

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 September 2024

Public Authority: Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Decision (including any steps ordered)

1. The complainant has requested communication between the Department for Transport ('DfT') and Greybull Capital. The DfT disclosed information with redactions made under section 43(2) (commercial interests).
2. The Commissioner's decision is that all withheld information engages section 43(2) and the public interest lies in maintaining the exemption, except in one instance.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the information redacted from the letter dated 23 August 2021.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 16 February 2024 the complainant made the following request for information under FOIA:

 "Please provide all communication between the DfT and Greybull Capital pertaining to the administration of Monarch and its subsidiaries."
6. The DfT responded on 16 April 2024, disclosing information with redactions made under section 40(2) (personal information) and section 43(2) (commercial interests).
7. The complainant requested an internal review on the same day, arguing that disclosure of any commercially sensitive information was in the public interest. They didn't raise any concerns about the application of section 40(2).
8. Following an internal review the DfT wrote to the complainant on 14 May 2024. It upheld its previous position.

Scope of the case

9. The complainant contacted the Commissioner on 14 May 2024 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of his investigation is to determine whether the DfT is correct to withhold the information it has done under section 43(2).

Reasons for decision

Section 43(2) – commercial interests

11. Section 43(2) of FOIA states:

'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).'

12. The Commissioner's guidance¹ 'Section 43 - Commercial interests' states 'A commercial interest relates to a legal person's ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent.'
13. Section 43(2) is a qualified exemption, which means its subject to the public interest test. Before considering the public interest, the Commissioner must be satisfied that the public authority has demonstrated a causal link between disclosure of any information being withheld, and the prejudice against which the qualified exemption is designed to protect.
14. This request relates to the collapse of Monarch Airlines. Monarch Airlines was bought by Greybull Capital, a private equity firm, in 2014. Monarch Airlines continued to suffer financial difficulties and in 2017 went into administration, leaving the government to pay the cost of repatriating all stranded passengers. At the time, it was the 'biggest ever peacetime repatriation' in the UK.²
15. There's 11 pages of correspondence, between Grant Shapps MP, The Secretary of State for Transport at the time, and Greybull Capital, that's been disclosed in response to the request. Eight redactions have been made; these redactions are either a line or a whole paragraph.
16. In the DfT's view, disclosure of this information 'would be likely to prejudice the commercial interests of both the Department for Transport and Greybull Capital.'
17. In relation to its own commercial interests, the DfT has explained that:

(disclosure would lead to) 'other third parties being likely to rely on the information disclosed to strengthen their negotiation position following a company failure, exploiting this to provide less income to government.'
18. The Commissioner accepts this argument. Some of the withheld information details the costs, to the government, immediately following the collapse of Monarch. Were this information to be published to the

¹ [Section 43 - Commercial interests | ICO](#)

² <https://www.theguardian.com/business/2017/oct/07/collapse-monarch-last-days-doomed-airline>

world at large, it would provide a figure which could be used to undermine the DfT's negotiation position, were it required to step in again in similar circumstances.

19. The DfT has also explained that:

"Disclosure would also be likely to prejudice the Department's reputation as a good faith partner in commercial negotiations with third parties, due to the concern that third parties' sensitive commercial information would be made public."

20. The Commissioner is less inclined to accept this argument. If a third party provides its services to the government, or in this case, accepts financial support from the government, it must accept that with this comes a certain amount of scrutiny. It has to recognise that, since the government is subject to FOIA, there is the possibility that commercial information of any arrangement with the government, specifically a high profile one such as this, are disclosable under FOIA.

21. The DfT claims that disclosure would be likely to prejudice Greybull Capital's commercial interests since:

"the information would be likely to be used by third parties in their commercial negotiations with Greybull Capital, or in commercial negotiations where they are working in opposition or in competition with Greybull Capital."

22. Again, the Commissioner accepts this argument. Some of the withheld information details the costs, specifically the losses, costs and financial position of Greybull Capital following Monarch's collapse. Greybull Capital is a private equity firm that invests in failing companies in an attempt to turn them around. If a company knows the specifics of what investment Greybull Capital put into Monarch, it will be able to use this information as a baseline for its own negotiations with the business. Likewise, a competing private equity firm could do the same.

23. Where a public authority claims that disclosure would be likely to prejudice the commercial interests of a third party, it must consult that third party to obtain its views. The DfT did and the Commissioner has had sight of this correspondence, where Greybull Capital agree that specific information should be withheld.

24. The Commissioner is satisfied that there's a causal link between the withheld information and the prejudice, to either the DfT's or Greybull Capital's commercial interests and therefore the exemption is engaged. Now the Commissioner will go onto consider the balance of the public interest.

