

26<sup>th</sup> June 2019

Our ref: FOI/OPCC/19-021

Dear Requestor

### **Requests under the Freedom of Information Act 2000**

I refer to your original request for information dated 17<sup>th</sup> April 2019, the OPCC's response dated 15<sup>th</sup> May 2019 and your subsequent request for an internal review of that decision dated 10<sup>th</sup> June 2019.

In carrying out this internal review as well as the aforementioned correspondence, I have also had regard to:

- The Freedom of Information Act 2000 (FOI Act)
- The Data Protection Act 1998
- The Data Protection Act 2018
- The Elected Local Policing Bodies (Specified Information) Order 2011
- Information Commissioner's Office (ICO) Guidance, in particular, "Requests for personal data about employees"  
*Corporate officer of the House of Commons v Information Commissioner (2008) EWHC 1084 (Admin)*
- ICO Decision Notice FS503077842

In your email dated 10<sup>th</sup> June 2019 to the OPCC, you assert that he "*applied a blanket definition of his personal information without regard to the specific ICO guidance*".

In his response the OPCC includes a substantial level of details concerning personal data, starting with its definition, namely "*any information relating to an identified or identifiable living individual*" and goes on to explain how the staff within the Office of the Police and Crime Commissioner (OPCC) are all readily identifiable since they are public facing and use their names and job titles in contact with the public. It is clear from the ICO guidance that salary details fall within the definition of personal data and that, in general, the exemption for personal data provided under S.40 of the FOI is an absolute exemption. This is necessarily so in order for the United Kingdom to comply with its obligations under the Data Protection Act.

The OPCC goes on to refer you to the ICO's guidance concerning "Requests for personal data" and paragraph 42 of that guidance specifically deals with "Salaries and Bonuses". It is therefore difficult to uphold your assertion that the OPCC has not taken ICO guidance properly into consideration.

In accordance with the view of the Information Commissioner, the key question here is "*would the disclosure of the personal information be fair*". Whether the disclosure is fair will depend on a number of factors, most notably in this instance is the reasonable expectations of the employees concerned and the practical implications of disclosure as well as whether there is a legitimate interest in the public or requester having access to the information and the balance between this and the rights and freedoms of the data subjects.

It is generally accepted that the more junior the post, the more reasonable it is to hold the expectation that salary details would not be released. This assumption is reflected in The Elected Local Policing Bodies (Specified Information) Order 2011 by virtue of the fact that it explicitly provides for the

<sup>1</sup> <http://www.legislation.gov.uk/ukxi/2011/3050/contents/made>

<sup>2</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2011/609952/fs\\_50307784.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2011/609952/fs_50307784.pdf)

publication of certain specified salaries i.e 'senior salaries'. Therefore, the assumption is that it exempts the posts in question from publication as they are not deemed to be senior employees.

As has already been explained the individuals involved would be readily identifiable and to have their earnings disclosed to the public at large would be a serious intrusion on their privacy and could constitute a disproportionate and unwarranted level of interference with their rights and freedoms, particularly their right to protection of their personal data under Article 8 of the Charter of Fundamental Rights of the European Union.

ICO Decision Notice FS50307784 is relevant here. The exact salary of a council officer was requested from West Berkshire District Council. The Commissioner accepted that the officer would have had a reasonable expectation that their salary would not be released, as they were not in a senior position and had no management or budgetary responsibilities. While there was a legitimate public interest in expenditure of public money on salaries, this could be met by providing a salary band, rather than the exact salary. To disclose the exact salary would be unwarranted and cause them distress. Disclosure would therefore be unfair and the information was exempt under S.40(2).

In this instance, I consider the legitimate public interest in knowing how public money is apportioned across an organisation has been satisfied by the publication of the salaries of senior staff, the aggregate salary of the OPCC and the partial release of information concerning the remaining 14 posts where broad salary bands have been provided. I do not consider there is a "*pressing social need*" (see the High Court decision in "*Corporate Officer of the House of Commons v Information Commissioner*"), nor any exceptional circumstances that would justify the disclosure of all the salaries of the roles within the OPCC or the exact pay bands.

Despite your assertion that apparently the "*vast majority of OPCCs in England have provided this information, which might most particularly lead to Cambridgeshire being singled out in any future assessment of the information provided*", I am firmly of the view that to do so would go beyond what is necessary to meet the public interest given what has already been disclosed. More importantly, I consider disclosure would amount to a breach of the first principle of the Data Protection Act 1998 and could result in the OPCC being subject to enforcement proceedings by the Information Commissioner.

Accordingly, the decision to refuse your request is maintained.

In the event that you are dissatisfied with this decision, may I remind you of your right to appeal to the Information Commissioner. Further details can be found on their website at [ico.org.uk](http://ico.org.uk).

Yours sincerely,

Office of the Police and Crime Commissioner for Cambridgeshire and Peterborough