

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2024

Public Authority: Environment Agency

Address: Horizon House
Bristol
BS1 5AH

Decision (including any steps ordered)

1. The complainant has requested declaration of interest forms for staff in the roles of Area and Regional Directors at the Environment Agency (Deputy Directors and Directors respectively). The Environment Agency refused the request under section 40(2).
2. The Commissioner's decision is that the for the less senior position of Deputy Director the Environment Agency was correct to withhold the information in the declaration of interest forms. However, for the more senior position of Director the Commissioner considers section 40(2) has not been correctly engaged.
3. The Commissioner requires the Environment Agency to take the following steps to ensure compliance with the legislation:
 - Disclose the requested information at Director level
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 11 January 2024 the complainant wrote to the Environment Agency (EA) and requested information in the following terms:

"Please provide copies of the declaration of interests forms submitted by staff in roles of Area and Regional Director across the Environment Agency from 1. Jan 2019 to the present date.

I am referring to financial and other business interests."

6. The EA responded on 8 February 2024, explaining that staff below Executive Director level are not required to publicly disclose their declared interests with the exception of Directors who are members of the Pensions Committee. The EA stated data on the declared interests of staff as referred to in the request was exempt under section 40(2) FOIA.
7. Following an internal review the EA wrote to the complainant on 16 May 2024 upholding its position.

Scope of the case

8. The complainant contacted the Commissioner on 26 May 2024 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to determine if the EA has correctly withheld the declaration of interests forms under section 40(2) FOIA.

Reasons for decision

Section 40(2) – third party personal data

10. Section 40(2) of FOIA allows a public authority to withhold information that constitutes the personal data of someone other than the requester, and if disclosing that information would contravene any of the data protection principles¹ set out under UK data protection law.
11. The two main elements of personal data are that it must relate to a natural person (i.e. a living individual), and that the person must be identifiable from the information (either directly or indirectly).
12. In this case the withheld information is the declaration of interests forms for Area and Regional Directors. The EA explained that Area Directors sit underneath Directors in parts of the EA's structure². In some areas of the business these roles are referred to as Area Directors and in other

¹ The data protection principles are set out in Article 5(1) of the UK General Data Protection Regulation and section 34(1) of the Data Protection Act 2018.

² [EA Org Chart June 2024 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

areas they are referred to as Deputy Directors. 'Regional Director' is not a term used in the EA's organisational structure but as Regional Director's would logically sit above Area Directors the EA has taken the request to be for the declaration of interest forms for Directors (Regional) and the level below that where Area Directors and Deputy Directors sit. This notice will, for ease, refer to these roles as Director and Deputy Directors to remain consistent with the nomenclature used by the EA.

13. The forms would clearly be personal data as they not only identify individuals but may contain details of those individuals' activities outside of work.
14. The Commissioner considered whether the forms could be anonymised by removal of the name of the member of staff. The names of Deputy Directors and Directors are already know so the question is whether, in anonymised form, the forms could be linked back to named individuals. The level of detail in the forms can include references to outside interests - financial, business and recreational - as well as to family members interests.
15. The information may contain geographic references, specific references to family members employment/interests, charity trusts, membership of local/regional groups, amongst other information. Deputy Directors have their approximate geographic locations included in their job titles ie Area Director Yorkshire. There is a real likelihood that, given Deputy Director and Director's names are already in the public domain along with (in the case of Area Director's) approximate geographic locations that the detail in the declaration of interest forms could be used to identify specific individuals. For example, knowing that someone is a board member of a specific charity or group could easily allow a motivated individual to search for that charity or group and cross-reference this with the list of Directors at the EA.
16. The Commissioner is therefore satisfied that this information is personal data within the definition under section 3(2) of the DPA.
17. He has therefore gone on to consider whether its disclosure would contravene the data protection principles.

Would disclosure contravene the data protection principles?

18. The fact that information constitutes personal data does not automatically exclude it from disclosure under FOIA. The second element of the test under section 40(2) is to determine whether disclosure would contravene any of the data protection principles.

19. The most relevant data protection principle in this case is the one under Article 5(1)(a) of the UK GDPR, which states:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

20. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if doing so would be lawful, fair and transparent.

21. For disclosure to be “lawful”, there must be a “lawful basis” for that processing. If there is no lawful basis under data protection law, the personal data cannot be disclosed. The available lawful bases for processing are listed in Article 6(1) of the UK GDPR. The disclosure must also be generally lawful (i.e. not in contravention of any other laws).

22. Of the six lawful bases listed under Article 6(1) of the UK GDPR, the ones most likely to apply to the disclosure of personal data under FOIA are those under Article 6(1)(a) and Article 6(1)(f):

(a) the individual to whom the requested information relates has given consent to the disclosure under FOIA, or

(f) the disclosure of the requested information is necessary for the purposes of legitimate interests pursued by the public authority or by a third party [e.g. the requester], except where such interests are overridden by the interests or fundamental rights and freedoms of the individuals to whom the requested information relates.

