

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 November 2024

Public Authority: Civil Aviation Authority (CAA)
Address: Aviation House
Gatwick Road South
West Sussex RH6 0YR

Decision (including any steps ordered)

1. The complainant requested a copy of CAA's whistleblowing policy. CAA provided this information with personal data redacted from it under section 40(2) of FOIA.
2. The Commissioner's decision is that CAA complied with sections 1(1), 10(1) and 17(1) of FOIA and correctly withheld personal data under section 40(2).

Request and response

3. In correspondence to CAA dated 9 January 2024, the complainant first stated that they wished to complain that CAA hadn't provided them with any information about its investigation into a particular airline company. They then requested information in the following terms:

"The CAA were required to amend its Whistleblowing policy by the Government Ombudsman (referred to in the email directly below).

Can you please provide the CAA's updated whistleblowing policy outlining the steps to be taken and a point of contact to provide details of my complaint to (once the whistleblowing policy has been received)?"

4. In correspondence to the complainant on 17 January 2024, CAA advised that it and the Parliamentary and Health Service Ombudsman (PHSO) had investigated the complainant's substantive concerns and there was

nothing further to address. CAA said it had complied with PHSO's recommendations and provided the complainant with a link to details about its whistleblowing policy.

5. On 17 January 2024, the complainant wrote to CAA and said:
 "...please provide a copy of the actual internal Whistleblowing policy that describes the actions the CAA takes rather than just refer me to the webpage."
6. On 22 January 2024, CAA provided the complainant with a copy of the whistleblowing policy with personal data redacted under section 40(2) of FOIA.
7. Following an internal review, CAA confirmed that it considered it had provided the complainant with the information they'd requested and was entitled to redact personal data from this information.
8. The Commissioner has corresponded with the complainant about their complaint. The Commissioner advised that his assessment was that CAA had provided the complainant with the information they'd requested, and it was entitled to withhold some of the information under section 40(2).
9. The complainant considered that the Commissioner should consider matters that are, as the Commissioner explained to them, outside his remit, such as whether or not CAA had complied with its own policies. The Commissioner explained that his remit was solely FOIA, and whether CAA had complied with this legislation in respect of the complainant's request for the whistleblowing policy.
10. The complainant wouldn't accept the Commissioner's position and so he's concluding this matter through this decision.
11. In their most recent correspondence to the Commissioner, the complainant referred to CAA having relied on section 31(2) of FOIA (law enforcement) to withhold information. The Commissioner will explore separately what might have been a different request.

Reasons for decision

12. This reasoning focusses on the request for the whistleblowing policy; whether CAA has provided this information and its reliance on section 40(2) of FOIA.

13. Under section 1(1) of FOIA a public authority must (a) confirm whether it holds information an applicant has requested and (b) must communicate the information if it's held and isn't exempt information.
14. Under section 10(1), a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
15. Under section 17(1), a public authority that has applied an exemption to information must provide the applicant with a refusal notice within the same 20 working day time period.
16. Finally, under section 40(2) of FOIA information is exempt from disclosure if it's the personal data of an individual other than the applicant and disclosure would contravene any of the principles relating to the processing of personal data that are set out in Article 5 of the UK General Data Protection Regulation (UK GDPR).
17. The most relevant principle is Article 5(1)(a). This states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
18. Having originally requested it on 9 January 2024, on 17 January 2024 the complainant confirmed that they were seeking a copy of CAA's whistleblowing policy.
19. On 22 January 2024, CAA provided a copy of this document. The Commissioner therefore finds that CAA complied with section 1(1) and 10(1) of FOIA.
20. Because it also issued a section 40(2) refusal notice on 22 January 2024, the Commissioner finds that CAA also complied with section 17(1) of FOIA.
21. The Commissioner has finally considered whether CAA is entitled to withhold some information in the whistleblowing policy under section 40(2).
22. He's first considered whether the withheld information can be categorised as other individuals' personal data, which is defined as information that relates to a living individual and from which the individual can be identified.
23. In this case the withheld information is the names of those involved in drafting and approving the whistleblowing policy.

24. The Commissioner is satisfied that this information relates to and identifies specific individuals and is therefore the personal data of those individuals – the 'data subjects.'
25. The Commissioner has gone on to consider whether disclosing the personal data would breach Article 5(1)(a) which, as above, states that personal data must be processed lawfully.
26. Personal data is processed when it's disclosed in response to a FOIA request. In order to be lawful under Article 5(1)(a), the lawful basis under Article 6(1)(f) of the UK GDPR must apply to the processing. It must also be generally lawful.
27. Article 6(1)(f) 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."
28. In order to determine whether disclosing the personal data would be lawful the Commissioner considers three 'tests': the legitimate interest test, the necessity test, and the balancing test where the legitimate interests are balanced against the data subjects' rights and freedoms.
29. The complainant clearly has an interest in the whistleblowing policy as it's associated with concerns they've raised with CAA and PHSO. This is a legitimate interest for them to have. But aside from the general public interest in public authorities demonstrating that they're open and transparent, the Commissioner doesn't consider that the specific information being withheld has significant wider public interest.
30. The Commissioner has gone on to consider whether disclosing the personal data is necessary to address the legitimate interests that have been identified.
31. In this case, the Commissioner doesn't consider disclosure is necessary. As noted, CAA has disclosed the majority of the whistleblowing policy. The Commissioner considers that this information sufficiently addresses the legitimate interest in the matter of whistleblowing. Disclosing the personal data in this document wouldn't add materially to the reassurance the complainant is seeking about whistleblowing, in the Commissioner's view.
32. The Commissioner also considers that the legitimate interest in CAA being transparent has been adequately met through the information it has disclosed.

33. As the Commissioner has decided in this case that disclosure isn't necessary to meet the legitimate interests in disclosure, he hasn't gone on to conduct the balancing test. As disclosure isn't necessary, there's no lawful basis for this processing and it's unlawful. It therefore doesn't meet the requirements of the principle under Article 5(1)(a).
34. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he doesn't need to go on to consider separately whether disclosure would be fair or transparent.
35. The Commissioner's decision is that CAA is entitled to withhold the information under section 40(2) of FOIA.

Right of appeal

36. 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

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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