

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

### **Decision notice**

**Date:** **31 January 2017**

**Public Authority:** **The Bank of England**  
**Address:** **Threadneedle Street**  
**London**  
**EC2R 8AH**

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

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1. The complainant requested information about the ethnicity and remuneration of senior officials at the Bank of England (the Bank). The Bank disclosed the information regarding remuneration but refused to disclose information about ethnicity relying on section 40(2) – personal information.
2. The Commissioner's decision is that the Bank is correct to rely on section 40(2) to refuse part 1 of the request relating to ethnicity. She does not require the public authority to take any steps.

### **Request and response**

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3. On 11 May 2016, the complainant wrote to the Bank and requested information in the following terms:
  - "1. How many (i) members of the Court of Directors, (ii) Governors and (iii) Executive Directors of the Bank of England have classified themselves as other than White. Please reply separately in respect of each of these 3 categories.*
  - 2. What is the remuneration of each member of the above 3 sets.*
4. The Bank responded on 27 May 2016. It disclosed information within the scope of the request at question 2 (remuneration) but refused to provide the information requested at question 1 (ethnicity) citing section 40 FOIA.

5. The complainant requested an internal review on 27 May 2016 and the Bank sent the outcome of its internal review on 21 June 2016. It upheld its original position.

### Scope of the case

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6. The complainant contacted the Commissioner on 27 July 2016 to complain about the way his request for information had been handled. The complainant set out his view that in refusing to disclose the requested information, the Bank appears to be of the view that it would be unfair for it to disclose information which might indicate to the public that it operates a "*colour bar*" *in relation to the most senior positions at the Bank.*'
7. He also set out that in refusing to disclose the requested information, *"the Bank considers it unfair that it should be obliged to disclose information as to the effectiveness of its equal opportunities policies and practices."*
8. The complainant considers the Bank's refusal to disclose the requested information is disingenuous because photographs of all members of these groups are on its website; he has set out that it appears that all but one of the 27 members is white.
9. He further set out that those concerned must have a reasonable expectation that their 'self-declared ethnicity' may be subject to public disclosure.
10. The complainant has set out that he wishes to focus the spotlight on the fact that it appears that almost all of the members of the three groups of staff are white, and he wants official confirmation of this from the Bank.
11. The Commissioner considers the scope of the investigation is to determine if the Bank was correct to rely on section 40(2) to refuse to disclose the requested information, ie how many individuals in each of the three groups specified have classified themselves as other than white.

## Reasons for decision

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12. Section 40(2) of FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the DPA).
13. The Bank has, upon request, provided the Commissioner with a submission setting out its position and has also provided a copy of the withheld information.
14. It has explained that all members of staff at the Bank, as well as non-executive members of Court, are given the opportunity to provide the Bank with personal information relating to their ethnicity. The provision of such information is made via a pre-defined list of ethnicity options. The provision of this information is also made entirely on a voluntary basis and therefore there are individuals who choose not to provide such information.
15. For those who do provide information on ethnicity, it is held electronically and securely with access to the information limited.
16. It is the Bank's position that as the requested information relates to the racial or ethnic origin of the data subject, it is considered 'sensitive personal data' in accordance with section 2(a) of the DPA. The Commissioner considers that the DPA clearly sets out details of data which constitutes sensitive personal data and the requested information falls squarely in that category under the DPA section 2(a).
17. In its submission, the Bank has acknowledged that the groups of individuals detailed in the request are relatively small. Revealing numerical information from within these groups could in itself reveal information about an individual either by deduction or by combining that information with other publicly available information.
18. The Commissioner accepts that there is a possibility of identification of the data subjects who have declared their ethnicity if the requested information is disclosed. Therefore it is necessary to consider the data protection principles in relation to the requested disclosure of sensitive personal data.
19. The Bank has set out its position that information relating to a person's ethnicity is inherently sensitive and is therefore afforded greater protection under the DPA than some other types of information. The requested information does not relate to any individual's professional or public role and it is the Bank's position that in these circumstances, the

seniority issue is not relevant because every individual should be afforded the protection of the DPA in these circumstances.

