



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Appeal Reference: EA/2018/0070**

**Before**  
Judge Stephen Cragg Q.C.

**Tribunal Members**  
Mr Gareth Jones  
and  
Mr Paul Taylor

**Between**

**Steven Singleton**

Appellant

And

**The Information Commissioner**

Respondent

Sitting at Nottingham Civil Justice Centre on 24 August 2018

Representation: The Appellant appeared in person

The Commissioner was not represented

## DECISION AND REASONS

### BACKGROUND

1. The Appellant requested information from the Two Counties Trust (the Trust) on 7 September 2017, which materially read as follows:-

“ ....

According to the Academies Financial Handbook 2017, issued by the Education & Skills Funding Agency, ‘special payments’ are transactions that fall outside of the The Two Counties Trusts’ [the Trust] planned range of activities. They are either non-statutory or non-contractual and so are subject to greater control than other payments.

In particular I am interested in those special payments that specifically fall into a number of defined categories which have been made by [the Trust] relating to the Manor Academy...during the period 1<sup>st</sup> October 2016- 31<sup>st</sup> August 2017 (inclusive).

2. In an appendix the Appellant listed the categories he was interested in, and these all included payments to staff during this period: redundancy payments, compensation payments, ex gratia, voluntary exit and severance payments, discretionary payments ‘to buy out actuarial reductions in staff pensions’, and payments made in lieu of notice. He also sought the ‘grand total’ of special payments in this period. In each category he sought the total number of employees in receipt of a special payment by type, the total value of employee special payments by type, and the total number of such special payments approved by the Education & Skills Funding agency/HM Treasury (because delegated levels had been exceeded).
3. Most of the information was provided by the Trust on 8 September 2017, but it declined to provide the number and value of ex gratia, voluntary exit and special severance payments and payments in lieu of service.

Following a review, the Trust upheld its decision and confirmed that the withheld information related to one individual and relied on s40(2) FOIA as the reason for withholding the information.

4. The Appellant complained to the Commissioner who issued a decision notice dated 27 March 2018, which upheld the reliance on section 40(2) FOIA. In the Commissioner's view, the information requested is personal data, despite being anonymised, as it could lead to the individual being identified, and it would not be fair to disclose the information as the individual has not consented to its release, and would have a reasonable expectation that the information would not be released. The Commissioner recognised that there may be concerns about the special payments made by the Trust, and how it is categorised the payments in audited accounts, but these do not outweigh the legitimate interests of the individual.
5. The Appellant filed an appeal dated 2 April 2018. He explains that he seeks the information requested because of his concerns about the number of payments made by the Trust at the Manor Academy school 'designed to circumvent a number of conduct, capability and staff grievance issues'. He is particularly interested in 'a large payout of public money' to one senior member of staff. He points out that the Academies Financial Handbook 2017 (the financial handbook) issued by the Education & Skills Funding Agency (the Agency) in July 2017 has provisions which state that 'Staff severance payments should not be made where they could be seen as a reward for failure' (see para 3.7.5 of the financial handbook).
6. He notes that the financial handbook states that academy trusts 'must disclose aggregate figures for transactions of any amount, and separate disclosure for individual transactions above £5,000, in their audited accounts' for a list of transactions which include 'special payments - compensation' and 'special payments - ex gratia' (para 3.1.8) and that para

3.1.9 of the financial handbook states that 'special payments - staff severance' must be disclosed in total and individually. He says that the information should have been disclosed in published accounts (but it has not been so published) and therefore he is simply requesting information that should have been published elsewhere. He disagrees with the Trust's submission to the Commissioner that any information published in accounts would have been presented in a way that would not have revealed the identity of the individual. On this basis he argues that the public interest in disclosure should outweigh the interests of a senior member of staff. He makes it clear that he is seeking the disclosure of the value of the ex gratia payment made to the senior member of staff.

