

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

### **Decision notice**

**Date:** 29 May 2025

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4D

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

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1. The complainant requested information about immigration raids carried out in specific postcode areas of Kent between 2022 to 2024. The Home Office provided information in scope of the request but explained that the information with five or fewer results was being withheld as it related to third party individuals under section 40(2) – personal information.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 40(2) of FOIA to withhold some information in scope of the request in this case.
3. The Commissioner does not require any steps as a result of this decision.

## Request and response

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4. On 13 October 2024, the complainant requested information in the following terms:

"I would like to request the following information:

(a) the number of immigration raids/visits conducted in each East and South Kent postcode CT1-CT19 from 2022 to 2024 end of Q2 broken down by quarter.

I would suggest a format for the number of raids/visits for each quarter to be separately listed (column 1 = raids/visits in 2022 Q1; column 2 = raids/visits in 2022 Q2; etc.) but am happy to accept other formats.

(c) a breakdown of the kind of establishment these raids took place including but not limited to for example: Brothel, Building/Construction Site, Bus/Coach station, Commercial, Commercial (inc farms), Employers address, Factory, Hospital/Care Home, Hotel/Guest House, Industrial, Office Premises (Private Company), Police station, Public House/Bar, Residential, Residential (Flat), Residential (House), Registry Office Premises, Restaurant/Takeaway, Shop, Social Club/Nightclub, Sports Venue, Street, Supermarket etc."

5. The Home Office responded on 11 November 2024. It provided information in scope of the request and explained that it was withholding information relating to five or fewer results under section 40(2) of FOIA.
6. The complainant submitted a revised request to the Home Office on the same day and stated that: "As you have already compiled the data, I do not expect the addition of the totals to necessitate a further request."
7. On 14 November 2024, the Home Office provided a new case reference to the revised request (FOI2024/09543) as it consider this was a new request. The complainant requested an internal review of the reference FOI2024/08360 stating that: "The Home Office has not provided any evidence how "it may be possible that someone could be identified using that information and other information that may be available." The information I have requested cannot be used to identify any individuals."
8. The Home Office provided its internal review response on 4 December 2024 upholding its reliance on section 40(2) to withhold the information. It went on to advise that the revised request under reference FOI2024/09543 would be handled separately to the internal review.

## Scope of the case

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9. The complainant contacted the Commissioner on 4 December 2024, to complain about the way their request for information had been handled. They stated specifically that: "I am specifically dissatisfied with the Home Office's refusal to disclose the number of immigration raids/visits for some quarters in some postcodes when the number is fewer than 5." Also "I am unhappy both with the use of the s.40(2) exemption used to withhold figures less than 5 and the failure to meaningfully engage in internal review."

The Commissioner considers that the scope of his investigation is to determine if the Home Office was entitled to withhold information under section 40(2) of FOIA.

## Reasons for decision

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### Section 40(2) – third party personal data

10. 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.
11. 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").
12. 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 the FOIA cannot apply.
13. Secondly, 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?

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

"any information relating to an identified or identifiable living individual."

15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. Having considered the nature of the withheld information, the number of raids carried out within a specific postcode area over a specific period of time broken down by each quarter, with 5 or fewer returns, the Commissioner is satisfied that the information relates to and identifies individuals. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
17. The complainant has argued that: "The information I have requested cannot be used to identify any individuals. The data concerns the number of raids/visits. An immigration raid/visit does not necessarily result in an arrest of an individual. For example, an immigration enforcement officer may go to a residential property to conduct a visit, but no one answers the door. Even if someone were to answer the door, if the Home Office were to disclose the exact number of visits in Q1 of 2022 e.g. 2 instead of the current response, <5, no one would be any closer to identifying the person(s) arrested or the addresses in the visit.

In addition, my request spans a significant length of time (4 months), a large geographical area (broken down by postcode, not by road) and does include other data e.g. age, ethnicity, sex, nationality etc."

18. The Home Office has explained that given the local and businesses in those specific postcode areas may be the only one of that type, for example, a hospital, a small business specialising in a niche business area or SME/one man band, there is a very real probability individuals would be able to be identify.
19. When considering the possibility of identification, the Commissioner applies the "Motivated Intruder Test." This test starts with a hypothesis that there exists a person who wishes to identify the individuals covered by the disputed information. The person is willing to devote a considerable amount of time and resources to the process of identification. They may have some inside knowledge (i.e. information not already in the public domain) but will not resort to illegality – they are determined but not reckless. The Commissioner looks to see how such a person would go about identifying the individuals involved.
20. In this case, the type of establishment within a specified postcode area, it is highly likely that a motivated intruder could identify individuals linked to that address or business. It would be easy for a motivated intruder to link the role to an identifiable living individual as the names of business owners are, for the most part, already in the public domain.

21. The Commissioner is aware that disclosure under FOIA is considered as being made to the world at large, rather than to the requester only, and this includes to those individuals who may have a particular interest in the information (and additional knowledge of the specific circumstances of those involved) which is not shared by the wider public.
22. 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.
23. The most relevant DP principle in this case is principle (a).

### **Legitimate interests**

24. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that 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. These interests can include broad general principles of accountability and transparency, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate.
25. The requester wishes to know the number of immigration raids/visits in order for transparency and accountability. The Commissioner therefore accepts that the complainant has a legitimate interest in the information.

### **Is disclosure necessary?**

26. 'Necessary' means more than desirable but less than indispensable or absolute 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.
27. The Commissioner is aware that disclosure under FOIA is disclosure to the world at large. It is the equivalent of the Home Office publishing the information on its website. When considering the necessity test, he is not therefore considering whether providing the information to the requestor is necessary to achieve the legitimate interest, but whether it is necessary to publish the information.
28. The Commissioner notes that the Home Office has demonstrated that the information is regarding specific locations within specific postcode

areas and the businesses trading in those areas. He is therefore satisfied that disclosure of the withheld information is necessary to meet the requester's legitimate interests and that there are no less intrusive means of achieving this.

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

29. It is necessary to balance the legitimate interests in disclosure against an individual's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if an individual 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.
30. 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 individuals expressed concern to the disclosure; and
  - the reasonable expectations of the individuals.
31. In the Commissioner's view, a key issue is whether 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.
32. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to the individuals mentioned.
33. The Commissioner considers that the individuals involved have a strong and reasonable expectation that personal information about them will remain confidential given the nature and scope of work undertaken by the Home Office.
34. The Commissioner accepts that there is an expectation that the personal information of individuals will remain private. The Commissioner has seen no indication that the data has been made public by the individuals.

35. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals involved. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
36. Given the above, the Commissioner is satisfied that the Home Office was entitled to rely on section 40(2) of FOIA to withhold information in scope of the request.

### **Other matters**

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37. Although they do not form part of this notice the Commissioner wishes to highlight the following matter of concern.

### **Section 45 - Internal review**

38. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather, they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA.
39. The Commissioner considers that, where offered, internal reviews should be completed promptly. Although no explicit timescale is laid down in the code of practice, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer, but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.
40. By failing to complete an internal review, the Commissioner considers that the Home Office did not conform with the Section 45 code of practice.
41. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy."

## Right of appeal

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42. 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)  
General Regulatory Chamber  
PO Box 11230  
Leicester  
LE1 8FQ

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)

43. 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.
44. 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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