

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 November 2024

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

Decision (including any steps ordered)

1. The complainant has requested all documents relating to the reasons for the closure and possible reopening timelines for a named post office. The Post Office Ltd (the Post Office) provided some information but withheld other information under sections 40(2) – personal information, 43(2) – commercial interests and section 31(1)(a) of FOIA – law enforcement.
2. The Commissioner's decision is that the Post Office has correctly refused the information it withheld under section 31(1)(a). The Post Office also correctly withheld most of the information it had cited under section 40(2), however some of it is not personal data and must be disclosed. The Commissioner has accepted, on the balance of probability, that the Post Office does not hold any further information than it has already disclosed with redaction for the relevant exemptions. However, the Commissioner does not accept that section 43(2) of FOIA is engaged and some information withheld under that exemption should be disclosed. The Post Office also breached section 1(1) and 10(1) by confirming that it held information late and providing further information at internal review stage. It also breached section 17(1)(b) by later relying on exemptions that it had not cited in its original response.
3. The Commissioner requires the Post Office to take the following steps to ensure compliance with the legislation: disclose the information identified below.

- Disclose the name and whole job title of the individual that was previously withheld from page one, paragraph five of the information provided to the complainant and all other instances, minus contact details.
 - Disclose the information on page five (20 October 2023 email) that was withheld under section 43(2) of FOIA.
 - Disclose the second paragraph of page 17 as this is not personal information.
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 20 February 2024, the complainant wrote to the Post Office and requested information in the following terms:
- “Please provide copies of all documents relating to the reasons for the closure and possible reopening timelines for the Billingham Post Office located at 53 Queensway, Billingham, TS23 2ND.”
6. On 2 April 2024 the Post Office provided its response. It cited section 21 of FOIA (information accessible to applicant by other means) and provided a link to information on its website.
7. On the same date the complainant requested an internal review.
8. The Post Office provided its first internal review on 7 June 2024. The review did not maintain its position. It acknowledged the complainant’s view that “irrelevant” information had been provided but confirmed that the documents it had provided “related to the correct branch and were concerning its closure”. The Post Office was satisfied that it had been correct to provide it. It accepted that not all the relevant information had been provided and included information it had located that fell within scope of the request. It also accepted that its response to the request had been late. The complainant responded on the same date contending that there must be further information held.
9. On 14 June 2024 the Post Office confirmed that it would conduct another internal review.

10. The Post Office provided another internal review on 30 August 2024 because the original review had not covered part of the review request. The review noted that the complainant had “asked about internal emails and memos regarding the closure of the branch as well as documentation relating to the re-opening of the branch”. It confirmed that it had “no further information to disclose regarding the reasons for the closure and re-opening of the branch including about the financial position of the company that operated (sic) branch”. The Post Office provided further information, some of which was withheld under sections 40(2), 43(2) and section 31(3) of FOIA. It confirmed that it held nothing further.

Scope of the case

11. The complainant contacted the Commissioner on 30 May 2024 to complain about the lack of an internal review.
12. On 18 October 2024 the Post Office made a submission to the Commissioner where it confirmed its citing of sections 43(2) and 40(2) of FOIA. It explained that it had not intended to cite section 31(3)(neither confirm nor deny) and should have cited section 31(1)(a).
13. The Commissioner subsequently sought further information about what searches the Post Office had carried out to determine if it held further information. The Post Office confirmed that no further information had been withheld except that which had been redacted.
14. The Commissioner considers that the scope of his investigation is to determine whether the Post Office cited the exemptions correctly and whether it holds any further information. He will also consider any procedural matters that may have occurred.

Reasons for decision

Section 1 – held/not held

15. The task for the Commissioner where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request is to determine whether, on the balance of probabilities, the public authority holds any information relevant to the request which it has not already disclosed to the complainant.
16. In making this determination, the Commissioner will consider the complainant’s evidence and argument and the actions taken by the

public authority to check whether the information is held and he will consider any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held.

17. The Commissioner is not expected to prove categorically whether the information was held; he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities. Applying the civil test of the balance of probabilities is in line with the approach taken by the Information Tribunal when it considered the issue of whether information was held.
18. The complainant pointed out to the Commissioner that "none of the information currently provided is more recent than 25/10/23" and that most of the information from the second internal review is limited to emails that related to the recruiting of a temporary postmaster and staff and "uninformative responses to queries from members of the public and two local authorities".
19. The complainant has provided other arguments to the Commissioner that they believe suggests that there is further information, for example details about the financial situation: "It is highly unlikely the Post Office were not aware of these insolvency situations and they must have been significant contributory factors that led to the closure of the Billingham Branch". They suggest that certain information has not been provided which the complainant contends should exist:

"One or more people in Post Office Limited must have recommended, or advised that their Billingham Town Centre Branch should be closed, and the same or additional Post Office employees must have asked for the closure implementation to be enacted."

20. The complainant says that the Post Office must have notified the relevant parties of "their decision to close the branch and possibly send out warnings about the possibility of it taking place". They consider that the financial position of the company concerned and their "financial instability" which "may have been a major factor in the branch Closure decision...could have been disclosed...if applicable".
21. Their view is that there must have been people in the Post Office discussing what actions should be taken to reopen the branch or to consider its permanent closure and that this information had not been provided. Similarly, the complainant believes that there must have been communications with the "temps" from the disclosure (20 August 2024) they had had from the Post Office. This same disclosure "implied" that the Post Office had decided to permanently close the branch and seek to open another at an unspecified location" but that this information had

not been provided as part of the FOI response, "nor have they implemented any consultation about a new location". The complainant states that there is no branch information on the Post Office's website www.postoffice.co.uk/branch-finder.

22. The Post Office has confirmed to the Commissioner that it has not withheld any further information than it has provided to the complainant in a redacted form. However, the Commissioner went back to the Post Office for a more detailed response regarding what information it held falling within scope of the request and the searches that it had made to establish that it did not hold any further information. It explained that it had carried out electronic searches on both personal and shared network drives (including emails) of the relevant teams and employees who were dealing with the branch closures. The information would only be held electronically. The key search term used was "Billingham Post Office closure".
23. The Post Office accepted that it had not carried out adequate searches regarding its initial response but rectified that at the point of the second internal review. It now considers that "all appropriate and proportionate searches have been carried out". The Post Office has confirmed that no recorded information falling within scope has been deleted or destroyed and it explained that "records of this age/nature would not typically be deleted". The Post Office stated that there were no statutory requirements or business purpose to hold the requested information.
24. The Commissioner understands the complainant's view that there must be more information held. However, the Commissioner is only able to consider what is held and not what might be expected to be held as this is outside the FOI legislation. Nor can he consider whether Post Office procedures were followed. Although the Post Office failed to carry out thorough searches when the request was received it has now had several opportunities to do so. Therefore, on the balance of probability, the Commissioner accepts that the Post Office does not hold any further information.

Section 43(2) – commercial interests

25. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
26. The Commissioner has defined the meaning of the term "commercial interests" in his guidance on the application of section 43 as follows:

