

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 08 August 2017

Public Authority: The British Broadcasting Corporation ('the BBC')

Address: Broadcast Centre
White City
Wood Lane
London, W12 7TP

Decision (including any steps ordered)

1. The complainant has requested information relating to the appointment of the Director of Radio and Education. The BBC refused to provide the requested information citing the exemption under section 40(2) of the FOIA (third party personal data) as its basis for doing so. The Commissioner's decision is that the BBC has correctly applied section 40(2) of FOIA to the withheld information. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

2. On 23 December 2016 the complainant made the following request for information:

'Please note that I am only interested in information which relates to the period 1 July 2016 to 10 October 2016.'

Please note that I would like both sides of the correspondence and communications including emails.

Please note that the reference to Lord Hall and James Purnell should include the two men themselves as well as their private offices.

1. Could you please provide copies of all correspondence and communications (including emails) between Lord Hall and James Purnell

which in any way relates to the BBC's decision to make James Purnell Director of Radio and Education.

This correspondence and communications will include information about the post's specific responsibilities; Mr Purnell's suitability for the post, the recruitment process for this particular post, the salary; other potential candidates; how the vacancy might be advertised it[sic] at all; and the subsequent reaction to the appointment.

2. In the interests of clarity could you please provide copies of all correspondence and communication between Lord Hall and James Purnell during the same period which in any way relates to the idea of Mr Purnell accepting a new role and or taking on new responsibilities within the BBC. I am interested in receiving all information even if it does not specifically relate to the actual new role Mr Purnell ended up with.'

3. On 25 January 2017 the BBC responded that it held some information within the scope of the request and cited section 40(2) (Personal Information) of the FOIA to withhold it.
4. On 13 March 2017 the complainant requested an internal review. On 23 April he chased for a response to this. On 24 April the BBC stated that the request for an internal review had not been logged due to an 'administrative error' and apologised.
5. On 18 May 2017 the BBC provided the outcome of the internal review. It explained that it did not hold communications or correspondence such as emails between the relevant individuals Lord Hall and James Purnell.
6. The BBC provided some information that was publicly available; stated that no further information was held for some of the seven parts of the request; and withheld some information as personal data under section 40(2). This is summarised as:

1. Correspondence and communications between James Purnell and Lord Hall

- a) the post's specific responsibilities; [no further information held]*
- b) Mr Purnell's suitability for the post; [no further information held]*
- c) the recruitment process for this particular post; [section 40]*
- d) the salary; [no further information held]*
- e) other potential candidates; [no further information held]*

f) how the vacancy might be advertised it[sic] at all; [no further information held] and

g) the subsequent reaction to the appointment. [No further information held.]

Background

7. The BBC stated that a significant amount of information about Mr Purnell and his appointment had been published and provided the following links:
- Mr Purnell's background and experience:
http://www.bbc.co.uk/aboutthebbc/insidethebbc/managementstructure/biographies/purnell_james/
 - Mr Purnell's salary:
<http://www.bbc.co.uk/aboutthebbc/insidethebbc/howwework/accountability/disclosures.html>
 - Press statements announcing Mr Purnell's appointment:
<http://www.bbc.co.uk/news/entertainment-arts-37517074>
<http://www.bbc.co.uk/mediacentre/latestnews/2016/bbc-leadership-helen-boaden>

Scope of the case

8. On 6 June 2017 the complainant contacted the Commissioner. He argued that disclosure would not breach data protection legislation and was unhappy with the time taken to process the internal review.
9. The Commissioner wrote to both parties outlining the scope of the case as limited to information requested at question 1c (see above paragraph 6):
1. Correspondence and communications between James Purnell and Lord Hall
 - c) the recruitment process for this particular post; [section 40]
10. The BBC confirmed that its submission was limited to this as *'the BBC provided the applicant with the extent of the information that the BBC holds in relation to the other six factors.'*

11. The complainant has not disputed the scope of the case and therefore, the Commissioner will determine if the BBC is entitled to rely on section 40(2) as a basis for refusing to provide the information requested at question 1c.

Reasons for decision

Section 40(2) – Third party personal data

12. This exemption provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act (DPA).

Is the withheld information personal data

13. Personal data is defined by the DPA as any information relating to a living and identifiable individual.
14. 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.
15. The BBC have stated that this *'is clearly the case in respect of the CV and other related matters that would reveal personal information relating to Mr Purnell's financial position and job negotiation skills and relevant experience that fall under the s1(1) definition of personal data'*.
16. The Commissioner has viewed the withheld information (the long form CV and a presentation) and is satisfied that the information withheld under section 40(2) is information from which a living data subject would be identifiable, namely Mr Purnell.

