

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2024

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information concerning changes in role titles and whether there would be any impact on terms, conditions and pension rights. The Cabinet Office ("CO") disclosed some information within scope and relied on section 40(2) of FOIA (third party personal information) to withhold the remaining information.
2. The Commissioner's decision is that the CO has correctly relied on section 40(2) of FOIA to withhold the remaining information.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 20 September 2024, the complainant wrote to the CO and requested information in the following terms:

"On the 15th August I emailed my union representative and yourself requesting copies of any consultation papers and/or any minutes of any consultation meetings in relation to the change of my job title from Vetting Officer to Vetting Clearance Officer. In order for me to confirm with Cabinet Office HR and an employment legal team that my terms, conditions and rights have not been affected by the change of title, and to safeguard me going forward.

Following your lack of reply and the reply received from my union representatives, I am now emailing you to formally request under the Freedom of Information Act the following:

Any consultation papers and/or minutes of any meetings where the change of job title was discussed.

Any emails/paperwork relating to the change of job title and/or paperwork/ minutes of meetings relating to the change of job title, between any of the following:

Government Chief Security Officer

(Name redacted)

UKSV CEO (Name Redacted).

UKSV Head of Delivery (Name redacted).

Head of people and places (Name redacted)

Name redacted,

Name redacted,

Name redacted,

Any member of Cabinet Office HR."

5. The CO responded to the Complainant on 18 October 2023 and stated that it was extending the time to respond to consider the balance of the public interest, under section 24 of FOIA.
6. The CO provided a full response on 15 November 2024. It stated that it held information within the scope of the request and provided a copy of meeting minutes with redactions applied under section 40(2) to protect personal information, chiefly the names of the officers on the documents.
7. The complainant requested an internal review on 12 January 2024.
8. Following an internal review the CO wrote to the complainant on 4 April 2024. It upheld its position to withhold the names of the officers on the documents. The CO stated:

"I do note that in your initial request you raised a question related to your own personal employment circumstances. I do not consider that this could have been addressed under the confines of the Act,

as doing so would have been likely to compromise your own personal data.

Section 40 (1) of the legislation could therefore have also been considered. For this reason and in an effort to support your understanding, I have asked a senior official from UKSV to address those concerns in separate correspondence "

Scope of the case

9. The complainant contacted the Commissioner on 22 May 2024 to complain about the way his request for information had been handled.
10. As any personal information relevant to the complainant has been dealt with separately, the Commissioner considers that the scope of his investigation is to establish whether the public authority is entitled to withhold the names of CO employees annotated on the requested information and provided to the complainant under section 40(2) of FOIA.

Reasons for decision

Section 40 - personal information

11. 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.
12. 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').
13. 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.
14. 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?

15. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual”.

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

17. 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.

18. 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.

19. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information requested is personal data. This is because the document contains the names of CO members of staff. The names of the data subjects quite obviously is information that both relates to and identifies those concerned.

20. This information therefore falls within the definition of ‘personal data’ in section 3(2) of the DPA.

21. 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.

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

Would disclosure contravene principle (a)?

23. 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”.

24. 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.

25. 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

26. 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”¹.

27. 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;
- 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.

28. 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

29. 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.

30. Further, a wide range of interests may be legitimate interests. They can be the requester’s own interests or the interests of third parties,

¹ 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”.

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.

31. The Commissioner has to take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the public. He must therefore consider the wider public interest issues and fairness to the persons involved when deciding whether or not the information is suitable for disclosure.
32. Having considered the specific circumstances of the complainant's request, the Commissioner accepts that there is a narrow and largely private legitimate interest in disclosure of the names of the CO members of staff who may or may not be involved in the decision making process for the changes in role titles. There would be little public interest in disclosure.

Is disclosure necessary?

33. '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.
34. The Commissioner has accepted the legitimate aim identified by the complainant. However, in his opinion the disclosure of the names of the CO members of staff is not necessary because disclosure would not serve the specific interests identified by the complainant of whether the role title changes affected the terms and conditions of his role.
35. Additionally, as the complainant is an employee of the CO, there may be less intrusive ways of obtaining the information he requires via the HR and union routeways or by internal communication.
36. Given that the individuals are not senior members of staff and are not in a public facing role, they would not expect their personal details to be disclosed in response to a FOI request as such disclosures are considered to be to the whole world.
37. The Commissioner notes that providing personal details also risks unwanted contacts from organisations and individuals and therefore the Commissioner is not persuaded that it is necessary to disclose their names into the public domain in order to meet the legitimate aim in creating transparency and accountability.

38. Consequently, the Commissioner finds that the necessity test is not met. The CO would not be able to rely on Article 6(1)(f) as a lawful basis for disclosure of the withheld information.
39. Given the above conclusion, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.
40. As the Commissioner is satisfied that disclosure is not necessary, there is no lawful basis for disclosure and therefore the CO was entitled to rely on section 40(2) of FOIA to withhold the information.

Other matters

41. FOIA does not impose a statutory time within which internal reviews must be completed, albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe²
42. The Commissioner expects that most internal reviews should be completed within 20 working days, and for more complicated requests, reviews should be completed within a total of 40 working days.
43. In this case the Cabinet office took over 3 months to complete the internal review³. The Commissioner reminds the CO of the Code of Practice and urges it to respond in a timely manner.

² <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

³ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmentalinformation-regulations/request-handling-freedom-of-information/#internal>

Right of appeal

44. 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

45. 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.
46. 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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