



Freedom of Information
Internal Review decision

Internal Reviewer	Polly Ralph, Adviser – Data Protection
Reference	IR2010011
Date	17 May 2010

Requested information

On 17 March 2010, the applicant made a request (BBC IPC reference RF120100401) under the Freedom of Information Act 2000 (FOIA) for access to the following information:

Copies of the annual appraisals for all Afghan stream grade 7 staff going back for the past seven years (2003-2010)

The applicant advised that it would be acceptable if names and staff numbers were redacted in order to protect the identity of individuals.

Robert Johnston, of BBC People, responded to the request in the first instance. Mr Johnston advised that the information requested was being withheld under section 40(2) of FOIA. This was on the basis that personal information about living individuals is exempt from disclosure to a third party, if such disclosure would breach one or more principles of the Data Protection Act 1998. Mr Johnston considered that the individuals who work, or have worked, at the BBC do not expect that their personal/employment details will be disclosed in response to a FOIA request, and that it would be unfair to do so. Therefore, disclosure would breach the first data protection principle, which provides that organisations must process personal data fairly.

On 7 April 2010, the applicant sought an internal review of Mr Johnston's decision. The applicant reiterated that all personal information could be redacted from the appraisal documents in order to protect individual staff members' identities.

Issues on review

The issue on review is whether the BBC's decision to withhold the requested information under the personal information exemption, section 40(2) of FOIA, was appropriate.

Decision

Section 40 FOIA – Personal Information Exemption

Sections 40(2) and 40(3)(a)(i) of FOIA stipulate that information is exempt from disclosure under FOIA if it constitutes personal data under the DPA and its disclosure would contravene any of the data protection principles.

Section 1(1) of the DPA defines personal data as '*data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of...the data controller.*'

A key element in determining whether information is 'personal data' is whether an individual can be *identified* from that information.

In this instance, the number of individuals in the Afghan Stream grade 7 group of staff is small; it currently comprises less than 25 individuals. Further, BBC People have clarified that that group of individuals can be split into further groups, which have slightly different roles. This is a relevant factor, as the smaller the group, the greater the risk that individuals within that group can be identified.

I am also mindful that the content of those appraisal documents will be specifically tailored to each individual. The appraisal documents contain information about each individual's duties, their achievements of the past year, and their performance in their role. Given this level of detail, and in light of the small number of individuals in the group, I consider that individual staff members are identifiable from the information contained in the appraisal documents.

For this reason, I am satisfied that the appraisal documents constitute personal data for the purposes of the DPA.

I must now consider whether disclosure would contravene any of the data protection principles.

The first data protection principle provides that personal data must be processed fairly and lawfully, and must not be processed unless one of the conditions in Schedule 2 of the DPA is met.

To assist me in determining whether it would be 'unfair' to release the appraisal documents to the applicant, I have considered a previous decision of the Information Commissioner.¹ In that decision, the Information Commissioner considered it was

¹ Freedom of Information Act 2000, Decision Notice, 25 November 2009, Reference: FS50167506.



important to consider, first, the context in which the information was produced and, second, whether the individuals concerned would have had any expectation of disclosure.

Annual performance appraisal is an intrinsically confidential process, and indeed it must remain so in order to be effective. In this context, I do not consider that the members of the Afghan Stream would hold any reasonable expectation that information relating to their individual performance appraisal documents would be disclosed in response to a FOIA request. In the absence of such an expectation, I conclude that the disclosure of this information would be unfair and in breach of the 1st principle of the DPA.

Can the information be anonymised?

The applicant has argued that if individual names and staff numbers are redacted from the performance documents, this will render the remaining information anonymous and therefore individual privacy rights can be protected.

As noted above, the body of the appraisal documents contain detailed information about each individual's duties, their achievements of the past year, and their performance in their role. Given this level of detail, and in light of the small number of individuals in the group, I do not consider that it is possible to anonymise the appraisal documents simply by redacting names and staff numbers.

Decision

For the reasons set out above, I agree with the initial decision made in this case to apply the section 40(2) FOIA exemption in respect to disclosing the *Copies of the annual appraisals for all Afghan stream grade 7 staff going back for the past seven years (2003-2010)*.

Appeal Rights

If you are not satisfied with the outcome of your internal review, you can appeal to the Information Commissioner. The contact details are: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF; Telephone 01625 545 700 or www.ico.gov.uk

Polly Ralph
Adviser – Data Protection
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