Would disclosure breach the Data Protection Principles?

17. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
18. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual, the potential consequences of

the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

Reasonable expectations

19. Whether an individual might reasonably expect to have their personal data released depends on a number of factors. These include whether the information relates to an employee in their professional role or to them as individuals, the individual's seniority or whether they are in a public facing role.
20. The information in this case concerns the detailed personal information of a named individual during the recruitment process for a particular post and the BBC have stated that there is no expectation from the individual that these details would be made publicly available.
21. The BBC stated that:
 - The BBC acknowledges the need for accountability and transparency in the work of public authorities. A BBC employee, particularly a senior employee, will therefore have some expectation that data relating to their professional role may in some limited circumstances be disclosed. In the interests of transparency, the BBC has proactively published a significant amount of information that is relevant to the request.
 - While the requested information strictly relates to the individual's senior role in a public authority, the individual has a reasonable expectation that the information would not be disclosed...based on two factors: the nature of the information...and...the circumstances in which the personal data was obtained.
 - Mr Purnell does not consent to the disclosure.
22. The Commissioner understands that the BBC would not routinely make public such information.

Consequences of disclosure/Damage and distress

23. Disclosure is unlikely to be fair if it would have unjustified adverse effects on the named individual.
24. The BBC has argued that:
 - The nature of the information is specific to the role to which he was later appointed as it relates to his vision for the role and his assessment of his capacity to fulfil the role.

- Disclosure may be prejudicial to Mr Purnell as it may impact on his future employment and earning prospects by revealing the way he markets his skill set and experience for specific roles and the way he negotiates employment arrangements.
- Disclosure raises a real risk of unjustified adverse effects for both the individual named as well as for the public authority.
- It is not BBC policy to proactively disclose individual's job applications. At no time in the application process or after the announcement of Mr Purnell's appointment did the BBC inform Mr Purnell that this information may be disclosed.
- The BBC believes that disclosure would set a precedent that individuals who apply for positions – particularly high profile positions – will have the entirety of their job applications published.

25. Upon viewing the contents of the withheld information, the Commissioner accepts that disclosure could be distressing for the named individual.

Balancing the rights and freedoms of the individuals with the legitimate interests in disclosure

26. Given 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 individuals. 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.

27. The complainant has argued that:

- 'The appointment attracted a great deal of adverse press criticism – not least because Mr Purnell has never worked in radio before...I believe there are strong public interest reasons for disclosing the material.'

28. The BBC has already informed the complainant that:

- the disclosure of information already undertaken by the BBC satisfies any legitimate interest in the public having the requested information.
- The BBC has followed policy in relation to the publication of salary, as well as publishing particulars of Mr Purnell's previous experience and suitability for the position.

29. In its submissions to the Commissioner the BBC stated that:
- the information that has already been disclosed to the requestor (and to the public), is general in nature and is therefore qualitatively different from the specialised, tailored CV and presentation provided by Mr Purnell in his application.
30. The Commissioner accepts that there is a difference between the published biography and the specific details of the CV in the withheld information and that the data subject has a reasonable expectation of privacy in relation to his CV and presentation.
31. This follows a previous decision notice, FS50356624, where the Commissioner upheld a Council's decision to withhold the CV and job application of a senior employee under section 40(2) of the FOIA: https://ico.org.uk/media/action-weve-taken/decision-notice/2011/624624/fs_50356624.pdf
32. Having considered the BBC's submission and the views of the complainant the Commissioner is not convinced that the specific and detailed information requested is of sufficient wider public interest to warrant overriding the protection of the third party personal data of those concerned, namely:
- the individual's likely expectation about how his personal data will be managed;
 - the individual's lack of consent to its release; and
 - the possible negative consequences to the individual of releasing the information.
33. The Commissioner is satisfied that on balance, the legitimate public interest would not outweigh the interests of the individual and that it would not be fair to disclose the requested information in this case.

Conclusions

34. The Commissioner is satisfied that the withheld information is personal data and that disclosure would breach the first data protection principle as it would be unfair to the individual concerned. The Commissioner upholds the BBC's application of the exemption provided at section 40(2) of the FOIA.

Other matters

35. The Commissioner's guidance explains that when a public authority receives an internal review request, it should ensure the review takes no

longer than 20 working days in most cases, or 40 in exceptional circumstances.

36. The Commissioner notes that in this case the BBC took 46 working days to respond to the internal review request. The Commissioner will not comment on the BBC's statement that there was a failure to log the request due to an 'administrative error' but the Commissioner would advise the BBC to follow her guidance on this matter to ensure good practice when dealing with internal review requests.

Right of appeal

37. 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

38. 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.
39. 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

Pamela Clements
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