disclosure 1" by virtue of section 40(2). The complainant did not take issue with withheld information that consisted of bank account numbers (withheld under section 43(2)), email addresses and telephone numbers (both withheld under section 40(2)). There was no further information withheld under section 43(2) other than the said bank account numbers.

Reasons for decision

18. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
 - the duty to inform the applicant whether or not requested information is held and, if so,
 - the duty to communicate that information to the applicant.

19. The complainant takes issue with DfID withholding information in "F2013-154 Disclosure 1". DfID relies on sections 40(2) (personal data) to withhold that information. The withheld information consists of the following;

- The names of attendees at the meeting
- The names of non-governmental organisations that had attendees at the meeting
- Two curricula vitae of people connected to the IBT

Section 40(2)

20. Section 40(2) of the FOIA states that information is exempt from the duty of disclosure if it constitutes the personal data of a party other than the complainant and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the DPA).

Personal Data – names and job titles

21. Personal data is defined in section 1(1) of the DPA as -

"...data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or 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 person in respect of the individual".

22. In determining whether information is the personal data of individuals other than the requester, that is, third party personal data, the Commissioner has referred to his own guidance² and considered the information in question. He has looked at whether the information relates to living individuals who can be identified from the requested information and whether that information is biographically significant about them.

23. The withheld information that concerns a record of attendance at two seminars (at the meeting) who were arranged by the IBT and others under the rubric of the Cambridge Media and Environment Programme in May 2004 and September 2005. As far as it is aware, DfID did not

² http://www.ico.org.uk/for_organisations/data_protection/the_guide/~/media

fund either event. The information on the two seminars was provided to DfID by the IBT in 2005, along with other information, to support the IBT's bid for funds under the Development Awareness Fund.

24. The Commissioner finds that the names and job titles of people ("the data subjects") referred to in the withheld information, and the fact that they attended seminars, is those individuals' personal data. This is because the fact that individuals are listed as attendees has biographical significance for the individual. It is a record of their whereabouts at a particular time and that each person took part in a meeting in the course of their career. Job titles when coupled with the name of the employer and the date of their attendance can readily be used to identify individual data subjects. Thus the job titles constitute the personal data of the data subjects
25. The data subjects comprise of persons who attended the seminars on behalf of named charities, as academics from UK universities or merely as an interested person.
26. Having decided that the requested information, that constitutes names and job titles, is third party personal data, the Commissioner then turned his attention to the conditions under section 40(3).
27. The first condition under section 40(3)(a)(i) says that personal data is exempt from disclosure to a member of the public if doing so would contravene one of the data protection principles set out in Schedule 1 of the DPA. The Commissioner considered whether disclosing the information would breach the first data protection principle: that personal data 'shall be processed fairly and lawfully...'

Fairness

28. In considering whether disclosure of personal data would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner considers the following factors:
 - The data subject's reasonable expectations of what would happen to their personal data.
 - The consequences of disclosure.
 - The balance between the rights and freedoms of the data subject and the legitimate interests of the public.
29. DfID states that the IBT has informed it that participation in the two seminars was on the basis of 'Chatham House rules', meaning that any statements made during the course of the seminars would not be attributed outside the seminars to individual participants. The IBT has

also informed DfID that it was the understanding of the BBC at least that these rules also cover expectations that the names of individuals attending the seminars would not be published, and also that the BBC requested the IBT remove details of participants' names from the IBT's website after the IBT published these shortly after the seminars took place. DfID considers that given these circumstances, disclosure of the personal data would breach the legitimate expectations of the data subjects concerned and would therefore be in breach of the first principle of the DPA.

30. Where the data subject has not expressed consent to the disclosure of their personal data the Commissioner adopts the following approach when considering fairness:

- Non-expression of consent is not solely determinative as to whether the data subject's personal data will be disclosed.
- It also remains important to still consider whether it would be reasonable for the data subject to object to the disclosure.

31. The Chatham House Rule originated at Chatham House³ with the stated aim of providing anonymity to speakers and to encourage openness and the sharing of information. It can be described as follows;

When a meeting or part thereof, is held under the Chatham House Rule, participants are free to use the information received. However the identity, or the affiliation of the speaker(s), or that of any other participant is not to be revealed.

32. The Chatham House Rule is, of course, not a law as such but rather an agreement as to how information is to be treated by participants and attendees of a meeting. The Rule is subservient to the FOIA (read together with the DPA) which contains provisions for the "sharing" of information held by public authorities with the public and regulates the issue of identification of participants.

33. The Commissioner accepts the general tenet of DfID's position. That is the data subjects have not given their consent for the release of their personal data which has been withheld by DfID.

³ <http://www.chathamhouse.org/about-us/chathamhouserule>

34. It is the Commissioner's position that the data subject's non-expression of consent to the information release is not determinative as to whether the release would be fair or not. The non-expression of consent is one factor that has to be weighed against those factors which focus on the legitimate interest in releasing the information.
35. Acknowledging the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individual. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
36. DfID explains that it has taken account of the fact that any comments were made to the IBT, an organisation which is not a public authority, and many were made at a time prior to the commencement of the FOIA. It also considers that, given the passage of time, it is unlikely that all of the data subjects will be able to recall the detail of any meetings they participated in or comments they made to the IBT before or after any of the events. There was no interaction between any non-IBT data subjects and DfID in connection with the funding application at all.
37. Disclosure, DfID says, of the personal data of those data subjects in these circumstances would be unnecessary as the data is held incidentally by DFID and they do not directly relate to the funding application or decisions made on it (i.e. there was no lobbying or similar activity by any of the data subjects to seek to influence DFID). In conclusion, it is of the view that these circumstances in their totality mean that it could not be assured it would be fair to release the personal data concerned in response to this request.
38. The complainant on this issue referred the Commissioner to the Information Tribunal's decision in *The Corporate Officer of the House of Commons v Information Commissioner and Norman Baker MP* (EA/2006/0015 & 0016). The Tribunal commented that:

"The existence of FOIA in itself modifies the expectations that individuals can reasonably maintain in relation to the disclosure of information by public authorities, especially where the information relates to the performance of public duties or the expenditure of public money. This is a factor that can properly be taken into account in assessing the fairness of disclosure." (paragraph 43).
39. The Commissioner finds the following facts to be particularly pertinent when considering the issue of fairness and the public interest in disclosure. The data subjects, in attendance at the meeting, were not there at the behest of, or to represent, public authorities that fall within

the ambit of the Act. Similarly they were attending a conference organised by a charitable organisation that itself is not subject to the duties of the FOIA as laid out in paragraph 18 above.

40. On the facts of this matter the complainant's submission (as laid out above) is not particularly relevant. This is because the data subjects were not there in the performance of a public duty or expending public funds
41. The Commissioner cannot find a compelling public interest reason to override the data subjects' right of privacy. Accordingly the Commissioner finds that this information was correctly withheld by virtue of section 40(2).

Curricula vitae

42. A portion of the withheld information consists of two curricula vitae of people connected to the IBT. The information contained therein is the biographical information of the named data subjects.
43. The issues as laid out in paragraph 30 above are equally applicable here
44. These data subjects have not given their consent to this information being publically disseminated. However, as said above, this is not necessarily determinative as to whether the information should be released.
45. The Commissioner cannot discern a wider legitimate interest that outweighs the data subjects' legitimate interests of privacy and confidentiality as regards the contents of the curricula vitae. The curricula vitae are therefore exempt from disclosure by virtue of section 40(2).

Non – Governmental Organisations

48. Personal data means data which relates to a living individual. Accordingly the Commissioner finds that the name(s) of the non – governmental organisations cannot be withheld by reference to section 40(2).
49. Given the relative size of these organisations, the Commissioner is satisfied that it is highly unlikely that a person would be able to work out who, from those organisations attended, simply by providing the names of the organisations. Accordingly the Commissioner's view is that there is little chance of inadvertently disclosing personal data by releasing the names of the organisations.

Right of appeal

50. 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: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

51. 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.
52. 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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF