

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 January 2024

Public Authority: Northern Ireland Human Rights Commission

Address: 4th Floor, Alfred House

19-21 Alfred Street

Belfast

BT2 8ED

Decision (including any steps ordered)

1. The Commissioner's decision is that the information regarding the individual researchers details the complainant has requested are exempt from disclosure under section 40(2) of FOIA. This is because it is the personal information of third parties.
2. It's not necessary for the Northern Ireland Human Rights Commission (NIHRC) to take any corrective steps.

Request and response

3. The complainant made the following information request to the NIHRC on 16 August 2023:
 1. What steps were taken in the tendering process?
 2. Where was this advertised?
 3. How many bids were received?
 4. On what criteria were the successful applicants selected?
 5. Please provide copies related to relevant documents in the tendering process, including expert specification, details of the research specification and any clarification questions sent by applicants and answers provided.
 6. Please provide copies of tender applications submitted.

7. Please provide any information related to the NIHRC's evaluation of applications to the tendering process.
 8. Please provide a copy of the contract issued for carrying out the research.
 9. How much money was spent on this independent external research?
 10. What were the names of the independent external researchers and any organisations or institutions they represent?
4. The NIHRC responded on 30 August 2023 answering each point in turn, it withheld information at point 6 under section 40 and 43 of FOIA, and points 8 and 10 under section 40 of FOIA.
 5. On 11 September the complainant requested a review of the NIHRC response as they felt this was over redacted around the names, CVs, and qualifications of the researchers.
 6. The NIHRC's final position was that the relevant information it holds is exempt from disclosure under section 40 of FOIA.

Reasons for decision

7. As the complainant has not queried the application of section 43(2), the Commissioner's reasoning focusses on whether the NIHRC is entitled to withhold the remaining information, by virtue of section 40(2) of FOIA.

Section 40 - personal information

8. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
9. In this case the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
10. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data, then section 40 of the FOIA cannot apply.
11. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

12. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual”.

13. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

14. An identifiable living individual 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, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of the individual.

15. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

16. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information withheld in this case includes specific personal details about named individuals and their connection with the research and investigation. The personal data relates to the data subjects who can be identified as they are named within the investigation.

17. Having considered the nature of the withheld information, the Commissioner is satisfied that it both relates to and identifies the individuals concerned. This information therefore falls within the definition of ‘personal data’ in section 3(2) of the DPA.

18. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”

19. Personal data is processed when it is disclosed in response to an FOI request. Therefore, the information can only be disclosed if to do so would be lawful, fair, and transparent.

20. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in the information being disclosed, and whether that legitimate interest overrides the rights and freedoms of the individuals whose personal information it is. The Commissioner must also decide whether

the disclosure is necessary, or whether the legitimate interests identified could be met in another way.

21. The complainant has argued that: "There is legitimate interest in transparency and a wide public interest in this information because those involved have produced research that is intended to impact the education of all state-educated children in NI. The credibility of the NIHRC report rests in part on the expertise of the "independent experts". What is their expertise? What have they published? Are they independent? Are they linked to any lobby groups?"
22. The Commissioner acknowledges that the complainant, and the wider public, have a legitimate interest in understanding information about the quality and veracity of research carried out for the investigation in question. The researchers have an important role in ensuring information gathered and submitted to the investigation is credible and evidential; their research and the investigation outcome affect the local and wider community. The public therefore has a legitimate interest in knowing that the researchers are credible and qualified to undertake the specified research, in order to reassure themselves that decisions and actions are taken appropriately and, with the best interests of the wider community in mind.
23. The Commissioner is satisfied that it would be necessary to disclose the information in order to fully meet the requirements of the complainant's request for information.
24. The Commissioner must therefore balance this legitimate interest against the rights and freedoms of the individuals whose data has been withheld.

Balancing the legitimate interests

25. Having considered the withheld information, the Commissioner has decided that in this case the condition at section 40(3A)(a) is met as a disclosure of the information would contravene data protection principle (a).
26. The Commissioner has decided this by assessing whether there is a lawful basis for processing the requested information under Article 6(1)(f) of the UK GDPR.
27. He has determined that, whilst the complainant has a legitimate interest in disclosure, and disclosure would be necessary to satisfy that interest, there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms.

28. The Commissioner has determined this by balancing the legitimate interest of the complainant against the fact that the individuals concerned would have a reasonable expectation that their information would not be disclosed to the public.
29. The researchers would not expect that their names, CVs, and qualifications would be disclosed in response to an FOI request. As disclosures under FOIA are considered to be to the whole world, a disclosure of this type of information risks unwanted and unwarranted communications being received by the individuals.
30. It is not necessary for the public to have access to the researcher's detailed personal information.
31. The tender process ensured the credibility and suitability of the chosen provider and its research staff as well as due diligence undertaken to ensure the same.
32. The Commissioner has identified no legitimate interests in the names or CVs of the researchers being disclosed beyond the transparency of the documents generally. Given that they would not expect their details to be disclosed, the Commissioner considers that the rights and freedoms of the researchers outweighs the legitimate interests identified.
33. As the Commissioner has concluded that disclosure would not be lawful under Article 6(1)(f) of the UK GDPR, he has not gone on to separately consider whether disclosure would be fair or transparent.
34. The NIHR was therefore correct to apply section 40(2) to withhold the information from disclosure.

Right of appeal

35. 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

36. 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.
37. 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

Susan Duffy
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Wycliffe House
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