

Freedom Of Information Act 2015

DECISION NOTICE

Section 42

Decision Number: 2024/04

Public Authority: Garff Commissioners

Address: 35 New Road
Laxey
Isle of Man
IM4 7BG

Decision Date: 11 December 2024

Summary

The Applicant asked the Garff Commissioners (“the Authority”) for the salaries of its two clerks to the Commissioners. Following a request for a review, the Authority provided bandings, between £40,000 and £50,000, though withheld the specific figures, noting that this was personal data and exempt under the Freedom of Information Act (“FOIA”).

The Commissioner reviewed the case and found that the Authority was justified in applying the exemption.

The Commissioner does not uphold the Applicant’s complaint and does not require further action.

However, the Commissioner notes that it is best practice to proactively publish salary bandings.

Background

1. On 27 November 2022 the Applicant made a request for information to the Authority, IM44133I. They requested the following: *“the current salaries of he [sic] two Clerk to Garff Commissioners.”*
2. The Authority responded on 29 November 2022. The Authority refused the request under section 25 (“S25”) of the FOIA, citing exemption S25 “absolutely exempt personal information.”
3. On 31 January 2023, the Applicant wrote to the Authority requesting a review of the decision. The Applicant noted that *“the two Clerks are public facing and they, therefore, have no expectation of privacy with regard to the amount of salary they receive or their salklry [sic] scales.”*

4. The Authority wrote to the Applicant with the outcome of its review on 07 March 2023. They provided additional information, including salary bands, though withheld exact figures, citing the exemption relied upon in the first instance (S25). It further specified, within its review of their initial response, that it was relying on S25(2) which refers to the *“personal data of which the applicant is not the data subject.”*
5. The following additional information was provided:
 - Extracts from the audited and published accounts of the Local Authority for Financial Year End 2022, Section 8 (Page 32):
 - *“8.Employees’ remuneration*
There were no employees whose remuneration, excluding pension contributions, was £50,000 or more in bands during the current or prior year.
 - *Key management compensation*
Compensation paid to key management includes all employee benefits including pension contributions amounted to £118,021 (2021: £114,625).
 - Additional salary information regarding the two clerks, including the pay band of both clerks. The Authority advised that *“both clerks received remuneration during financial year 2022/2023 in the pay band of £40,000 to £50,000.”* The Authority noted that the release of this information provides an *“open and transparent indication of the cost of their [Clerks’] employment to the ratepayer whilst at the same time maintaining a balance with the need to protect the personal privacy of the two employees indicated in the FOI request.”*
6. On 07 March 2023, the Applicant wrote to the Commissioner, applying for a review of the PA’s decision to apply an exemption to their request for information.
7. The Commissioner is satisfied that the Applicant provided their name, address for correspondence, and an adequate description of the information required, as required by the FOIA.
8. The Commissioner is satisfied that the Authority undertook a reasonable search, as required by the FOIA.
9. The Authority complied with the request within the standard processing period.

Analysis

10. Under section 42(1) of the FOIA, the Commissioner is required to decide on whether a public authority has responded to a request in accordance with the requirements of Part 2 of the legislation or whether the public authority was justified in refusing to provide the information requested.
11. On 07 March 2023 the Commissioner received the request for review (RN2023/04) and allocated it to a Casework Officer. The Casework Officer determined that the request was valid and acknowledged receipt to the applicant on 09 March 2023.

12. On 09 March 2023 the Authority was notified in writing that the Applicant had made a valid application. The Casework Officer requested that the PA provide the Commissioner with comprehensive information about how it complied with the request by 24 March 2023.
13. The Authority provided the requested information on 23 March 2023.

Decision

14. The Commissioner must decide whether the Authority was justified in refusing to give the information requested.
15. The Authority's refusal notice indicated that the information was withheld as it was determined to be absolutely exempt personal information under S25 of the FOIA.
16. Having reviewed all of the submissions made to them by the Applicant and the Authority, the Commissioner's decision is that the Authority was justified in applying the exemption. The Commissioner therefore does not uphold the Applicant's complaint.
17. The Commissioner notes that the salary bands of the clerks were released following the Applicant's request for an internal review. The Commissioner would consider it best practice to proactively publish this information and considers that it is in the public interest for the salary bands to be shared.

Reasons for decision: Section 25 Exemption

18. The following analysis sets out why the Commissioner has concluded that the Authority was entitled to rely on S25 of the FOIA in this instance.
19. Section 11(2)(a) notes that a public authority may refuse to give the applicant the information requested if the information is either absolutely exempt or qualified exempt.
20. Section 25(2)(a) of FOIA sets out that information is also absolutely exempt if it *"constitutes personal data of which the applicant is not the data subject"*.
21. The public authority broadly applied Section 25 in its initial response to the applicant, and upon internal review it further clarified that Section 25(2) applied and it considered *"the information requested constitutes personal data under the terms of the Data Protection Act 2018"*.
22. The Commissioner considers that the public authority should have further specified how the release of any individuals' personal data would contravene the Data Protection legislation.
23. Personal data is defined as in Article 4(1) of the Applied GDPR as: *"any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person."*

24. The Commissioner accepts that the salary information requested is the personal information of specific living people. These people can be identified from the information, either by itself or read in conjunction with other information in the possession of (or likely to come into the possession of) the data controller. It clearly focuses on those persons and is biographical of them in a significant sense, and consequently the Commissioner is satisfied that it relates to them.
25. While local authorities do publish salary information on their websites, they usually only include salary bands relating to employee job grades. Clerks would not normally expect that their salaries be disclosed to the public in response to an FOI request.
26. The Commissioner pays regard to the earlier Decision Notice 2023/07 which set out that the Peel Town Commissioners had correctly applied an absolute exemption to a request for the clerk to the Commissioners' salary, citing that this was personal information and thus not subject to disclosure.¹
27. The Commissioner notes the UK Information Commissioner's ("UK ICO") guidance about requests for salary information relating to public sector employees which notes that *"exceptional circumstances are needed to justify the disclosure of exact salaries when you don't routinely publish them. In such cases there may be additional public interest factors that outweigh any detriment to the employees concerned"* (page 17).²
28. The Commissioner concurs with the Information Commissioner's comment in recent decision notice IC-169433-H2G4³ (page 2) which states: *"While local councils do publish salary information on their websites, they usually only include salary bands relating to employee job grades [...] Disclosure of the pay grade the individual in question is on whilst not revealing their exact salary, would still reveal a narrow range within which their salary falls. This range is narrower than salary band data usually published by public authorities. There the named employee would not reasonably expect that their pay grade would be disclosed to the public in response to an FOI request."*
29. The UK ICO guidance on personal data in relation to Section 40 of the UK Freedom of Information Act (FOIA) 2002 notes: *"Exceptional circumstances are needed to justify the disclosure of exact salaries when you don't routinely publish them."*⁴

Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to appeal to the High Court on a point of law only. Any such appeal must be made within 28 (calendar) days after the date of this Decision Notice. Further information about the Appeal process is available on the General Registry's web site at: <https://www.courts.im/courtprocedures/AppealsCivil/>

An appeal should be filed at or sent to:

¹ dn2023_07_peeltowncommissioners_04july2023.pdf

² https://ico.org.uk/media2/migrated/1187/section_40_requests_for_personal_data_about_employees.pdf

³ <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4022326/ic-169433-h2g4.pdf>

⁴ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

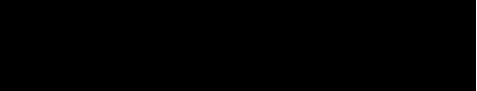
The Court Office
Isle of Man Courts of Justice
Deemsters Walk
Bucks Road
Douglas
Isle of Man
IM1 3AR

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the High Court that it has failed to comply. The Court must inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Publication

The Commissioner will publish this Decision Notice five working days after it has been issued to the Applicant and the Authority.



Dr Alexandra Delaney-Bhattacharya
Isle of Man Information Commissioner
11 December 2024