23. As the individuals to whom the requested information relates have not consented to its disclosure in this case, the Commissioner has gone on to consider whether the “legitimate interests” lawful basis under Article 6(1)(f) would apply to the disclosure.

24. When considering whether Article 6(1)(f) applies to the disclosure of personal data, public authorities must consider:

- whether there is a legitimate interest being pursued,
- whether disclosure of the information is necessary to satisfy that interest, and
- whether the legitimate interest is overridden by the rights and freedoms of the individuals to whom the information relates.

25. The Commissioner recognises that the public has a legitimate interest in knowing that senior staff at the EA do not have any conflicts of interest that might affect their decision making or that any conflicts of interest

they do have are resolved and managed appropriately. The need to ensure that EA staff in decision-making roles are acting without prejudice is of public interest at this time due to the role of the EA in investigating water and sewerage companies.

26. The Commissioner also notes the complainant is not seeking information on private issues but is focused on financial and other business interests. The Commissioner therefore considers the complainant is pursuing a legitimate interest in wanting to ascertain if there are any genuine conflicts of interest with staff at the EA. There appears to be no less-intrusive way of achieving that interest given that there is no information currently in the public domain on any declared interests of Deputy Directors and Directors (other than those on the Pensions Committee). Disclosure of the requested information is therefore necessary to meet that interest.
27. The Commissioner has gone on to consider whether the legitimate interest being pursued by the complainant is overridden by the interests or fundamental rights and freedoms of the individuals to whom the information relates.

Balance between legitimate interests and the data subject's interest or fundamental rights and freedoms

28. To appropriately balance the legitimate interests in disclosure against the data subjects' interests or fundamental rights and freedoms, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect the information to be disclosed to the public under FOIA, or if such disclosure would cause unjustified harm, their interests or rights are likely to override the legitimate interests in disclosure.
29. In considering this balancing test, the Commissioner has taken into account the following factors:
 - the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individuals to whom the information relates expressed concern about its disclosure; and
 - the reasonable expectations of the individuals to whom the information relates.

30. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy and the purpose for which they provided their personal data. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
31. The EA has explained that all staff complete a declaration of interest annually. This is completed regardless of whether there is a conflict to declare. The EA's declaration of interest policy applies to all employees except Executive Directors (who have a separate policy) and this policy does not state that declarations may be disclosed publicly or that there is any legal obligation on the EA to publish declarations.
32. The EA is an executive non-departmental public body, and as such its employees are not civil servants. This means that the Cabinet Office's guidance 'Declaration and management of outside interests in the Civil Service'³ does not apply. What this means in practice is that the EA is not under any legal obligation to make declarations of interest publicly available. Employees therefore have a reasonable expectation that their declarations of interest will remain confidential as the EA's declaration of interests policy does not indicate information provided will be made public.
33. The EA does publish declarations of interest for board members, Executive Directors and Members of the Pensions Committee as it considers these individuals' right for this information to remain confidential is lesser.
34. The EA considers disclosing declarations of interest for staff below this level would breach the expectation of confidentiality those staff have and they would object to this processing of their personal data. The EA believes there would be significant distress caused as personal data would be in the public domain and outside their control and it would not be reasonable to seek consent for declarations of interest to be made public, as individuals are unlikely to give consent.
35. The complainant argues that as the environmental regulator of the water industry (amongst others) the decisions made by staff at all levels can significantly impact companies. They argue that there is a need for careful oversight to avoid inappropriate relationships and transactions with a view to ensuring the protection of the environment and preserving public confidence.

³ [Declaration and management of outside interests in the Civil Service - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

36. In making a decision the Commissioner has first considered the seniority of the employees that are involved in the requested information. The request asked for Area and Regional Directors and the EA has clarified that this, based on its organisational chart, is Director and Deputy and Director level. The Commissioner notes the structure is a fairly standard one consisting of a Chief Executive, Chair and an Executive Board below this, made up of Executive Directors in charge of different areas of business. The Directors then sit below this and head up teams with Deputy Directors.
37. Whilst all of these employees are named on the organogram there are clear differences in seniority between Directors and Deputy Directors and the reasonable expectations of staff about what they would expect to be made publicly available will be different. Directors at the EA lead broad areas, for example in the 'Environment and Business' area there are Directors responsible for broad areas such as 'Energy & Resources' and 'Water'. There is also a Chief Regulator at the same level as the Directors.
38. The Commissioner's view is these are senior roles, covering broad areas and highly likely to carry responsibility and decision-making power. The Deputy Director roles are much narrower in scope, for example under the Director of Strategy (a board area) there is a Deputy Director for the Innovation Delivery Group and a Deputy Director for the Portfolio Delivery Office. Based on the June 2024 organogram there were 20 Director level roles at the EA and closer to 90 Deputy Director roles, each seemingly answerable to the Director for the broader area of work.
39. The Commissioner's view is that at Director Level the legitimate interest in transparency to allow for greater public oversight of any competing interests is higher than at Deputy Director level. It is a matter of fact that more senior roles will carry greater responsibility and greater decision-making powers so anyone in those roles will have an increased expectation they will be scrutinised and held to a high standard. This may not extend to an expectation that their declaration of interests will be disclosed but there will overall be more of a general expectation of transparency.
40. For this reason the Commissioner does not consider that at the less senior level of Deputy Director the legitimate interest in disclosure would necessarily override the rights of the individuals to expect a degree of privacy about their outside interests, bearing in mind these interests may not be directly relevant to their work and may relate to family members' interests.
41. However, for Directors the Commissioner has gone on to look at this in more detail. In doing so he has looked at the level of detail published by