"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.”¹

27. Most commercial activity relates to the purchase and sale of goods but it also extends to other fields such as services.
28. The Commissioner’s guidance says that there are many circumstances in which a public authority might hold information with the potential to prejudice commercial interests. The actual harm that the public authority alleges would or would be likely to occur if the withheld information was disclosed has to relate to commercial interests.
29. The public authority must demonstrate a clear link between disclosure and the commercial interests of either itself, a third party or both. There must also be a real and significant risk of the prejudice to commercial interests occurring for it to be successfully engaged.
30. The exemption is subject to the public interest test. This means that, even if the exemption is engaged, the Commissioner needs to assess whether it is in the public interest to release the information.
31. The Post Office explained in its submission to the Commissioner that it was its own commercial interests and those of the sub-postmaster that were likely to be prejudiced if information relating to the reopening of a post office branch was disclosed.
32. It argued that “Disclosing such information [...] would allow Post Office’s competitors to identify and target areas where Post Office either no longer trades, or where we are experiencing challenging trading issues.” Disclosing this information “would allow competitors to target those areas with similar services and products, thus leading to harm to Post Office’s ability to remain commercially viable” and “for the postmaster to drive commercial sustainability”.
33. The complainant argued that “the Post Office provides its own unique counter services, branded insurance & telecommunications products etc...” They state that it isn’t clear to them why disclosing the information requested would mean that the Post Office would be unable to operate in a fair marketplace or that it would be commercially damaged if the information was released. The complainant believes that “the competitive dialogue procedure applies to the procurement of

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

goods and services for public bodies” and they consider it “irrelevant” to the information they sought.

34. The information that is being withheld under this exemption is extremely limited. The Post Office has not provided sufficient arguments as to why the particular information withheld under this exemption would be likely to prejudice its commercial interests for the Commissioner to accept that it is engaged. The small amount of information withheld under this exemption on page five must therefore be disclosed.
35. However, the Commissioner considers the remaining information withheld under section 43(2) to be third party personal data and therefore he is proactively applying section 40(2) to it and he will consider it under his analysis of that exemption.

Section 31 - Law enforcement

36. Section 31(1) of FOIA states:

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

(a) the prevention or detection of crime...”

37. The Post Office is relying on this exemption to withhold some of the information that was redacted from the disclosures made to the complainant. Though it acknowledged that time had passed since the original request had been made, the Post Office was reviewing the “probable harm or prejudice of the information and the application of the exemption as of receipt”.
38. The Post Office argued that disclosure of the information it had withheld under this exemption was “likely to prejudice the prevention of crime by facilitating the possibility of a criminal offence being carried out”. In the Post Office’s submission to the Commissioner it stated that “This information if released could leave branches vulnerable to crimes such as burglary and/or cyberattack...” To disclose the information “would prejudice the investigation of any incidents of criminal activity if it were to occur”.
39. The redacted information is again limited as is the Post Office’s argument. Having seen the withheld information, the Commissioner accepts however that it contains details relating to Post Office internal processes in circumstances such as these and also as they would relate to similar situations. The Commissioner considers the exemption is

engaged at the lower level of prejudice and will therefore go on to look at the public interest.

Public interest test

40. The Post Office recognises the public interest in transparency about “the ways of working” relating to the closure of a Post Office branch. It acknowledges “specifically helping communities understand the closure process that may have impacted them”.
41. Set against this, it asserts that there was a “strong public interest in withholding information concerning the specific security and financial arrangements around a branch closure” and links to internal shared drives. The Post Office’s view is that the release of this information “could leave branches vulnerable to crimes such as burglary and/or cyberattack” which is not in the public interest.

Balance of the public interest

42. The Commissioner does not accept that there is any real public interest in the release of this particular information but it may reveal details to potential criminals about the Post Office’s security and financial procedures that could make it vulnerable to crime. The Commissioner has not considered this solely from this particular information which would be unlikely to aid any criminal if it was released many months afterwards but from the wider perspective of how it might be used in other future similar scenarios.

Section 40(2) – personal information

43. The majority of the information withheld by the Post Office was withheld under section 40(2) – personal information.
44. 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.
45. 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 (UKGDPR).
46. 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.

47. 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?

48. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual".

49. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

50. 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.

51. 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.

52. In this instance the Post Office explained that the personal data it had withheld was that of members of the public and its employees. The Post Office lists what it withheld as names, job roles and contact details. It has withheld certain codes that are a "unique identifier" for the Post Office branch and the identification of a specific owner. The Commissioner notes that there is also limited personal data relating to particular individuals that does not fall into those categories.

