

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 March 2014

**Public Authority:** London Councils  
**Address:** 59½ Southwark Street  
London  
SE1 0AL

#### Decision (including any steps ordered)

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1. The complainant has requested information about the appointment of a Chief Adjudicator. The public authority has provided most of the requested information but has withheld the names of three unsuccessful candidates citing section 40(2)(personal information) of the FOIA. The Commissioner agrees that section 40(2) is engaged and he does not require any further steps.

#### Background

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2. The request refers to PATAS, the "Parking and Traffic Appeal Service". More information about this service can be found online<sup>1</sup>.

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<sup>1</sup> <http://www.patas.gov.uk/>

## Request and response

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3. On 29 July 2013, the complainant wrote to the public authority and requested information in the following terms:
  1. *Please provide a list of all the PATAS adjudicators, including the Chief Adjudicator, showing for each the date of their appointment and their legal status being either a solicitor or a barrister.*
  2. *With reference to the retirement of the former Chief Adjudicator Martin Wood, please advise the names and positions of the members of the Committee which interviewed/considered candidates for appointment to the replacement position of Chief Adjudicator and also provide a list of the candidates who were considered for the post.*
4. In its response of 6 August 2013 the public authority directed the complainant to some information which was published on its website. It gave the job titles of those who made up the interview panel, citing section 40(2) to forego disclosure of the names.
5. The complainant contacted the public authority again on 17 August 2013 to request an internal review; on this occasion this was done via the "What do they know?" website so it can be followed online<sup>2</sup>.
6. Following an internal review the public authority wrote to the complainant on 3 October 2013. It accepted that its previous response was "insufficient" and provided some further information.
7. During the course of the Commissioner's investigation the public authority made a further disclosure. It provided all the remaining withheld information except for the names of those candidates who were unsuccessful at interview; this consists of three names.

## Scope of the case

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8. The complainant contacted the Commissioner on 6 October 2013 to complain about the way his request for information had been handled.
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<sup>2</sup>

[https://www.whatdotheyknow.com/request/details\\_of\\_patas\\_adjudicators\\_a\\_n#incoming-436371](https://www.whatdotheyknow.com/request/details_of_patas_adjudicators_a_n#incoming-436371)

This initially included non-disclosure of whether or not each named adjudicator was a solicitor or barrister, the names of those on the interview panel and the names of those who were interviewed.

9. Following further disclosure during his investigation, the Commissioner will consider whether or not the remaining information, ie the names of three unsuccessful interview candidates, should be released.

## Reasons for decision

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### Section 40 – personal information

10. Section 40(2) of the FOIA provides an exemption from the disclosure of personal data where the information is the personal information of a third party and its disclosure would breach one of the data protection principles of the Data Protection Act (DPA).

*Is the information personal data?*

11. The first step for the Commissioner to determine is whether the requested information constitutes personal data, as defined by the DPA.

12. Personal data is defined in section 1(1) of the DPA 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 intention of the data controller or any other person in respect of the individual."*

13. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
14. The names of the parties concerned clearly identify them and are therefore their personal data.

*Would disclosure contravene a data protection principle?*

15. Having accepted that the information requested constitutes the personal data of living individuals other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles.
16. In this case, the Commissioner understands that the public authority considers that the principle at issue is the first principle. That principle deals particularly with the privacy rights of individuals and the balance between those rights and other legitimate interests in processing personal data. It states that:

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

- (a) at least one of the conditions in schedule 2 is met", and*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."*

17. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and meet one of the DPA Schedule 2 conditions (and Schedule 3 conditions if relevant). If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

*Would it be fair to disclose the requested information?*

18. In considering the fairness element of the first data protection principle, the Commissioner takes into account a number of factors depending on the circumstances of each case. In this case, he has considered:
  - the reasonable expectations of the data subjects and the nature of the information;
  - the consequences of disclosure; and
  - any legitimate interests in the public having access to the information and the balance between these and the rights and freedoms of the individuals who are the data subjects.

*Reasonable expectations of the data subject*

19. In correspondence with the Commissioner the public authority advised:

*"The candidates for the position of Chief Adjudicator have not consented to having the fact of their application for this position publically revealed.*

*The candidates applied for this role with the reasonable expectation that the fact of their application would be treated confidentially unless they were successful. There is a strong presumption in almost any job application that the identity of applicants will be treated confidentially. London Councils did not indicate to applicants for the role of Chief Adjudicator that the fact of their application would be disclosed to the public at any point.*

*Decision notice FS50308477 (Ministry of Justice) is relevant here. This decision notice concerns a request for information about the individuals who applied for the position of Information Commissioner. In the decision notice, the Commissioner 'acknowledges the likelihood that job applicants, when they apply for a job, will have a clear expectation that the potential new employer will keep the fact of their application confidential in order to safeguard their existing employment'".*

20. The public authority also argued that it believed the names of the candidates to be personal data which relates to their 'private' rather than 'public' lives as it relates to a job application rather than work being undertaken in an official capacity. The Commissioner accepts this assertion and agrees that an application should be considered as 'private', unless the applicant is advised otherwise - which is not the case here.
21. The Commissioner acknowledges that there will be circumstances where, for example due to the nature of the information and/or the consequences of it being released, the individual will have a strong expectation that information will not be disclosed. He considers that whether or not someone has applied for a particular position of employment will generally fall under this umbrella.
22. The Commissioner also recognises that it is reasonable to expect that a responsible public authority will not disclose certain information and that it will respect confidentiality.
23. In this respect, the Commissioner accepts that an unsuccessful candidate for a post would not expect their name to be published, even where the post is a senior one. Whilst this may not be the case for a successful candidate who will then be performing that role, the Commissioner finds that the former will carry a general expectation of privacy.

#### *Consequences of disclosure*

24. When considering the consequences of disclosure in this case, the Commissioner has taken into account the nature of the withheld

information. He has also considered the fact that disclosure under freedom of information legislation is disclosure to the public at large and not just to the complainant.

25. In this case, the Commissioner is satisfied that releasing the names of three withheld parties would allow them to be recognised. It would therefore be publicised that their applications for the role of Chief Adjudicator were unsuccessful.
26. In this respect, the public authority provided the following arguments:

*"Disclosure of this information would be detrimental to the data subjects on two counts.*

*Firstly, it may cause distress to the data subjects if the fact that they applied for this position was made known to their current employer and colleagues. This could affect their working relationships with their employer and colleagues as well as their personal relationships with the same people and has the potential to cause significant distress to the data subjects.*

*However, we accept that this argument is not as strong as it would have been if the request for information had been made immediately after the application process. Three years have now passed since the application process and the detriment to data subjects that would be caused by this information being made known to their employer and colleagues is not as strong as it would have been. Nevertheless, we still consider that disclosure may still be detrimental to the data subjects in terms of their relationships with their employers and colleagues.*

*Secondly, and more significantly, it would, in general, cause distress to the individuals if the fact that they applied and were unsuccessful for a position was made public. The Information Commissioner acknowledged this in decision notice FS50444639<sup>3</sup> (Department of Health, Social Services & Public Safety). In this case, an applicant had requested information about individuals who had applied for a senior position at the NI Medical and Dental Training Special Health and Social Care Agency.*

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[http://ico.org.uk/~media/documents/decisionnotices/2012/fs\\_50444639.aspx](http://ico.org.uk/~media/documents/decisionnotices/2012/fs_50444639.aspx)

*The Commissioner, in considering whether disclosure would cause any unnecessary or unjustified damage or distress, has concluded that applicants in general would be distressed if their personal details were placed in the public domain. An application for a position is essentially a person's employment history and were this to be disclosed to other applicants or placed in the public domain it could cause considerable damage or distress. For example a current employer may not know of the applicant's intention to apply for the position. Disclosure of their personal details would be contrary to the applicants' reasonable and legitimate expectation that an application process is confidential and could cause the applicants unjustified damage or distress.*

*The individuals who applied for the position of Chief Adjudicator did so with the reasonable expectation that the fact of their application would not be disclosed to the world at large. Disclosure would therefore be considered by the data subjects as an invasion of their privacy, which would cause them distress.*

*Furthermore, disclosure has the potential to damage the career prospects of the individuals, as prospective employers would know that these individuals had been unsuccessful in this competition".*

27. The Commissioner concurs with this analysis.
28. In light of the nature of the information and the reasonable expectations of the individuals concerned, the Commissioner is satisfied that release of the withheld information would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the individuals concerned.

*Balancing the rights and freedoms of the data subject with legitimate interests*

29. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to provide the information if there is an overriding legitimate interest in disclosure to the public. Under the first principle, the disclosure of the information must be fair to the data subject, but assessing fairness involves balancing their rights and freedoms against the legitimate interest in disclosure to the public.
30. The Commissioner accepts that there is a wider public interest in transparency of public sector organisations. However, in the circumstances of this case, he does not consider that the legitimate interest in the public accessing the withheld information would outweigh the potential damage and distress which could be caused to the data

subjects by disclosure of that information. Therefore, the Commissioner is unable to conclude that disclosure of the withheld information is necessary to meet a legitimate public, rather than personal, interest.

31. In view of the above, the Commissioner is satisfied that the withheld information is personal data and that disclosure of any of it would breach the first data protection principle as it would be unfair to the individuals concerned. As the Commissioner has determined that it would be unfair to disclose the requested information, it has not been necessary to go on to consider whether disclosure is lawful or whether one of the conditions in Schedule 2 of the DPA is met. The Commissioner therefore upholds the Council's application of the exemption provided at section 40(2) of the FOIA. As section 40 is an absolute exemption there is no need to consider the public interest in disclosure separately.



## Right of appeal

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32. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. 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**  
**Water Lane**  
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