

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 03 December 2018

**Public Authority:** Post Office Ltd  
**Address:** 20 Finsbury Street  
London  
EC2Y 9AQ

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to the Scone Post Office. The Post Office Ltd (PO) refused to provide the requested information citing the exemption under section 40(2) of the FOIA (third party personal data) as its basis for doing so.
2. The Commissioner's decision is that the PO has correctly applied section 40(2) of FOIA to the withheld information.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

#### **Request and response**

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4. On 3 May 2018 the complainant made the following request for information:

*'Under the Freedom of Information Act 2000 can you please tell me:*

- *Why the Scone Post Office (address redacted) is closed (in full detail)*
- *If the answer to the above question has costs involved with it, please could you provide a breakdown in costs*
- *When is the Scone Post Office expected to reopen.'*

5. On 4 May 2018 the PO responded with an answer to question 3 (the Scone Post Office will open 15 May 2018) and advised that the Scone Post Office was closed for operational reasons. It explained that any further disclosure was the personal data relating to a third party and cited the exemption section 40(2) of the FOIA to withhold the information.
6. On 5 May 2018 the complainant requested an internal review as he disputed that this was personal information.
7. On 5 June 2018 the PO provided the outcome of the internal review upholding the decision.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 6 June 2018 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of this case to be to determine if the PO has correctly applied section 40(2) FOIA to the withheld information for the first and second part of the request.

### **Reasons for decision**

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#### **Section 40(2) Personal information**

10. The public's right of access to the personal data of third parties is in effect governed by the Data Protection Act. At the time the request was made and dealt with by the PO the relevant Data Protection Act was the 1998 Act. Since that time the Data Protection Act 2018 has come into force and section 40(2) of the FOIA has been amended to accommodate the changes it has introduced. However the Commissioner's role is to determine whether the PO correctly applied the legislation that was in force at the time it was handling the request.
11. At that time section 40(2) of the FOIA provided that a public authority is entitled to refuse a request for information which constitutes the personal data of someone other than the person making the request, if disclosing that information would breach any of the data protection principles set out in Schedule 1 of the Data Protection Act 1998.
12. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as

defined by the DPA. Section 1 of the DPA defines personal data as follows:

“personal data” means data which relate to a living individual who can be identified –

- (a) from those data, or
  - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.”
13. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.
14. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner’s considerations below have focused on the issue of fairness.

### **Is the withheld information personal data?**

15. The Commissioner’s guidance on what is personal data<sup>1</sup> states that if information ‘relates to’ an ‘identifiable individual’ it is ‘personal data’ regulated by the DPA.
16. The information in this case doesn’t directly identify individuals. However, because the name of an individual is not known, it does not mean that an individual cannot be identified. The aforementioned guidance states the following:

‘A question faced by many organisations, particularly those responding to Freedom of Information requests, is whether, in disclosing information that does not directly identify individuals, they are nevertheless disclosing personal data if there is a reasonable chance

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<sup>1</sup><https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf> & [https://ico.org.uk/media/for-organisations/documents/1549/determining\\_what\\_is\\_personal\\_data\\_quick\\_reference\\_guide.pdf](https://ico.org.uk/media/for-organisations/documents/1549/determining_what_is_personal_data_quick_reference_guide.pdf)

that those who may receive the data will be able to identify particular individuals.'

It also states:

'The starting point might be to look at what means are available to identify an individual and the extent to which such means are readily available. For example, if searching a public register or reverse directory would enable the individual to be identified from an address or telephone number, and this resource is likely to be used for this purpose, the address or telephone number data should be considered to be capable of identifying an individual.'

17. The PO explained that over 11,000 Post Office branches are run on an agency basis, including the Scone branch. It is designated as a 'Local' branch in a small community and is operated by an individual sole trader as a private business rather than via a corporate entity.
18. The complainant argued that the requests were about the general running (and temporary closure) of the Scone Post Office and were not requests for personal data.
19. However, the Commissioner is satisfied that the address of the Scone Post Office is closely linked to the individual(s) operating the agency and would therefore, lead to the identification of the sole trader.
20. This is consistent with previous decision notices (for example <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013577/fs50628943.pdf>) and the Tribunal's decision in the case of England & L B of Bexley v Information Commissioner (EA/2006/0060 & 0066) ('Bexley') where the disclosure of addresses alone (ie without the associated details of the owner of a property) can amount to personal data.
21. Having viewed the submission from the PO and the withheld information, the Commissioner is satisfied that the requested information in this case constitutes personal data and potentially sensitive personal data of data subject(s). The Commissioner will not describe the withheld information in detail in this decision notice in case of inadvertent disclosure. As explained to the complainant, information disclosed under FOIA is considered to be information disclosed to the world at large and not just to the requester.

### **Would disclosure breach the Data Protection Principles?**

22. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The

Commissioner's considerations below have focused on the issue of fairness.

23. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

### **Reasonable expectations and Consequences of disclosure**

24. Disclosure is unlikely to be fair if it would have unjustified adverse effects on the data subject(s). Given the circumstances of the temporary closure of the Scone Post Office as detailed in the PO submissions to the Commissioner, the Commissioner accepts that it would not have been possible to anonymise the withheld information in any way. The Commissioner also accepts that it is not the PO's practice to reveal such details to the general public.
25. The Commissioner is satisfied that the data subject(s) would have a reasonable expectation that the disputed information would not be placed into the public domain by disclosure under the FOIA. Therefore she considers that disclosure of this information would be an unfair invasion of the privacy of the individual(s), and as such may cause them some distress.

### **Balancing the rights and freedoms of the individual with the legitimate interests in disclosure**

26. Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individual. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
27. The PO stated that it accepted *'there was a legitimate interest in the public knowing how long Scone PO would be closed, since its closure had generated some local press interest and since it provides important services to members of the local community'*.
28. The PO provided the Commissioner with details of the actions taken to communicate widely with the local community on the temporary closure. There was a press statement and a public letter to key local stakeholders updating them on the temporary closure and the expected date for re-opening.
29. The Commissioner accepts that there is a public interest in the opening arrangements for the Scone Post office in the small community and

notes that the PO published details of the temporary closure for operational reasons and the plans to reopen the branch in May. The Commissioner is satisfied that in this specific scenario, disclosure of the reasons for the closure beyond stating 'operational reasons' is not necessary to meet that legitimate public interest.

30. In this case, the Commissioner is not convinced that the specific information requested, is of sufficient wider public interest to warrant overriding the protection of the third party personal data.
31. In conclusion, the Commissioner is satisfied that the withheld information is personal data and that disclosure would breach the first data protection principle as it would be unfair to the individual(s) concerned. The Commissioner upholds the PO's application of the exemption provided at section 40(2) of the FOIA.

## Right of appeal

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32. 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. 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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**Wilmslow**  
**Cheshire**  
**SK9 5AF**