53. However, there is some information that has been withheld under the personal data exemption that the Commissioner does not accept is personal data. The information in the second paragraph of page 17 is not personal data and has not been withheld under any other exemption. As the information is not personal information, section 40(2) cannot apply and the information must be disclosed.

54. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

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

Would disclosure contravene principle (a)?

56. 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".
57. 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.
58. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

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

59. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that "processing shall be lawful only if and to the extent that at least one of the" conditions listed in the Article applies. One of the conditions in Article 6(1) must therefore be met before disclosure of the information in response to the request would be considered lawful.
60. 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".
61. The Commissioner considers that the lawful basis most likely to be relevant in relation to a request for information under the FOIA is Article 6(1)(f); legitimate interests. In considering the application of this provision 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;
 - 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 interests, fundamental rights and freedoms of the data subject.
62. 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

63. In considering any legitimate interests in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
64. 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.

Is disclosure necessary?

65. '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.
66. The complainant has not provided specific argument concerning the withholding of personal information and acknowledged that there may be personal information that was "subject to exemption" but it is clear that they believe that transparency in how the Post Office has acted in the matter of the closure of this Post Office is necessary. They have also made it apparent that details concerning individual/s running the branch should be transparent.
67. As regards one individual, a Post Office employee whose name has been withheld, the Commissioner has decided that it should be disclosed. The reason for this is that (from the information that was disclosed) the Post Office proactively provided the name and job role of this individual to members of the public sending their comments in. The individual has engaged in comments about branch closures and recruitment connected with their role, and there is legitimate interest in a level of scrutiny. The Commissioner has noted that their name and job role are both in the public domain.
68. The Commissioner is satisfied in this case that there are no less intrusive means of achieving the legitimate aims identified.
69. He has gone on to conduct the balancing test regarding other Post Office employees and members of the public.

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

70. 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.

71. 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.

72. 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.

73. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.

74. The complainant has pointed out that references to personal data have to be considered alongside the fact that the Post Office had put information into the public domain concerning the "business owner and the operative who ran the branch until 2023".

75. The Post Office has argued that disclosure would breach the first principle of the UK GDPR. It would not constitute fair processing of the personal data of either the "Post Office staff involved as well as members of the public, who would not reasonable expect their names, job roles and contact information to be disclosed" in response to an FOI request.

76. The information it withheld under section 40(2) of the FOIA was withheld by the Post Office because it constituted personal data relating to other persons which, if disclosed, would be likely to breach the first data protection principle.

77. The Commissioner is satisfied that disclosure is not necessary for the names of other members of staff, external parties and members of the

public. There is also some limited personal information that refers to matters completely separate from the Post Office closure. The Commissioner has determined this by balancing the legitimate interest of the complainant against the fact that the individuals concerned would have a reasonable expectation that their information would not be disclosed to the public.

78. As regards the personal information that the Commissioner considers also falls under this exemption (withheld by the Post Office under section 43(2)) his view is that it would be beyond the reasonable expectations of the individual concerned for it to be disclosed, even if there was higher level information available in the public domain.
79. 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.
80. 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

81. The Post Office did not confirm that it held information within the statutory timeframe of 20 working days and therefore breached section 1(1)(a) and 10(1) of FOIA. It also provided further information to the complainant at internal review stage, breaching section 1(1)(b). The Post Office later sought to rely on exemptions which it did not include in its refusal notice, breaching section 17(1)(b).

Other matters

82. The section 45 code of practice² recommends that public authorities complete the internal review process and notify the complainant of its findings within 20 working days, and certainly no later than 40 working days from the receipt.

² [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/682092/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926.pdf)
(publishing.service.gov.uk)

83. The Post Office did not provide its first internal review until beyond the maximum recommended timeframe.

Right of appeal

84. 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

85. 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.
86. 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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