

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 7 June 2018

Public Authority: The Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information regarding the socioeconomic and educational backgrounds of applicants to the Government's Fast Track Graduate scheme.
2. The Commissioner's decision is that the Cabinet Office was entitled to redact part of the disclosed information under section 40(2) and is entitled to withhold some of the information under section 23 and 24 in the alternative.
3. The Commissioner does find, however, that the Cabinet Office breached section 17(1) by not citing the exemption on which it was relying.
4. The Commissioner does not require the Cabinet Office to take any further steps to ensure compliance with the Act.

Request and response

5. On 25 February 2016, the complainant wrote to the Cabinet Office and requested information in the following terms:

"I would like to request, under the Freedom of Information Act, the following statistics:

1) Could you please break down for me the number of applicants recommended for appointment to the Diplomatic and Parliamentary Fast Streams by Socio-Economic Background and University Attended? I would like this data for as many year groups as you can provide, within the FoI cost limits.

2) If you have the information, the number of applicants that advanced to the Final Selection Board for the Diplomatic and Parliamentary Fast Streams by Socio-Economic Background and University Attended. Again I would like this data for as many year groups as you can provide, within the FoI cost limits.

3) If you have the information, could you please also indicate which Department 'Central Department' Fast Stream entrants were posted to, for their first posting, broken down by Socio-Economic Background and University Attended?

4) If you have the information, could you please also indicate the geographical distribution of 'Central Departments' Fast Stream entrants' first postings, broken down by Socio-Economic Background and University Attended?"

6. On 4 March 2016, the complainant withdrew this request as he was able to seek the information via a separate line of enquiry with Civil Service resourcing.
7. On 5 September 2016, the complainant contacted the Cabinet Office to inform it that he had not received the information via his alternate enquiries and made the request again under the Act.
8. On 3 October 2016, the Cabinet Office responded and confirmed that it held the requested information. The Cabinet Office provided links to the Fast Stream cohort data published for 2013 and 2014¹ and advised that the 2015 cohort would be published in due course.
9. The Cabinet Office stated that the information was therefore exempt under sections 21² and 22³ of the Act. The Cabinet Office also provided a link to information held in the Bridge report⁴.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/359238/Fast_Stream_annual_report-2013.pdf
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/457600/Civil_Service_Fast_Stream_-_Annual_Report_2014__web_.pdf

² Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

³ Information intended for future publication

10. On 6 October 2016, the complainant wrote to the Cabinet Office to request an internal review. The complainant considered that his request had not been answered and set out that he had requested data on entrants to the Diplomatic and Parliamentary Fast Streams.
11. The complainant contacted the Commissioner on 9 January 2017 to complain that he had not received the outcome of the internal review.
12. On 16 February 2017, the Commissioner wrote to the Cabinet Office to confirm that as the outcome of the internal review had not been provided to the complainant, she had accepted the complaint for investigation in its absence.

Scope of the case

13. During the course of the Commissioner's investigation, the Cabinet Office disclosed data tables relating to the socioeconomic background of applicants. These data tables included redactions under section 40(2) of the Act.
14. The Cabinet Office withheld the information relating to University attended under sections 23(1) and 24(1) in the alternative.
15. The Commissioner will consider whether the Cabinet Office is entitled to rely on section 40(2), and section 23(1) and section 24(1) in the alternative to withhold the specified information.
16. The Commissioner contacted the complainant to confirm the interpretation of "*socioeconomic*" background. The complainant confirmed that he was seeking information based on the occupational status of the applicants' parents.

Reasons for decision

Section 23(1) and 24(1) – National Security

17. Section 23(1) of the Act provides that:
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⁴ <https://www.gov.uk/government/publications/socio-economic-diversity-in-the-faststream-the-bridge-report>

“Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).”

18. Section 24(1) of the Act provides that:

“Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.”

19. Sections 23(1) and 24(1) are mutually exclusive. Section 24(1) can only be applied to information that does not fall within section 23(1). This means that they cannot be applied to the same information. In her published guidance⁵, however, the Commissioner has stated that she will accept section 23(1) and 24(1) being cited in the alternative, in certain circumstances.

20. The Commissioner has met with the Cabinet Office and has had confidential discussions and received detailed explanations of why section 23(1) and section 24(1) can be applied in the alternative.

21. The Commissioner has considered the submissions of both parties. For obvious reasons, she cannot go into detail on the submissions in this notice. She accepts that in the circumstances of this case, the explanations provided by the Cabinet Office with regards to the application of section 23(1) to the withheld information is sufficient for her to be satisfied that section 23(1) can be engaged in the alternative. Section 23(1) is a class based exemption. In this case, the Commissioner is satisfied that section 23(1) can be applied to the withheld information in the alternative to section 24(1).

22. As regard section 24(1) cited in the alternative, the Commissioner notes the view of the Cabinet Office in this regard and gives weight to it given the confidential discussions and detailed explanations provided. Unfortunately, she is unable to set these submissions out in this notice without disclosing which of the sections is engaged.

23. In light of the above, the Commissioner is satisfied that section 24(1) can be engaged in the alternative in relation to the withheld information.

⁵ https://ico.org.uk/media/for-organisations/documents/1196/how_sections_23_and_24_interact_foi.pdf

24. Section 24(1) is a qualified exemption which means that it is subject to the public interest test. Therefore, the Commissioner will also consider whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information withheld on that basis.
25. The Cabinet Office set out to the complainant that it had considered the balance of the public interest and, noting the information already in the public domain, it considered that there is little public interest in release of information to the level requested. The Cabinet Office set out that it considered that this was not sufficient to supersede the public interest in the appropriate protection of national security.
26. The Commissioner must make her decision on the basis of the information provided to her. The Commissioner is disappointed that the public interest arguments provided by the Cabinet Office were not of the standard she would expect for a case such as this. However, as this case has undergone severe delays whilst awaiting the Cabinet Office's submissions and the Commissioner's officer had requested the public interest arguments on more than one occasion prior to the disclosure of the redacted information and the associated fresh refusal notice, she does not consider it proportionate to continue to correspond with the Cabinet Office and has proceeded to make her decision on the basis of the information already provided.
27. The Commissioner acknowledges that there is a general public interest in openness and transparency in all aspects of government because it increases public trust in, and engagement with, the government. In addition, the Commissioner considers that there is public interest in disclosure of information relating to the intake of Fast Track applicants as this reveals the extent to which the government is ensuring equality, and preventing discrimination, when recruiting to its Fast Track scheme.
28. However, the Commissioner accepts that the public interest in protecting information required for the purposes of safeguarding national security is a very strong one, and in the circumstances of this case, she has concluded that, on balance, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
29. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 23(1) and 24(1) in the alternative to withhold the information relating to universities attended.

Section 40(2): Third party personal data

30. Section 40(2) of the Act states that personal data is exempt from disclosure if to do so would breach any of the data protection principles contained within the Data Protection Act 1998 (the DPA).
31. Personal data is defined in section 1(1) of the DPA 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..."
32. The Cabinet Office provided the complainant with a redacted version of the requested information. Where the number of individuals was less than or equal to five, the information was redacted. The Cabinet Office also redacted totals of less than 10, in a small number of instances, as to only redact totals of less than or equal to five would risk revealing the contents of the redactions within the columns or rows making up the totals.
33. The Cabinet Office provided the Commissioner with the raw data tables prior to disclosure to the complainant.
34. The information comprises data tables breaking Fast Stream applicants down by department and occupational status of parent 1 and parent 2. These occupational status are further broken down into 10 categories.
35. In cases where statistics are anonymised to the extent that individuals may not be identified by them, the Commissioner does not consider those statistics to be personal data. This approach is supported by paragraphs 24 and 25 of Lord Hope's judgement in the House of Lords' case of the *Common Services Agency v Scottish Information Commissioner* [2008] UKHL 47, where it was said:
"...rendering data anonymous in such a way that the individual to whom the information from which they are derived refer is no longer identifiable would enable the information to be released without having to apply the principles of [data] protection..." (paragraph 25).
36. The Commissioner has considered the unredacted raw data and she considers that the possibility of identifying individuals from the data set is not a remote one due the low numbers involved. She considers that the redacted information therefore comprises personal data.
37. As set out above, information is exempt from disclosure where disclosure would breach one of the data protection principles. The most relevant data protection principle in this case is the first data protection principle which states:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met, and*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”*

38. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual(s) in terms of what would happen to their personal data. Such expectations could be shaped by:
 - What the public authority may have told them about what would happen to their personal data;
 - Their general expectation of privacy including the effect of Article 8 of the European Convention on Human Rights;
 - The nature or content of the information itself;
 - The circumstances in which the personal data was obtained;
 - Any particular circumstances of the case, eg, established custom or practice within the public authority; and
 - Whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
- The consequences of disclosing the information, ie damage or distress, would the individual suffer if the information was disclosed? In consideration of this factor, the Commissioner may take into account:
 - Whether information of the nature requested is already in the public domain;
 - If so, the source of such a disclosure, and even if the information has previously been in the public domain, does the passage of time mean that disclosure now could still cause damage or distress.

39. Furthermore, notwithstanding the data subjects' reasonable expectations or any damage or distress caused by disclosure, it may still

be fair to disclose the requested information if it can be argued that there is more compelling legitimate interest in disclosure into the public domain.

40. In considering 'legitimate interests', in order to establish if there is a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sake, as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is important to consider a proportionate approach.
41. The Cabinet Office provided background context to the information requested. The Cabinet Office explained that in 2015, 365 applicants were recommended for appointment on the Fast Track scheme. The Cabinet Office explained that statistical information concerning the Fast Track stream is held by the Cabinet Office's private sector contractor who works in co-operation with the Cabinet Office's analysis teams to provide the data included in the annual report on the Fast Track scheme.
42. The Cabinet Office explained that the detail sought by the complainant is not retained in the manner requested and the datasets provided to the complainant has been created from material the contractor was able to provide.
43. The Cabinet Office explained to the Commissioner that responsibility for Civil Service HR previously lay with HMRC and, therefore, it only held the two datasets for 2015 and 2016 under consideration in this notice. It also confirmed that recording social mobility was a recent undertaking.
44. The Cabinet Office explained that the requested information comprises personal data regarding very small cohorts which, even where not explicitly revealing personal data, could, when combined with information in the public domain or from information which third parties are already aware of, make it trivial to deduce the personal data of members of the scheme.
45. The Cabinet Office confirmed that it had considered aggregation of multiple years of data but the numbers remained unacceptably small and it considered disclosure of aggregated data would still constitute a breach of the DPA.
46. The Cabinet Office explained that if a staff member could be identified this would, in turn, reveal the occupational status of his or her parents.
47. The complainant argued that the recruitment statistics requested had been published for over a decade and the request was made as two particular subsections of the Fast Stream had been omitted. He

considered that by supplying the information at the time of recruitment, applicants were consenting to publication for the purposes of monitoring the Government's recruitment processes. He explained that he considered there was a strong public interest in establishing accurately whether the Government is attempting to meet its own diversity objectives within the Civil Service.

The Commissioner's position

48. The Commissioner has considered the unredacted information and the submissions provided by both parties, as well as her own guidance regarding the Act and the DPA. She has concerns regarding the quality of the submission provided by the Cabinet Office, however, she has not returned for further submissions as she considers to do so would be disproportionate in the specific circumstances of this case.
49. In the specific circumstances of this case, the Commissioner considers that disclosure of the withheld information would breach the first data protection principle as it would constitute an unfair disclosure.
50. The Commissioner has reviewed the Civil Service Jobs privacy notice⁶ which sets out why data is collected and how it will be used. Although socioeconomic background is not specifically named as one of the areas information is collected about, the Equality and Diversity section states:

"We collect equality and diversity information to monitor the impact of our selection policies to ensure that they are not having an adverse effect on any particular group.