other regulators and also the guide for the civil service on declaration of interests which, although not directly relevant to non-departmental public bodies (NDPBs) outside the civil service, is a standard often used by them in setting their policies and procedures.

42. In terms of other regulators, the Commissioner has looked at his own office, the Information Commissioner's Office (ICO) and it proactively publishes the register of interests for Executive Directors and its management board⁴. However the ICO does ask all staff to declare any outside interests and makes it clear that there may be circumstances under which release of information about declarations is considered on a case-by-case basis, taking into account circumstances including the seniority of the staff involved. Conversely, it is also made clear that the declaration (below Executive/Board level) is not intended to be made public.
43. This approach is in line with Section 4.2 of the Civil Service Guide which states that:

"Departments will also need to publish the relevant interests of their Permanent Secretary, and other SCS who are Board members at least annually within their ARA (or other relevant publication) alongside all Board member interests. Any outside employment, work or appointment (paid or otherwise remunerated) held by a member of the SCS that has been agreed through the process for the declaration and management of outside interests should also be published"
44. From the information supplied by the EA it appears the situation is similar. As such, disclosing declaration of interests below Executive/Board level would not be a routine disclosure and the decision for the Commissioner is whether the legitimate interest in this information is sufficient to outweigh any rights and freedoms of the individuals at Director level at the EA.
45. Public bodies involved in environmental oversight, particularly those with regulatory functions relating to water and sewerage, are under increased scrutiny, criticism and pressure to address environmental concerns. The Director level roles in the EA are strategic decision-making roles, covering wide areas of responsibility from Director of Incident Management & Resilience to Director of Major Projects, with important roles in delivering the function of the EA for the betterment of the environment.
46. However, the Commissioner does not consider that the fact that a public body has a high-profile at a given time is necessarily a reason on its

⁴ [Register of interests | ICO](#)

own to find that information should be disclosed, particularly as not all roles at Director level are directly related to the currently high-profile areas of water and sewerage.

47. There is an importance to ensuring that high-level roles are carried out as transparently as possible. The complainant considers the fact that there could be a conflict of interest is a compelling argument for transparency. Pointing to examples of members of EA staff who have in the past declared they hold shares in water companies and a former Director who was a non-executive Director for a water company and went on work for a water company.
48. The Commissioner's view is that the purpose of declarations of interest is for the EA to have oversight of any outside interests of its employees and to avoid and manage any conflicts of interest. In any business or public authority it is very likely that individuals in senior positions will have industry links from their years working, whether that be former employment, non-executive Director roles, or even shares in companies.
49. At the most senior levels this information is open and transparent to allow the public to see that senior decision-makers have declared any conflicts they may have and to show that this is being appropriately managed by the EA.
50. At Director level this information is not proactively disclosed but that does not mean that the information cannot be disclosed in response to a FOIA request. The Commissioner has already discussed some of the reasons why there may be a legitimate public interest in this information but has to consider the impact of disclosure on the individuals concerned.
51. The EA has stated the information on the forms relates to an individual's activities outside of work ie not in an official capacity. Disclosing the information would breach the expectation of confidentiality employees have and they would object to this processing of their personal data.
52. The EA stated that this would likely cause significant distress to these individuals as their personal data would be in the public domain outside their control.
53. The Commissioner does not agree that there is a likelihood of significant distress to these individuals. The EA has not explained this further or evidenced it. The Commissioner notes that some employees who are not Executive Director's have their declaration of interests published if they are part of the Pensions Committee and this is done without any distress to the individuals.

54. As such, in conclusion the Commissioner finds that for the Director level roles the legitimate interests identified do outweigh the data subject's rights and freedoms and there is an Article 6 basis for processing so disclosure of the information would be lawful.

Is disclosure fair and transparent?

55. Even though disclosing this information under FOIA would be lawful, it is still necessary to show that disclosure would be fair and transparent. In relation to fairness, the Commissioner considers that if the disclosure passes the legitimate interest test for lawful processing, it is highly likely that disclosure will be fair for the same reasons. The requirement for transparency is met because as a public authority, the EA is subject to FOIA.
56. The Commissioner has therefore decided that the EA has failed to demonstrate that the exemption at section 40(2) is engaged with respect to the Director level information in the declaration of interests forms.

Right of appeal

57. 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

58. 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.
59. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jill Hulley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF