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A number of recent decisions of the UK Information Commissioner's Office (ICO) under the UK Freedom of Information Act 2000 (FOI) have shed light on the balance between personal privacy and the right to know.

If an FOI request is made for information about a third party, section 40 requires a public authority to ask itself, would disclosure of this information breach one of the eight principles under the Data Protection Act 1998 (DPA)? If the answer is yes then FOI provides an absolute exemption to disclosure of such information. The main DPA principle is the first one; information must be processed fairly and lawfully and the processing must be justified in accordance with schedule 2 (and schedule 3 in the case of sensitive personal data). There other parts to the section 40 exemption (if a DPA section 10 notice is served) but for this discussion of recent ICO decisions they are not relevant.

When dealing with requests for personal information, it is important to distinguish between professional personal information and private personal information. In Decision Notice FS50068973 involving Calderdale Council (Information Commissioner 2005a), ICO ruled that the names of officers who had been on a recruitment trip to Australia should be disclosed to the applicant. Whilst the names were considered to be personal data it was felt that it was fair and lawful to disclose them considering the nature of the officers' role, the amount of public money spent and the responsibility given to them to carry out the task.

The higher up an individual is within an organisation the more the public have a right to know what they do and how much they get paid for doing it. In Decision Notice FS50062124 involving Corby Borough Council (Information Commissioner 2005b), the complainant requested details of the total amount of money paid to the Former Temporary Finance Officer employed by the Council. ICO took into account the fact that the Council has been publicly criticised for the way in which the officer's appointment was handled and that he received a significantly higher rate than would normally be paid for such positions. ICO ordered the information be disclosed. The Decision Notice states:

“...it has been recognised for some time that individuals occupying senior posts within public authorities are likely to be subject to greater levels of scrutiny than those in more junior roles. This helps to ensure accountability of those individuals for their actions. We are satisfied that the Former Temporary Finance Officer could not have reasonably expected that the requested information would remain confidential. Disclosure of the requested information should inform the ongoing debate on this issue and help to ensure that processes are implemented by the Council to avoid similar problems in the future.”

In Decision Notice FAC0064579 involving Southend on Sea PCT (Information Commissioner, 2006c), the complainant, amongst other things, asked ICO to rule on whether the PCT was justified in withholding copies of staff contracts on grounds of third party confidentiality. ICO concluded that the PCT was for the most part justified in relying upon the personal data exemption. However, it did consider that some standard parts of GP contracts should have been released.

Public authorities will henceforth find it very difficult to keep employees' expenses information secret. The public has a right to know how public money is being spent. This especially so if the subjects are senior figures with a public role.

In Decision Notice FS50072319 involving the House of Commons (Information Commissioner, 2006d), the complainant requested a breakdown of the travel expenses claimed by individual MPs for the most recent year for which figures are available into the following four categories: rail travel, road travel, air travel and bicycle. An aggregate figure for travel expenses for each MP is already published but this figure is not broken down into different categories of transport, as the complainant requested. The House of Commons withheld the information on the basis that it was exempt under section 40(2) of the Act. ICO found that the requested information is personal data which can be disclosed without contravening any of the principles of the DPA and, consequently, that the exemption does not apply.

Thus far we have considered cases involving disclosure of personal information about public sector employees or officials. ICO seems to be much more loathed to disclose information about Jo Public.

In Decision Notice FS50078588 involving Avon & Somerset Constabulary (Information Commissioner 2006e) the complainant requested copies of documents relating to the trial of Jeremy Thorpe, the former Liberal Party Leader who was acquitted in 1979 of conspiring with three others to hire a hitman to murder Norman Scott. The scope of the initial request was then narrowed to a copy of the Senior Investigating Officer's report and the police authority considered the information to

be exempt from disclosure under, amongst others, section 40 (personal information). ICO was satisfied that some of the requested information constituted personal data relating to living individuals and that its disclosure would be unfair and involve contravention of the first DPA principle. It gave weight to the fact that those involved were found not guilty by the court and the fact that their reputations would suffer. It also considered that those who cooperated with the police during the investigation had a legitimate expectation that their details would not be disclosed except in the proceedings.

Many request received by public authorities will be about information received from third parties in an employment or complaints context. Again the balance at present seems to be in favour of the privacy of the individual.

In Decision Notice FS50069257 involving York Hospitals NHS Trust (Information Commissioner 2005f), the complainant requested information relating to a particular workplace grievance procedure. The request was refused under section 40. The Commissioner decided that if the third party personal data (including that about individuals who had consented to information being disclosed to the complainant) was disclosed to the general public there would be a breach of the first DPA principle. In the light of these recent ICO decisions it is fair to say that public sector employees, and those whose personal information is held public sector organisations, can no longer expect total confidentiality. Depending on the nature of their information and their involvement with the authority, it may be that there information is disclosed to the wider world.

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