

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 March 2015

Public Authority: Portsmouth City Council
Address: Civic Offices
Guildhall Square
Portsmouth
PO1 2BQ

Decision (including any steps ordered)

1. The complainant has requested details about a Finance Officer post at a particular school. Portsmouth City Council ('the Council') refused to provide the requested information saying it was the personal data of the current post holder and therefore exempt from disclosure by virtue of section 40(2) (personal information) of the FOIA. The Commissioner's decision is that the information is not personal data as it relates to the post itself so the exemption is not engaged.
2. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - it should provide the date requested.
3. The Council 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.

Request and response

4. On 1 December 2014, the complainant wrote to the Council and requested information in the following terms:

"School: Charles Dickens Primary School

Year: 01.09.2013 - 31.08.2014

The post of the Finance Officer, Band 7 commencing on 01.09.2013 - 31.08.2014

Date when the changes that took place within the above dates, job descriptions of these posts and pay bands for these posts

Schools policies and procedures for Portsmouth City Council, Organisational change policy and procedures."

5. On 2 December 2014 the complainant emailed the Council adding:

"Just to clarify its [sic] for the changes from Finance officer to Bursar during 01.09.2013 to 31.08.2014".

6. The Council responded to this (and an earlier request) on 31 December 2014 confirming that it held the information. It directed the complainant to where she could find its various policies but advised that the information about the post was exempt from disclosure on the basis that it was the personal data of the post holder and that disclosure would breach the Data Protection Act (the 'DPA').
7. When asking for an internal review, the complainant advised that she already knows the post holder. She again clarified that she wanted to know the information regarding the change of post from finance officer to bursar which she understood to have taken place during the academic year 2013-14.
8. In responding to this, the Council advised that it did not hold any relevant information as its records did not show that a bursar had been appointed during that period. On realising her error, the complainant apologised and advised that she actually meant the change of post from Finance Officer to Finance Manager.
9. Treating this as a request for internal review the Council wrote to the complainant on 14 January 2015. It again confirmed holding the information but maintained that it was exempt from disclosure by virtue of section 40(2).

Scope of the case

10. The complainant contacted the Commissioner on 18 January 2015 to complain about the way her request for information had been handled. She asked the Commissioner to consider whether or not the date that a

finance manager role became available at a school was personal data and exempt from disclosure. This will be considered below.

Reasons for decision

Section 40 – personal information

11. Section 40(2) provides that:

"Any information to which a request for information relates is also exempt information if-
(a) it constitutes personal data which do not fall within subsection (1), and
(b) either the first or the second condition below is satisfied".

12. The exemption provided by section 40(2) is an absolute exemption in combination with section 40(3)(a)(i) or 40(3)(b). This is where disclosure of information which falls under the definition of personal data contained in section 1(1) of the Data Protection Act 1998 (DPA) would breach any of the data protection principles.

13. In order to decide whether or not this exemption is engaged, the Commissioner shall consider whether the requested information is the personal data of one or more third parties and whether the release of this information would be fair and lawful.

Is the information personal data?

14. Section 1(1) of the Data Protection Act 1998 (the DPA) provides the following definition of personal data:

"personal data' means 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."

15. This provides two criteria that must be fulfilled for information to constitute personal data; the information must relate to an individual, and that individual must be identifiable either from that information directly, or from that information combined with other information available to the holder of that information.

16. The requested data covers solely the date that a post changed from that of a Finance Officer to a Finance Manager. Whilst the Commissioner

understands that this is as a result of some internal changes, that date relates only to the position, ie when the position changed from one job title to another, and does not seek to identify any party. That date will always relate to the job and will remain constant irrespective of whoever is fulfilling that role. Therefore, the Commissioner does not find the date that the post changed to be anyone's personal data as it is about the post itself not the post holder.

17. As he concludes that the withheld information is not personal data the Commissioner finds that this exemption is not engaged.

Right of appeal

18. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

19. 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.
20. 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

Rachael Cragg
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Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF