

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

### **Decision notice**

**Date:** 17 October 2024

**Public Authority:** Care Quality Commission  
**Address:** Citygate  
Gallowgate  
Newcastle upon Tyne  
NE1 4PA

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

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1. The complainant has requested information about care providers whose licence to sponsor visas had been revoked. The above public authority ("the public authority") relied on sections 41 (breach of confidence) and 31 (law enforcement) to withhold the information.
2. The Commissioner's decision is that section 41 of FOIA is not engaged. Section 31 is engaged and the balance of the public interest favours maintaining this exemption.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 27 March 2024 the complainant requested information of the following description:

"Could you provide me with:

- The list of care providers which have had their sponsorship licences revoked by the Home Office.
- For each company, can you provide:
  - The company address

- High level grounds for UKVI action – e.g. failure to monitor – underpayment of salary
- Number of migrant workers impacted
- The date the information was received
- The date of the suspension
- The date of the revocation

“...I would appreciate it if you could provide this information in an attachment in .csv or .xls format.

5. On 4 April 2024, the public authority responded. It refused to provide the requested information and relied on section 41 of FOIA in order to do so.
6. The complainant requested an internal review on 11 April 2024. The public authority sent the outcome of its internal review on 10 May 2024. It maintained its stance that section 41 applied, but now relied additionally on section 31 of FOIA (law enforcement).

## **Reasons for decision**

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### **Section 41 – actionable breach of confidence**

7. Section 41 of FOIA allows a public authority to withhold information it has received from another party, if publishing the information would amount to an actionable breach of confidence.
8. The public authority has explained that it received the information in question from UK Visas and Immigration (UKVI), part of the Home Office.
9. Government departments (and any executive agencies they oversee) cannot rely on section 41 in respect of information provided by other government departments. However, as the CQC is not a government department, nor part of one, it is entitled to rely on the exemption, as it has received the information from another party.
10. To establish the basis for a breach of confidence, the public authority must demonstrate that the information has the necessary quality of confidence; that it was imparted in circumstances implying a duty of confidence; and that publication would cause detriment to the confider.
11. The Commissioner accepts that none of the information is trivial.

12. The Home Office [publishes a register](#) of the organisations with a licence to sponsor worker visas. That register includes the name of the licence holder, its registered address and the type of visas it is permitted to sponsor. The metadata on the page indicates that it is updated roughly each working day to add and remove licence holders.
13. A person who had downloaded the register on an earlier occasion could compare it with the most recent copy available and, in doing so, identify licence holders on the earlier list that were not on the current list.
14. However, just because a company no longer has a licence, does not mean that its licence must have been revoked. The company may not have renewed a licence it no longer needed, it may have ceased to trade or there may be other reasons why it no longer has a licence.
15. Even a motivated intruder would be unable to establish, with any certainty, which licence holders had been removed from the register as a result of their licence being revoked. And they certainly wouldn't be able to establish why revocation had occurred or the number of workers affected.
16. The Commissioner therefore accepts that the information is not in the public domain.
17. In respect of circumstances, the public authority stated that:

"We know from our ongoing relationship with UKVI that they consider this information to be sensitive and confidential."
18. The public authority informed the Commissioner that it had consulted UKVI about disclosure. It stated that UKVI had "confirmed" that it had shared the information in confidence. It did not provide copies of this correspondence.
19. Whilst the evidential basis leaves much to be desired, given his assessment of the next test, the Commissioner has proceeded on the basis that the information was shared in circumstances that would imply a duty of confidence.
20. The final test is that publishing the information must cause detriment to the confider of the information. The public authority explained to the Commissioner that:

"UKVI have advised CQC that disclosure of the requested information would, or would be likely to, prejudice the exercise of UKVI's functions for the prevention or detection of crime. UKVI's view is that releasing this information could risk prejudicing ongoing investigations as the investigations continue."

"UKVI have also expressed the view that the release of the requested information may prejudice the public's perception and understanding of those licence holders who have had their license revoked. In cases where the reasons for those revocations [sic] are still subject to investigation or open to challenge, this is likely to be unfair to those organisations...

"...In making this assessment, we are mindful that we are not privy to details of the ongoing investigations and safeguarding processes being undertaken by UKVI in each case. Nor are we privy to ongoing investigations, challenges or legal issues arising from the revocation of licences. If CQC was to make a disclosure it would therefore do so without a clear understanding of the risk involved."

21. The Commissioner has disregarded the second paragraph as it does not show any detriment to the confider of the information (UKVI). In any case, it is not clear what unfairness would occur given that UKVI would (presumably) not revoke a licence unless it was satisfied, having considered all the available evidence, that it was justified. It may well damage the commercial reputations of those providers, but such damage does not seem unjustified if a provider has failed to comply with the terms of its licence.
22. In respect of the first and third paragraphs, the public authority has not provided evidence, beyond bare assertion, that UKVI's efforts would be damaged. Nor can the Commissioner see good reason why this would be the case.
23. When UKVI suspends or revokes a licence, it must inform the licence holder of that fact and of the reasons for taking that action.
24. The Commissioner accepts that, if a licence is revoked because the holder has been (for example) claiming to have vacancies which don't actually exist or under-paying the workers it brings in, it may also have committed offences under immigration, human trafficking or modern slavery legislation. The Commissioner recognises that those are criminal offences that would require separate investigation that may continue beyond the point at which a licence is revoked.
25. However, the public authority has not explained and it is not clear to the Commissioner, why those further investigations would be harmed by disclosure of this information.
26. The withheld information will reveal nothing to the former holder of a licence that they will not already have been told when their licence was suspended or revoked. Any action that could have been taken to destroy or conceal evidence, or to alert accomplices – which would hamper an

effective investigation – could have happened at that point. It seems logical that a decision to suspend or revoke a licence would already take such factors into account. Therefore it is not clear what additional risk would arise from disclosing information that those involved already know. This will especially be the case when the information relates to licences suspended over a year ago.

27. In addition it is not clear how long it takes for the register to reflect the fact that a licence has been revoked. Although the register is updated regularly, it is not clear what the lag is between a licence no longer being valid (for whatever reason) and it being removed from the register. Therefore the fact that the companies concerned no longer have a licence is already in the public domain – even if the reason for that is not.
28. The Commissioner recognises that the CQC is not privy to most of the investigative work of UKVI. Nevertheless, he cannot accept such a paucity of evidence. UKVI is part of a public authority and should be well aware of its own responsibilities under FOIA. It should also be well aware that, as the original owner of the information, it needs to provide proper evidence of detriment or harm in support of this exemption – even if that evidence itself needs to be provided to the Commissioner in confidence.
29. The Commissioner is not satisfied that the CQC has demonstrated that publication of the information would cause detriment to UKVI. As such, the conditions for a breach of confidence action do not exist and so section 41 is not engaged.

### **Section 31 – law enforcement**

30. Section 31 of FOIA allows a public authority to withhold information whose disclosure may make it more difficult for a regulator to carry out its work.
31. Section 31 will also apply to information whose disclosure would harm the ability of that public authority, or any other body, to prevent or detect criminal offences. Curiously, the public authority did not cite this part of the exemption in its responses, therefore the Commissioner is restricted to arguments relating to harm caused to the public authority's regulatory functions.
32. The public authority's justification for claiming harm was that, were it to disclose this information, it would not receive similar information from UKVI in future.

33. Once again, the public authority was keen to stress how long it had taken to acquire access to this information. It noted that the healthcare sector employed large numbers of overseas workers and that:

"UKVI and CQC have a shared role and interest in ensuring that people from overseas who are sponsored to work in health and social care are fit and proper persons to do so. We also recognise that international recruitment of staff across health and social care has increased the concerns and risk of mistreatment of both the existing workforce and internationally recruited staff. This includes an increased risk of modern slavery and unethical international recruitment practices. The working relationship between CQC and UKVI involves co-operation to address the root causes and reduce the likelihood of modern slavery and unethical international recruitment practices in health and social care settings...

"...Information on providers whose sponsorship registrations have been suspended or revoked, and the reasons for those actions by UKVI, is also vital intelligence for CQC in detecting and being able to act upon potentially serious issues within the providers that we regulate and therefore to use our powers to protect the people who use those services."

34. The public authority further explained that:

"Disruption or delay in receiving this information from UKVI would disrupt a key source of intelligence for CQC that we use to identify registered providers where there may be serious issues relating to possible criminality, failures of leadership, failures of management or administration, or staffing issues. This would disrupt the exercise of CQC's functions under the 2008 Act to monitor these providers and to decide whether circumstances would justify regulatory action such as conducting an inspection of the service or to require the provider to provide CQC with any information that we require and subsequently whether to use any of our enforcement powers to protect the safety and welfare of people using those services."

### **The Commissioner's view**

35. The Commissioner has had some difficulty in determining the likelihood of harm.
36. On the one hand, he has to note his finding above: that it is unlikely, on the available evidence, that UKVI would suffer detriment to its investigative abilities if this information were disclosed. Had UKVI been asked for this information and had it provided the level of evidence the

public authority reported, the Commissioner would likely have ordered the information to be disclosed.

37. However, the request has not been made to UKVI, it has been made to the public authority and it is the public authority that would bear the consequences of disclosure.
38. It is possible that UKVI does have genuine reasons to believe that disclosure would harm its investigative work that it has not shared with the public authority or the Commissioner. Neither the public authority nor the Commissioner are in a position to make such an assessment.
39. Whilst UKVI's concerns were not sufficient to convince it to provide evidence of harm to its investigatory work, that does not mean that it would continue to provide such information to the public authority in future if it were afraid that doing so would result in the information being made public.
40. The Commissioner does therefore accept there is a prospect that UKVI may stop sharing information and that, if it does so, this would harm the public authority's ability to regulate effectively. This is based on the fact that the public authority only recently began receiving this data, following lengthy negotiations.
41. However, the Commissioner assesses the likelihood as being the lower level of "would be likely to" cause harm, indicating that the probability is lower than 50%. In practice there are other factors such as public opinion and a possible loss of any consequent information that flows back to UKVI from the public authority, which might persuade UKVI to keep providing the information. Nevertheless there is more than a remote possibility that the flow of information would stop.

### **Public interest test**

42. Even where disclosure would cause harm to a regulator's functions, the information must still be disclosed unless the balance of the public interest favours maintaining the exemption.
43. The complainant argued that the public interest should favour disclosure. As well as ensuring transparency, they argued that:

"Some sponsored workers who work for companies which have had their licences revoked might not be informed in a timely manner or at all of the fact that their employer is no longer licensed to sponsor workers, because The Home Office does not necessarily have up-to-date contact details for them. In these circumstances the Home Office serves "a notice of cancellation on file", cancelling the workers' sponsorship without contacting them. Transparency regarding which



companies have had their sponsorship licence revoked is essential for these workers to be able to comply with immigration law.”

44. The Commissioner is not persuaded that this is a compelling argument.
45. Firstly, overseas workers are advised by the Home Office to keep their contact details up to date – precisely to avoid a situation where a worker is unaware that their sponsor’s licence has been revoked, thereby affecting their immigration status.
46. Secondly, the register of sponsors is published and regularly updated. Workers can therefore keep a check to see that their sponsor’s licence remains current.
47. Finally, the majority of the data relates to licences revoked in excess of 60 days ago. If a sponsor loses its licence, the people whose visas it has sponsored have a maximum of 60 days from the date of revocation to find a new sponsor, apply for a change of status or leave the country. Those affected have had ample time to check the public register to ensure that they are still complying with immigration law.
48. Whilst the Commissioner is not persuaded that there are good reasons for UKVI to stop sharing information with the public authority, he cannot rule out the possibility of that happening – the consequences of which would be serious for the public authority.
49. In the Commissioner’s view there is a strong public interest in ensuring the free flow of information between the public authority and UKVI to allow the public authority to perform its regulatory functions effectively. That flow would be likely to be damaged by disclosure and therefore the Commissioner concludes that the balance of the public interest should favour maintaining the exemption.



## **Right of appeal**

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50. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

51. 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.
52. 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**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**