Public interest test

Factors in favour of disclosure

25. The DfT acknowledges the 'limited public interest' in the information:

"including the promotion of government transparency, accountability, and to increase public awareness of how government departments respond to the administration of an airline, informing the public of the activities carried out on their behalf."

26. The Commissioner agrees with the complainant when they stated in their internal review request:

"Monarch's administration involved taxpayer funds spent on reparations of stranded passengers and the cost of regulatory oversight. The public has a right to understand how these public funds were utilised and how regulatory and financial decisions were made."

27. The repatriation costs following the collapse of Monarch were significant and funded by the taxpayer. There is a public interest in knowing how much and why.

28. The complainant has also identified a public interest in the industry impact and lessons learned from Monarch's collapse, including how policymakers and industry stakeholders work together to mitigate risks. They also believe that disclosure would meet the public interest in ascertaining whether operations and the change of management in relation to Monarch were carried out in accordance with International Civil Aviation Organization ('ICAO') legislation.

29. The complainant also expressed concern "whether it is morally right that an airline investor profits from a bankruptcy of a business at the expense of employees and other creditors by virtue of the requirement that the government is obligated to fund the repatriation of passengers."³⁴

³ [Greybull eyes profit from Monarch collapse \(ft.com\)](#)

⁴ [Letter from Chair to Greybull Capital LLP re Monarch Airlines collapse 19-10-2017 \(parliament.uk\)](#)

Factors in favour of maintaining the exemption

30. The DfT has identified:

“The strong public interest in ensuring fair commercial competition in a mixed economy and as a Department we are responsible for any commercially sensitive information provided to us and we must ensure we retain the confidence of any third party information we hold.”

31. To reiterate, whilst the DfT has obligations to keep commercially sensitive information of third party's secure, it must recognise that in high profile scenarios such as this, scrutiny is inevitable.

32. The Commissioner is more concerned that disclosure of the withheld information would be likely prejudice Greybull Capital's, but more importantly, the government's, ability to give and receive an appropriate amount of financial support, without previous financial details acting as a 'baseline' upon which to base negotiations.

The balance of the public interest

33. In this instance, the Commissioner has determined that the balance of the public interest lies in maintaining the exemption, in all but one instance.

34. The Commissioner acknowledges the public interest the complainant had identified. However, the question is whether the withheld information actually addresses this public interest identified. The Commissioner concurs with the DfT that it doesn't:

“The exempted information is specific commercial and financial detail, whereas detail on the operational decision making is already in the public domain as the Civil Aviation Authority (CAA) has published this here⁵.

Potential improvements for any future response were considered in great detail by the independent Airline Insolvency Review which published its final report in May 2019 which can be found here⁶.

⁵ <https://www.caa.co.uk/publication/download/16690>

⁶ [Airline Insolvency Review final report - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Disclosure would also not provide further clarity on the final cost to the taxpayer from the Monarch repatriation exercise (£40.5m) as this is publicly available here⁷”

35. In the Commissioner’s opinion, the public interest in the issues identified have been addressed by the information disclosed in response to the request. The information being withheld would contribute a very limited amount in relation to how the Monarch administration was handled by the government, except the negotiations between Greybull Capital and the government which is, in the Commissioner’s opinion, more in the public interest to withhold.
36. Turning to the concerns outlined in paragraph 29 and the matter of whether Greybull Capital benefited from the collapse of the airline. The disclosed information touches upon this, but its speculation as the Monarch administration was not yet complete. The withheld information deals with it directly, in a letter from Greybull Capital to the DfT dated 23 August 2021, once the Monarch administration was complete.
37. The government pledged to investigate further if it transpired that Greybull hadn’t acted ‘responsibly and with integrity’. However, the details of any such action, or whether it was even necessary, aren’t in the public domain.
38. The Commissioner is aware of concerns about Greybull Capital, both in relation to the Monarch administration⁸ and other acquisitions.⁹ The Commissioner agrees with the complainant, it’s in the public interest to understand the conduct of this private equity company in relation to its interactions with the government. Unlike the other withheld information and the complainant’s other public interest concerns, this isn’t addressed via any publicly available means, so it should be disclosed.
39. The Commissioner is satisfied the DfT was correct to withhold the information that it did, except the information redacted from the letter dated 23 August 2021. In that instance, the public interest lies in disclosure.

⁷ [Airline Insolvency Review - Hansard - UK Parliament](#)

⁸ [Monarch collapse: Lord Myners calls for inquiry - BBC News](#)

⁹ [String of firms that failed under controversial owner Greybull Capital \(yahoo.com\)](#)

Right of appeal

40. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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