

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

### **Decision notice**

**Date:** 2 April 2025

**Public Authority:** Information Commissioner  
**Address:** Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
SK9 5AF

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

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1. The complainant has requested the names, job titles and assigned department of staff who work on FOI, EIR and data protection complaints concerning central government departments and the number of complaints with each department. The Information Commissioner's Office ('ICO') provided links to already available information on the number of complaints and some information on staff roles. It relied on section 40(2) of FOIA (third party personal information) to withhold staff names and individual job titles.
2. The Commissioner's decision is that the ICO was entitled to rely on section 40(2) to withhold the requested information.
3. The Commissioner does not require further steps.
4. This decision notice concerns a complaint made against the Information Commissioner ('the Commissioner'). The Commissioner is both the regulator of FOIA and a public authority subject to FOIA. He's therefore under a duty as regulator to make a formal determination of a complaint made against him as a public authority. It should be noted, however, that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this notice. In this notice the term 'ICO' is used to denote the ICO dealing with the request, and the term 'Commissioner' denotes the ICO dealing with the complaint.

## **Request and response**

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5. On 27 June 2024, the complainant wrote to the ICO and requested information in the following terms:

"Please provide the full names of all your caseworkers that deal with central government departments complaints regarding freedom of information, environmental and data protection?

The job titles (all levels of caseworkers) and the departments they are assigned to?

The number of complaints with each department?."

6. The ICO responded on 18 July 2024. It provided some information on job roles and links to information it routinely publishes about the number of complaints. It stated that as information on the number of complaints was already accessible by other means it was relying on section 21 of FOIA to withhold it from its response. It relied on section 40(2) to withhold the requested list of staff names and job titles.
7. Following an internal review, the ICO wrote to the complainant on 3 September 2024. It maintained its position.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 23 September 2024 to complain about the way their request for information had been handled.
9. The Commissioner notes that the complainant has not challenged the ICO's reliance on section 21 in relation to the information on the number of complaints.
10. The Commissioner therefore considers that the scope of his investigation is to determine whether the ICO was entitled to rely on section 40(2) of FOIA to withhold some of the requested information.

## **Reasons for decision**

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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, the Commissioner is satisfied that the information does constitute personal data. This is because the withheld information is the names and job titles of individual staff ICO members dealing with central government departments complaints.
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”<sup>1</sup>.

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;

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<sup>1</sup> 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”.

- 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, 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 complainant has not provided any legitimate interest arguments for disclosure in their correspondence with the ICO nor when making their complaint to the Commissioner. However, the Commissioner acknowledges that there will always be a general legitimate interest in transparency and accountability.

### **Is disclosure necessary?**

- 32. '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.
- 33. The ICO has stated that it does not consider that there is a legitimate or necessary reason for a list of staff names and job titles to be put into the public domain.
- 34. The ICO has explained that the correct means to make a complaint about a central government department to the ICO is to fill out its online complaints form or call its helpline. There is no need to contact the appropriate members of staff directly as there are internal systems in place that direct complaints to the correct team.
- 35. It explained that once an individual's complaint is allocated to an ICO Case Officer, that Case Officer will contact them providing their name, so that they know who is handling their complaint. Similarly, any other

members of staff being involved in an individual's complaint case or speaking to them over the phone for any reason would also provide their name. The ICO believes that this meets its customers' reasonable expectation of transparency and accountability in the handling of their complaints and other matters.

36. The ICO explained that it does not consider providing a list of every member of staff working on a particular type of complaint would in any way enhance this process.
37. It added that it is also worth bearing in mind that this information is subject to change over time as staff join, leave, and change roles. It considers that this further limits the usefulness of such a disclosure.
38. The ICO explained that, if disclosed into the public domain, this information could be used to circumvent its internal processes to contact large numbers of staff directly where there is no good reason to do so. It added that this would be likely to cause distress to staff and disruption to the service that we are able to provide to the public at large.
39. The ICO considers that it has a duty to protect staff from potential harassment connected with their role at the ICO wherever possible.
40. The complainant has argued that some staff names and job titles are included in the decision notices that are published on the ICO's website so some of the information is in the public domain already. The complainant stated that the ICO's response was 'unnecessarily obstructive'.
41. The Commissioner acknowledges that his decision notices about FOI complaints include the names and job titles of either Group Managers or Senior Case Officers, and that this information is published on the ICO website. This is because these members of staff have authority to sign decisions on behalf of the Commissioner, and the Commissioner has committed to publishing all decisions made on his behalf. The ICO considers that this, together with case officers providing their names to complainants during the course of a complaint, is how it meets its transparency and accountability obligations.
42. The ICO explained that ICO staff acting as signatories on decision notices do so knowing that their name and job title will be published, and therefore, they have an expectation that their personal information will be disclosed to the public.
43. The Commissioner agrees that the ICO has an established process that enables the public to make complaints and to have those complaints directed to the most appropriate team. He finds that it is not necessary

nor reasonable for a list of all staff dealing with complaints concerning central government departments to be disclosed to the public. He agrees with the ICO's argument that the information could be used to try to circumvent the standard complaint process or to potentially target or harass individual members of staff.

44. Since the disclosure of a list of staff names and job titles is unnecessary, the Commissioner has not gone on to conduct the balancing test regarding this information. As disclosure is not necessary, there is no lawful basis for this processing, and it is unlawful. It therefore does not meet the requirements of principle (a).
45. The Commissioner has therefore decided that the ICO was entitled to withhold the information under section 40(2).

## Right of appeal

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46. 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)

47. 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.
48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Keeley Christine**  
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**SK9 5AF**