

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 September 2024

Public Authority: Post Office Limited
Address: 100 Wood Street
London
EC2V 7ER

Decision (including any steps ordered)

1. The complainant has requested the name of a Senior Dispute Resolution Manager on the Horizon Shortfall Scheme. The Post Office Ltd refused to provide the requested information, citing section 38(1) of FOIA – health and safety. It later cited section 40(2) of FOIA – personal information and withdrew its reliance on section 38(1).
2. The Commissioner’s decision is that the Post Office has correctly relied on section 40(2) of FOIA to withhold the information. However, he has found the Post Office in breach of sections 1(1)(a), 10(1) and 17(1) of FOIA by failing to provide a response and a relevant refusal notice within 20 working days.
3. The Commissioner does not require further steps.

Request and response

4. On 28 March 2024, the complainant wrote to the Post Office and requested information in the following terms: “Who is the senior dispute manager on the Horizon Shortfall Scheme?”
5. The Commissioner notes that the Post Office describes the Horizon Shortfall Scheme as: “for current and former postmasters who believe they experienced shortfalls related to previous versions of the Horizon

system". The government website¹ explains the following: "Current and former postmasters who were not part of the GLO² and who did not have a criminal conviction were eligible for the scheme."

6. On 17 May 2024 the Post Office responded, refusing to provide the requested information and citing section 38(1)(a) of FOIA – health and safety.
7. The complainant requested an internal review on the same date.
8. The Post Office sent the outcome of its internal review to the complainant on 12 July 2024. It upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 10 July 2024 to complain about the way their request for information had been handled. At that point the complaint was about the lack of an internal review. Subsequently, the complainant was not content with the outcome of the internal review.
10. The Post Office provided the Commissioner with two submissions, in the second it withdrew section 38 of FOIA, relying instead on section 40(2) of FOIA as its reason for withholding the requested information.
11. Therefore the Commissioner considers that the scope of his investigation is to determine whether the Post Office is entitled to rely on section 40(2) of FOIA and any procedural matters that may have arisen.

Reasons for decision

Section 40 - personal information

12. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

¹ [Financial redress factsheet: Post Office \(Horizon System\) Offences Bill - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/factsheets/financial-redress-factsheet-post-office-horizon-system-offences-bill)

² Group Litigation Order.

13. In this case the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
14. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
15. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

16. Section 3(2) of the DPA defines personal data as "any information relating to an identified or identifiable living individual".
17. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
18. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
19. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
20. The Post Office explains that the requested information "relates to someone other than the applicant" and should be withheld under sections 40(2) and 40(3A) of FOIA.
21. In the circumstances of this case, though he has not seen the withheld information, the Commissioner is satisfied that a request for the disclosure of the name of an individual in a particular role quite clearly relates to and identifies that individual. It is the Commissioner's understanding that the role is not singular but plural, though the request seems to presuppose one role. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
22. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under

FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

23. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

24. Article 5(1)(a) of the UK GDPR states that: "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

25. 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 to do so would be lawful, fair and transparent.

26. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the UK GDPR

27. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"³.

28. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;

³ Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
29. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

30. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
31. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

Is disclosure necessary?

32. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
33. The complainant disputes certain aspects of the Post Office's internal review and has noted:
- "Several months ago, Post Office were happy to provide me with the name, email address and phone number of the previous dispute resolution manager. So I don't understand why there has been a sudden change in policy to prevent this name being given out."
34. The Commissioner is in no doubt that the disclosure of this information is necessary to the complainant and he understands why. The complainant argued that they were requesting basic information and that the scheme cannot be held to account without this name.
35. The Commissioner is satisfied in this case that there are no less intrusive means of achieving the legitimate aims identified.

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

36. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
37. 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 individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
38. 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, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
39. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
40. The Post Office considers that it has a "duty of care regarding the wellbeing of all employees" and that "disclosure of this information is likely to breach the first data protection principle, which provides that personal data must be processed lawfully, fairly, and in a transparent manner". It contends that, "Disclosure would not constitute 'fair' processing of the personal data" as Senior Dispute Resolution Managers "only put forward the compensation proposals to a committee and it is then the committee that make the final decision".
41. The Post Office further argues that the request relates to non-public facing and what it considers to be junior staff. Its view is that any of the individuals involved would not reasonably expect their name to be disclosed in relation to this request for information. The Commissioner notes that he has not been provided with the withheld information due

to the Post Office's concerns about its release. Whilst he does not consider it necessary to be provided with it in order to make a decision in this instance, his role as Regulator means that he is bound by legislation not to disclose withheld information that has been provided to him by a public authority.

42. In its first response to the Commissioner the Post Office detailed incidents that had occurred where its employees had been targets of abuse by members of the public that cannot be detailed here for reasons of confidentiality.
43. The Post Office also explained in that response that it publishes information on its "corporate website dedicated to the Horizon IT Scandal, including a great deal of information about the compensation process and schemes" and it provided the following links to the Commissioner:

Horizon IT Scandal:

corporate.postoffice.co.uk/en/the-horizon-it-scandal/

HSS data:

corporate.postoffice.co.uk/en/horizon-scandal-pages/horizon-shortfall-scheme-latest-data-on-progress/

Overtured convictions and financial redress:

corporate.postoffice.co.uk/en/horizon-scandal-pages/overtured-convictions-and-financial-redress-information-on-progress/

44. The complainant has pointed to the "huge public interest" in the Horizon Shortfall Scheme. As previously explained, the Post Office has provided further supporting arguments and evidence in support of its position that cannot be set out in this decision. However, individuals have been targeted via emails and the internal review described "direct unwanted approaches from media organisations".
45. Given the high profile nature of the Horizon scandal, the publicity is likely to continue. The Commissioner appreciates that the complainant and many other individuals have an understandable interest in this information and might well consider that it is justified that the Post Office is transparent, given the history and context of the Horizon scandal.
46. This is not a straightforward decision. The role of the Senior Dispute Resolution Managers is clearly professional, not personal. Set against

this is the Post Office's view that this is a junior role in the organisation and is non public-facing. The Commissioner notes that there is information in the public domain about this specific matter, some of it speculative. It would appear that the Post Office has not asked for permission to disclose this information but has taken a corporate decision on behalf of its staff. It clearly believes that disclosure would be against the reasonable expectations of those staff. The Commissioner can appreciate the complainant's view that they had previously been provided with this information. However, he has concluded that, although the provision of such information may have been a normal course of business matter previously, the immense public interest and publicity surrounding the Horizon scandal has led to individuals being targeted.

47. The Commissioner has concluded that providing the requested information may well lead to outcomes such as increased targeting via social media or by other more direct means.
48. The Commissioner has decided that the rights of the individuals concerned and the damage and distress that could well occur outweigh any legitimate interests in disclosure. He has concluded this because the decision regarding compensation is made by a committee, not the individuals occupying the role specified by the requester.
49. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
50. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.

Procedural matters

51. The Post Office breached sections 1(1)(a) and 10(1) of FOIA because it failed to confirm that it held some of the requested information within 20 working days.
52. The Post Office also breached section 17(1) of FOIA by failing to issue a refusal notice within the statutory timeframe.

Right of appeal

53. 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

54. 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.
55. 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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