7. In the hearing, the Appellant emphasised these points about the accountancy shortcomings of the Trust and the importance of having all the requested information to reveal what has happened. We can see the force in what he says, and note that in the decision notice the Commissioner has recorded that the Trust 'considered that its auditors may have made an error in not reporting the 'special payments' in the year, in the last set out accounts' (paragraph 46). The Commissioner thought it unlikely that, if and when the information is published, this will be in such a way as to reveal any individual's personal data. The Commissioner also revealed in the decision notice at paragraph 54 that the payment about which information has been withheld is to only one person and is 'well below the £50,000 authorisation threshold for severance and compensation payments' (paragraph 54).

#### LEGAL FRAMEWORK AND APPLICATION

8. Section 40 FOIA reads, materially, as follows:-

**40. – Personal information.**

- (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
- (2) Any information to which a request for information relates is also exempt information if –
  - (a) it constitutes personal data which do not fall within subsection (1), and
  - (b) either the first or the second condition below is satisfied.
- (3) The first condition is –
  - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene –
    - (i) any of the data protection principles, or
    - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
  - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.
- (4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

9. The Appellant has not disputed that the payment amounts that have been withheld are ‘personal information’ on the basis that the one individual to whom the payments relate would be likely to be identifiable if the amounts are disclosed.
10. Consideration has to be given under s40(3)(a)(i) and (ii) as to whether that personal data can be disclosed without contravention of data protection principles.
11. Materially, for the purposes of s40(3)(a)(i), the first data protection principle requires that personal data is processed (which includes

disclosure) fairly. Section 10 of the DPA 1998 (as referred to in s40(3)(a)(ii)) refers to damage or distress caused by disclosure.

12. In relation to interpreting the first principle, the disclosure must also not breach the material conditions in Sch 2 to the DPA 1998 'relevant for purposes of the first principle'. Processing is permitted if the data subject has consented to it (Sch 2, first condition), but if not then for the purposes of the sixth condition in Sch 2 it must be established that the disclosure is necessary in order to meet the legitimate interests of the appellant.
13. Further for the purposes of the sixth condition, there is an exception to disclosure even where disclosure has been established as for the purposes of the appellant's legitimate interests. Thus, the exception covers a situation where the processing (disclosure) is unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

## DISCUSSION AND DECISION

14. Distilling the requirements of s40 FOIA, in deciding whether disclosure is fair, the Commissioner has noted the following in her Response: (a) the reasonable expectation of the data subject in relation to disclosure will be considered along with any consequences of disclosure; (b) whether there is a legitimate public interest in disclosure notwithstanding the two considerations in (a).
15. We understand (as did the Commissioner) why the appellant says he has a legitimate interest in the disclosure of these payment amounts. It is important that public authorities comply with guidance in relation to their accounts and it appears, by their own admission to the Commissioner, that the Trust in this instance may not have complied with the guidance.

However, the individual concerned (even though a senior member of staff) would have a strong expectation that details of payments would not have been disclosed, and this expectation must continue. If there is disclosure then it is accepted that it will be possible to calculate the amount paid to the individual which is bound to cause distress to the individual if this is reported, either widely or locally.

16. The Appellant is concerned about 'a large payout of public money', but in fact he now knows that the amount involved was 'well below £50,000' (see above). The Appellant also accepted that he had other avenues through which he could pursue the alleged financial irregularities and his appeal form states that he is 'seeking referral to the regulatory bodies that oversee Academy Trust sector (The Department for Education and the Charity Commission)'. It seems to us that the regulatory bodies are likely to be the appropriate route for the Appellant to pursue these issues further.

17. Therefore we find:-

- (a) The payment amount figures sought (and the grand total amount which would enable the Appellant to calculate these figures) are personal data.
- (b) There is a legitimate interest in having the full picture of the amounts paid, given the concerns that errors have been made in reporting 'special payments'.
- (c) But disclosure is not necessary for the purposes of those legitimate interests, because the disclosure is unwarranted by reason of prejudice to the rights of the data subject as described above.
- (d) Processing the information by way of disclosure would not meet the requirement of fairness.

## CONCLUSION

18. For the reasons set out above we are satisfied that that Trust were entitled to rely on s40(2) FOIA to withhold the information and the appeal is dismissed.

19. This decision is unanimous.

Signed

**Stephen Cragg QC**

Judge of the First-tier Tribunal

Date: 12 September 2018.

Promulgation Date: 24 September 2018

(Case considered by Panel on 24 August 2018).