20. The Commissioner notes that the Bank has disclosed information relating to remuneration and accordingly has made the distinction between the types of information requested, ethnicity and remuneration; the latter being relevant to the data subjects' public and professional life and the former being sensitive personal information. She agrees that this is reasonable to conclude that the data subjects will have very different expectations regarding the potential for disclosure of their personal data falling within each of these categories.
21. The Commissioner concurs with the Bank's position that the sensitivity of the information requested is demonstrated by the fact that there is no requirement on staff at any level to provide the information to the Bank. Provision of the information is therefore optional and those providing it have an expectation that the information will be held securely and not disclosed to a member of the public or in this case, to the world at large via a request under FOIA. The Bank has advised the Commissioner that individuals providing ethnicity information are advised by the Bank that the information provided will be treated in confidence. Given the nature of the information in question the Commissioner considers it reasonable for individuals to have such an expectation of confidentiality.
22. The complainant raised the issue of consent to disclose the information. The Bank confirmed that it had approached the individuals who had provided information and in each group there were objections to disclosure. Although consent is not a prerequisite to disclosure, the Commissioner considers it useful as an indication of the data subjects' views.
23. The Bank has also set out the possible consequences of disclosure of the requested information. Its position is that ethnicity is a particularly personal and sensitive matter and that disclosure of such information may be distressing to the individuals involved and potentially more so where the requested information was provided voluntarily under the expectation that it would not be disclosed. Further distress may also arise from the fact that there are those who did not give their consent for disclosure.
24. The Bank recognises that the consequences of disclosure may be dependent on an individual and their particular circumstances but that there are also more general consequences which are relevant.
25. In its submission the Bank has set out to the Commissioner that if the requested information were disclosed, future office holders may not provide the information or in the same circumstances may not consent

to disclosure. Therefore, disclosure, with or without consent may risk setting an unwelcome precedent. Any precedent which dissuaded individuals from providing such information would be unhelpful. The Commissioner considers that disclosure might not only create an unhelpful precedent in terms of future staff members and the knock on effect could also impact on the Bank's ability to pursue appropriate diversity policies; this would be a particularly detrimental aspect of disclosure in this case.

26. The Bank has set out that it recognises that there is a public interest in understanding whether public authorities are pursuing appropriate diversity policies and encouraging an appropriately diverse workforce. In order to address this legitimate public interest, the Bank says it publishes certain ethnicity data in its annual report. The Commissioner is satisfied that there is no overriding public interest in the disclosure of the specific requested information which would make such disclosure fair.
27. The Bank has also set out that senior officials may be viewed as role models and therefore how they identify themselves may be important to certain social groups. Therefore, disclosure of information which may reveal how a person identifies themselves, or indeed the fact that they choose not to provide this information, may bring unwanted publicity and in extreme cases may even present a risk to their security.
28. The complainant has referred to photographs of individuals on the Bank's website but the Commissioner considers that the Bank's assertion that ethnicity is not a question of physical appearance but is a matter of a variety of factors such as an individual's ancestry, history, religion, language and culture is correct. The Commissioner acknowledges that the Bank has made careful consideration of the issues, and agrees that the question of the photographs is irrelevant when considering this case. How a person appears physically and how they consider themselves ethnically are not necessarily one and the same thing.
29. In conclusion, the Commissioner is satisfied that the Bank has properly considered the requested information in this case. She finds that disclosure of this information would constitute a disclosure of sensitive personal data, and that this would be unfair to the individuals concerned. Since the Commissioner finds that disclosure of the requested information would not be fair, there is no need to consider the conditions in schedule 2 or schedule 3 to the DPA.
30. In conclusion therefore, the Commissioner is satisfied that the Bank has handled this request for information in accordance with the FOIA and

that it was correct to rely on section 40(2) to refuse the request for information.

## Right of appeal

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31. 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 7395836

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)

32. 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.
33. 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 .....**

**Sarah O'Cathain  
Senior Case Officer  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
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Cheshire  
SK9 5AF**