In some circumstances, and only for applicants successful at interview who commence employment, the information may also be used to create an internal HR personal record."
51. The Commissioner notes that in separate sections of the privacy notice, it is stated that any statistical information derived from information provided during the recruitment process will be anonymised before publication.

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<https://www.civilservicejobs.service.gov.uk/csr/index.cgi?pageclass=StandardMessage&display=dp>

52. The Commissioner considers that the information provided by the applicants on the social background, specifically their parents' occupational status, is likely to have been imparted in circumstances in which the data subjects would reasonably expect their personal data to remain confidential.
53. The Commissioner is mindful that it is not only the applicants' personal data under consideration, but that of the applicants' parents as well. The Commissioner considers that if Fast Stream applicants are identifiable from the data provided, it is logical that their parents will also be identifiable and disclosure would place their occupational status into the public domain.
54. The Commissioner does, however, acknowledge that there is a strong public interest in ensuring fairness and transparency of public sector recruitment. As set out in paragraph 40, she considers it is important to take a proportionate approach.
55. The Commissioner considers that the public interest in disclosure has been served by the disclosure of the redacted information. She notes that the Cabinet Office did not explain in its refusal notice that it was redacting the cells where the value is less than or equal to five, however, she considers that the redaction of the information clearly indicates that the number is low and this provides information regarding the proportion of candidates recruited from specific socioeconomic backgrounds. The Commissioner therefore considers that disclosure of the redacted datasets allows for increased transparency without the risk of breaching the data protection principles.
56. The Commissioner notes that it may be possible that the total columns and rows in the datasets will reveal withheld information if the number of anonymised cells within them is more than five. She therefore considers that, in the specific circumstances of this case, it is reasonable to redact the data to less than or equal to 10, in a small number of instances, where this disclosure may negate the purpose of the redactions.
57. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 40(2) to withhold the information.
58. The Commissioner notes the complainant's argument that similar information has been disclosed previously, however, her decision must be based on the specific information under consideration in each case. She cannot order disclosure of information that will breach the DPA on the basis that similar disclosures may have already been made.

Section 17 – Refusal notice

59. Section 17(1) states:

A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which-

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies.*

60. The Commissioner notes that in its refusal notice dated 17 April 2017 (issued 17 April 2018), the Cabinet Office states that the information provided has been “redacted with reference to data protection concerns” but does not provide the complainant with the specific exemption being applied to the redacted information.

61. The Commissioner therefore considers that the Cabinet Office has breached section 17(1) of the Act.

Other matters

62. The complainant also raised concerns with the Commissioner about the Cabinet Office’s delays in providing the outcome of the internal review. The Act does not provide for a statutory time limit within which such reviews must be completed. These matters are, however, addressed in the Code of Practice, issued under section 45 of the Act and in the Commissioner’s guidance. In the Commissioner’s view, most internal reviews should be completed within 20 working days and in no circumstances should an internal review take longer than 40 working days to complete.

63. In the circumstances of this case, the complainant requested an internal review on 6 October 2016 and on 16 February 2017, the Commissioner used her discretion to accept the complaint for investigation in the absence of the internal review. The Commissioner considers that four months is an excessive and unacceptable amount of time to be continuing to review the handling of a request.

64. The Commissioner’s investigation encountered significant and unnecessary delays in waiting for the Cabinet Office to provide the withheld information and its submissions.

65. Whilst there is no statutory timeframe in which public authorities must provide information to the Commissioner, public authorities are obliged to engage with the Commissioner.
66. The Commissioner wishes to emphasise that the Cabinet Office's delays in conducting internal reviews and its delays in engaging with the Commissioner's investigation, whilst not representing statutory breaches of the legislation, are clearly against the spirit and intention of the Act.
67. The Commissioner is also concerned at the quality of the submissions provided to her. She considers that as the department responsible for Freedom of Information policy across government, the Cabinet Office is aware of its obligations under the Act and the Commissioner is disappointed that the Cabinet Office has fallen short of the standards she would expect in a case such as this.

Right of appeal

68. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

69. 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.
70. 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

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