

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

### **Decision notice**

**Date:** 5 November 2024

**Public Authority:** UK Health Security Agency  
**Address:** Wellington House  
133-155 Waterloo House  
London SE1 8UG

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

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1. In a five part request, the complainant requested information about employees who've been suspended. UK Health Security Agency (UKHSA) withheld the information requested in parts 3 and 4 of the request under section 40(2) of FOIA, which concerns personal data. For parts 1 and 5, UKHSA advised that the numbers involved are less than 10 and applied section 40(2) to the specific numbers. It disclosed the information requested in part 2.
2. The Commissioner's decision is that UKHSA has correctly applied section 40(2) of FOIA to parts 3 and 4 of the request and it's not necessary for it to take any corrective steps.

#### **Request and response**

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3. On 27 February 2024, the complainant submitted a request for information about staff subject to suspension and staff subject to UKHSA's disciplinary process.
4. On 26 March 2024, UKHSA responded to that request. It disclosed some information and relied on section 40(2) of FOIA to withhold the remainder.
5. On 26 March 2024, the complainant wrote to UKHSA and requested information in the following terms:

"I have amended my request to remove anything which could pertain to be exempt due to Section 40(2) personal data ...

- [1] The number of UKHSA employees suspended from work and including 01 January 2023 to 31 January 2024
  - [2] The average length of suspension (specify whether calendar days or working days in your response) for those in the data set requested above
  - [3] The longest suspension period (specify whether calendar days or working days in your response) for those in the data set requested above
  - [4] The shortest suspension period (specify whether calendar days or working days in your response) for those in the data set requested above
  - [5] The number of employees from the above data set who remain suspended as of today's date, 26 March 2024"
6. UKHSA responded to this request on 18 April 2024. It withheld the requested information under section 40(2) of FOIA.
  7. Following an internal review UKHSA wrote to the complainant on 17 May 2024. It maintained its reliance on section 40(2) and explained why it considered this exemption was engaged.
  8. The complainant submitted a complaint to the Commissioner on 5 June 2024.
  9. On 26 September 2024 UKHSA provided the complainant with a fresh response to their request. For parts 1 and 5 of the request, it advised that the number was less than 10 and relied on section 40(2) to withhold the specific number. It also continued to rely on section 40(2) to withhold the information requested in parts 3 and 4. UKHSA disclosed the information requested in part 2 of the request.
  10. The Commissioner advised the complainant that his assessment was that section 40(2) was likely to be engaged.
  11. In correspondence to the Commissioner on 29 October 2024 the complainant confirmed that the focus of their complaint is parts 3 and 4 of their request. They preferred to conclude their complaint formally, through this decision.
  12. With regard to part 2 of their request, they also noted that UKHSA had given the average length of suspension, but hadn't said, as the

complainant had requested, whether the figure was working days or calendar days. In its submission to the Commissioner, UKHSA has confirmed that the figure it provided was calendar days.

## Reasons for decision

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13. This reasoning focusses on whether UKHSA is entitled to withhold some of the information the complainant requested on 26 March 2024 under section 40(2) of FOIA.
14. 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).
15. 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."
16. The Commissioner has first considered whether the withheld information can be categorised as other individuals' personal data.
17. Personal data is defined as information that relates to a living individual and from which the individual can be identified.
18. UKHA has disclosed that the number of people suspended from work during the specified 12 month period, and the number of people who remained suspended at the date of the request, was less than 10, and that the average length of suspension was 121 (calendar) days.
19. The information in question here is the longest and shortest suspension periods for those employees who'd been suspended.
20. Whether individuals have been suspended from work relates to those individuals. The Commissioner has next considered whether those individuals could be identified if the requested time periods were disclosed.
21. In its submission, UKHSA says that if the suspension lengths were disclosed, it's possible that an individual or individual with knowledge about UKHSA, for example a UKHSA employee, could identify a specific person or people.

22. UKHSA hasn't disclosed the number of employees who had been, and who remained, suspended, only that the number of both is less than 10. It has provided the Commissioner with the specific numbers.
23. The Commissioner has taken account of the relatively small numbers involved and the fact that the time period covered by the request is relatively short and relatively recent and so can be considered to be a 'live' period. He's persuaded that it would be possible that someone with knowledge about UKHSA as a workplace – such as an employee – would be able to combine what they may already know about the organisation and its employees with the longest suspension period, and the shortest suspension period. From this they'd be able to identify the individuals who'd been subject to those two periods of suspension.
24. If a UKHSA employee (or anyone else, as disclosure under FOIA is disclosure to the wider world) knew that another employee (or that a UKHSA employee) had been absent from work for, for example, six weeks and UKHSA disclosed that the shortest period of suspension was 42 calendar days, then it would be possible to deduce that that employee had been suspended from work. That's particularly the case in a workplace where it's unusual for at least some employees not to discuss and speculate on the circumstances around someone's lengthy absence from work.
25. The Commissioner will therefore accept that it would be possible to identify specific employees if the information were to be disclosed and that therefore the withheld information can be categorised as the personal data of those employees – the 'data subjects.'
26. 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.
27. 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.
28. 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."

29. 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.
30. The complainant clearly has an interest in the matter of UKHSA employees who've been suspended and that's 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 information has significant wider public interest.
31. The Commissioner has gone on to consider whether disclosing the personal data is necessary to address the legitimate interests that have been identified.
32. In this case, the Commissioner doesn't consider disclosure is necessary. As noted, UKHSA has disclosed the broad number of employees who've been suspended in the period covered by the request and the average length of suspension. The Commissioner considers that this information sufficiently addresses the legitimate interest in suspensions at UKHSA during the time in question. Disclosing the longest and shortest period of suspension wouldn't add materially to the understanding about suspensions, in the Commissioner's view.
33. The Commissioner also considers that the legitimate interest in UKHSA being transparent has been adequately met through the information it has disclosed.
34. 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).
35. 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.
36. The Commissioner's decision is that UKHSA is entitled to withhold the information under section 40(2) of FOIA.

## **Right of appeal**

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37. 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)

38. 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.
39. 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**