

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

### **Decision notice**

**Date:** 17 December 2024

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

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

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1. The complainant has requested information about weekly meetings the Home Office has with asylum seekers at one of its sites. The Home Office disclosed some information but withheld the remainder citing section 40(2) (Personal information) of FOIA.
2. The complainant was content for personal information to be withheld but asked the Commissioner to determine whether or not the redactions were proportionate. The Commissioner has determined that section 40(2) is only partly engaged.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation:
  - disclose the information listed in the table at the end of this notice.
4. The Home Office 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.

## Background

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5. The request refers to a site being used to house asylum seekers. More details about the site are available on the Government website<sup>1</sup>.

6. According to the local Council's website<sup>2</sup>:

"The Home Office asylum accommodation centre has been housing asylum seekers since July 12, 2023. It was initially permitted under emergency permitted development rights (known as Class Q) with capacity of up to 1,700 service users.

On April 11, 2024, the Home Office had its permission extended via a Special Development Order<sup>3</sup> (SDO) from the Secretary of State at the Department for Levelling Up, Housing and Communities.

This extends the use of the asylum accommodation centre at Wethersfield Airfield for a further three years, with up to six months decommissioning following.

It also limited the operational capacity to 800 users, with an additional 420 'surge' capacity.

There are a number of conditions that the Home Office must adhere to in the SDO. Some of these are outstanding, during which the capacity is limited to 580 users".

7. The Home Office has also advised the Commissioner:

"The Weekly Wethersfield Site Meeting is an engagement chaired by the Home Office to provide individual asylum seekers ('service users') an opportunity to engage directly with Home Office representatives to discuss any issues or concerns in relation to their accommodation, or suitability to be accommodated on-site. These engagements are facilitated by professional, accredited interpreters to ensure an understanding between Home Office representatives and Service Users. Minutes and actions are captured by the Home

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<sup>1</sup> <https://www.gov.uk/government/publications/asylum-accommodation-wethersfield/wethersfield-factsheet>

<sup>2</sup> <https://www.braintree.gov.uk/wethersfieldairfield>

<sup>3</sup> <https://www.legislation.gov.uk/uksi/2024/411/contents/made>

Office for each engagement to ensure issues and concerns are recorded and acted upon; personal identifiers are recorded for each Service User. Due to the nature of some Service Users concerns, private medical information can be disclosed, with Home Office representatives advising and encouraging appropriate next steps (i.e., speaking with their GP). All interactions are held privately on a one-to-one basis therefore, there is a limited risk of other Service Users or staff hearing these disclosures. Service Users can return at future engagements to discuss ongoing and/or new issues/concerns.

The Independent Chief Inspector of Borders and Immigration (ICIBI) previously recommended the Home Office instigate weekly engagements with Service Users at another accommodation site. Following the successful implementation of a weekly engagement, with high attendance and positive Service User feedback, the Home Office adopted this approach at Wethersfield to support Service Users”.

## **Request and response**

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8. On 16 January 2024, the complainant wrote to the Home Office and made the following information request:

“I would like to ask for the following information in relation to 25.6 of the OPM which states – ‘The Home Office conducts a weekly virtual meeting with SUs [service users] at Wethersfield’:

1. The dates that these weekly virtual meetings have been held?

2. Confirmation that the following is recorded at these meetings:

- a. SU attendance
- b. Minutes
- c. Action logs
- d. Any other form of record (please state)

3. If the answer to 2a is yes, can you please provide the (statistical) number of SUs who have attended each meeting?

4. If the answer to any or all of 2b, 2c and 2d is yes, to release copies through this FOI I want to make clear from the outset that I am not requesting any personal information. Any personal information should be redacted in your response”.

9. On 12 February 2024 the Home Office responded. It provided information in respect of parts (1), (2) and (3) of the request. Regarding

part (4), it provided some information but refused to disclose the remainder citing section 40(2) of FOIA.

10. On 12 February 2024, the complainant requested an internal review of the response to part (4) of his request.
11. The Home Office provided an internal review on 30 July 2024 in which it revised its position. It maintained reliance on section 40 of FOIA, added reliance on section 38 and disclosed some further information.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 30 July 2024 to complain about the way his request for information had been handled. He disagreed with the citing of exemptions, which were applied to part (4) of the request. He advised that he was happy for any personal data to be withheld, but he considered some of the redactions to be excessive so he asked the Commissioner to consider the extent of these.
13. During the Commissioner's investigation, on 15 November 2024 the Home Office wrote to the complainant. It removed reliance on section 38 and disclosed further information. It also advised:

"...upon revisiting the information again, we have identified some information which although was disclosed previously, is in hindsight, section 40(2) information. We now intend to withhold this information, as there is a risk that individuals could be identified. Please delete your previous copy of the meeting log".

14. Following this disclosure, the Commissioner contacted the complainant for his views. The complainant advised:

"...my expectations would be for minimal redactions that would remove information that could result in a person being identified - on that basis I am pleased that names have been redacted, and can even understand the complete redaction of each individuals language. However, there is clearly more information redacted than just names etc. In particular, in the third set of meeting logs emailed to me (containing annex Q to W) redactions are more heavily used. This coincides with virtual meetings held around the time that concerns about the appropriateness of this asylum accommodation were being aired by various sources, including the Chief Inspector of Border and Immigration. Some of these redactions appear to remove information that the Home Office do not want in the public domain (for eg the severity of people's anxiety and distress caused by the asylum accommodation [sic] site) rather than redacting information to protect personal data.

Having applied section 40 (2) there are no grounds on which the Home Office should be redacting such information. The redactions should be limited to personal information only”.

15. The complainant also added:

“...I am concerned that...the Home Office have decided to redact information that had previously been disclosed. I will admit that I have not had the time to do a like for like comparison of both disclosures but having asked me to delete the previous disclosure I would like guidance from the ICO on the legal position on me now holding that information? Am I mandated to delete this? Can the previous disclosure still be used for purposes such as research? Also, what are the repercussions for the Home Office of them choosing to redact previously disclosed information?”

16. The Commissioner will consider the application of section 40 to the remaining redactions below. He has commented on the concerns raised in paragraph 16 in Other Matters at the end of this notice.

17. The Commissioner has viewed the withheld information.

## **Reasons for decision**

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### **Section 40 – Personal information**

18. 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.

19. In this case the relevant condition is contained in section 40(3A)(a)<sup>4</sup>. 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').

20. 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.

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<sup>4</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

21. 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?**

22. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual".
23. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
24. 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.
25. 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.
26. The complainant does not dispute that some of the information should be properly withheld under section 40, ie that its disclosure would result in identification of some of the parties concerned, and he is happy for the Commissioner to accept that any identifying information can be properly withheld, including the language spoke. The Commissioner is therefore only considering whether release all the redactions applied by the Home Office have been done so appropriately.
27. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that some of the information that has been withheld could be used to identify individuals, such as names, visible injuries/conditions, faiths, room locations. He is satisfied that this information both relates to and identifies those individuals and that this information therefore falls within the definition of 'personal data' in section 3(2) of the DPA. As the complainant is happy for this information to be withheld, the Commissioner has not conducted any further analysis as this is not necessary.
28. However, bearing in mind the hundreds of people at the site, the Commissioner does not agree that all of the withheld information could lead to someone being identified and, in this respect, he finds that section 40 is not engaged, for example someone with high cholesterol or haemorrhoids. This information should therefore be disclosed; the Commissioner can confirm that this includes some of the information which the Home Office previously disclosed but later determined to be personal information.

The information that the Commissioner considers not to be personal information is described in the table at the end of this notice.

## **Other matters**

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

### **Section 45 – internal review**

30. There is no obligation under FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one, the code of practice established under section 45 of FOIA sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.
31. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
32. The complainant asked for an internal review of his request on 12 February 2024 and the Home Office provided the outcome of its internal review on 30 July 2024, more than 5 months later.
33. The Commissioner considers that in failing to conduct an internal review within the timescales set out above, the Home Office has not acted in accordance with the section 45 code. This will be logged for monitoring purposes.

### **Information Notice**

34. As the Home Office failed to respond to the Commissioner's enquiries in a timely manner it was necessary for him to issue an Information Notice in this case, formally requiring a response. The Information Notice will be published on the Commissioner's website.

### **Previously disclosed information**

35. During the Commissioner's investigation the Home Office advised that it wished to revise its position and withhold information which had previously been disclosed. It asked the complainant to destroy the incorrect disclosure and rely on its revised position. The complainant sought the Commissioner's view on this matter.
36. The Commissioner is unable to make a formal determination on the correct action as the disclosure was made inadvertently and he cannot

require the complainant to destroy what he was previously given as this is out of his jurisdiction. However, to ensure that no personal data has been inadvertently disclosed, he would recommend that the complainant adheres to the Home Office's request.

37. The Commissioner can confirm that the information in question has been considered in his findings above.



## Right of appeal

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38. 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)

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

**Table of action required to comply with step ordered:**

<b>Date of meeting</b>	<b>Cell</b>	<b>Action required</b>
27/11/23	C14	Disclose
	C18	Disclose
01/12/23	C13	Disclose
	D13	Disclose
	C16	Disclose
04/12/23	D9	Disclose last redacted sentence
	D12	Disclose all of 4 <sup>th</sup> sentence
	D13	Disclose information that is also disclosed in C13
	D14	Disclose
08/12/23	C12	Disclose
	C14	Disclose
	D14	Disclose
11/12/23	D16	Disclose
	D20	Disclose last sentence
	D22	Disclose
	D23	Disclose
15/12/23	C10	Disclose
	D10	Disclose
	E16	Disclose
18/12/23	C9	Disclose
	E9	Disclose
	C11	Disclose
	C16	Disclose other than country
	D16	Disclose
	E16	Disclose
	C17	Disclose other than 3 <sup>rd</sup> word
	D17	Disclose other than 7 <sup>th</sup> word
22/12/23	D11	Disclose other than first sentence
	E11	Disclose
	D15	Disclose
	E15	Disclose
	D16	Disclose
05/01/24	D9	Disclose first two words
	C10	Disclose
	D10	Disclose other than time period
	C12	Disclose other than location, injury and language
	D12	Disclose first three words
	E11	Disclose
08/01/24	C9	Disclose
	C11	Disclose other than country and faith
	E11	Disclose

12/01/24	C12	Disclose other than location
	D12	Disclose
	E12	Disclose
	D13	Disclose other than countries and 6 <sup>th</sup> sentence
	E13	Disclose
15/01/24	D10	Disclose
	C11	Disclose
	D11	Disclose other than nationality
	C12	Disclose
	C13	Disclose other than country and type of injury
	C14	Disclose other than religion.
	C16	Disclose
19/01/24	C10	Disclose other than age
	D10	Disclose
	E10	Disclose
	C11	Disclose
	D11	Disclose
	C12	Disclose
	D12	Disclose
	C13	Disclose
	D13	Disclose
22/01/24	C13	Disclose
	C15	Disclose other than times absent