

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 February 2023

Public Authority: Crestwood Community School
Address: Shakespeare Road
Eastleigh
SO50 4FZ

Decision (including any steps ordered)

1. The complainant requested information from Crestwood Community School about the breakdown of IT staff by job grade. The Commissioner's decision is that the public authority is entitled to rely on section 40(2) of FOIA to withhold all of the requested information.
2. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 11 June 2022, the complainant made the following request for information to the public authority:

"Please provide a breakdown of staffing, by EHCC grade of all IT related staff employed in the following financial years: 2021/22, 2020/21, 2019/20."
4. The public authority refused to provide all of the requested information citing section 40(2) (personal information) of FOIA as its basis for doing so.

Reasons for decision

Section 40 - personal information

5. This reasoning covers whether the public authority was correct to apply section 40(2) of FOIA to the request.¹
6. Section 40(2) says that information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
7. In this case, the Commissioner is satisfied that the withheld information is personal data because if disclosed, the requester would be able to identify the salary bands of the individuals in question.
8. Additionally, the request concerns only a small number of individuals. The Commissioner recognises that small numbers carry a greater risk of identification than larger ones – but that does not mean that every small number identifies any individual. Whether individuals can be identified will depend on the particular facts, such as the size of the overall dataset, the number of data points that have been requested and the information, already in the public domain, that could potentially be cross-referenced with the disclosed information. It is not sufficient for there to be only a hypothetical risk of identification. If there is no realistic route to identification, the information is not personal data, regardless of its sensitivity.
9. When considering the possibility of identification, the Commissioner applies the “Motivated Intruder Test.” This test starts with a hypothesis that there exists a person who wishes to identify the individuals covered by the disputed information. The person is willing to devote a considerable amount of time and resources to the process of identification. They may have some inside knowledge (i.e. information not already in the public domain) but will not resort to illegality – they are determined but not reckless. The Commissioner looks to see how such a person would go about identifying the individuals involved.
10. 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 lawful, fair and transparent.

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

11. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary and whether these interests override the rights and freedoms of the individuals whose personal information it is.
12. The Commissioner considers that the complainant is pursuing a legitimate interest but that disclosure of the information through FOIA is not necessary to satisfy it. This is because the legitimate interest has been met by the fact that some of the information, including the names of the staff in question and their job titles have already been disclosed by the public authority disclosing a staff list on their website.
13. The Commissioner therefore considers that disclosing the requested information in relation to staff grades would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation. The public authority was therefore correct to apply section 40(2) of FOIA to this request.

Right of appeal

14. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

15. 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.
16. 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

Catherine Fletcher
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF