

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 February 2025

Public Authority: Department of Health and Social Care
Address: 39 Victoria Street
London
SW1H 0EU

Decision (including any steps ordered)

1. The complainant has requested from the Department of Health and Social Care (DHSC) information related to care providers that had had their sponsorship licences revoked or suspended by the Home Office. The DHSC refused to provide this information citing section 21 of FOIA (information accessible to the applicant by other means), section 31(1) (law enforcement), section 40(2) (personal information) and section 43(2) (commercial interests). It later withdrew section 21 and provided some information without identifying sponsors making section 40(2) no longer relevant.
2. The Commissioner's decision is that the DHSC has correctly cited sections 31(1) and 43(2) of FOIA and that the public interest favours non-disclosure.
3. The Commissioner does not require further steps.

Request and response

4. On 11 April 2024, the complainant wrote to the DHSC and requested information in the following terms:
 - "A list of care providers which have had their sponsorship licences revoked or suspended by the Home Office, according

to the most recent data provided to you by the Home Office UK Visas and Immigration team.

- For each company, can you provide:
 - o The sponsor name
 - o The sponsors status: The most recent status of the licence subject to compliance activity
 - o Date email received: The date DHSC received notification from UKVI of the most recent status
 - o Workers affected: The number of international workers the organisation sponsors at the time of the most recent status update
 - o The reason for suspension/revocation: high level summary of UKVI's compliance investigation
 - o Reason (simplified)
 - o Registered address: The address where the organisation has registered their sponsor licence
 - o The company's CQC registration

I understand from your response to my FOI request FOI-1499787 that when UK Visas and Immigration undertakes compliance activity relating to sponsor licence holders, who have sponsored care workers and senior care workers from overseas, DHSC is informed via email. These notifications are then collated into a spreadsheet. I have worded the above request in line with the column names in the spreadsheet where you hold this data.

I would appreciate it if you could provide this information in an attachment in .csv or .xls format..."

5. The DHSC responded on 7 May 2024. It refused to provide any information citing sections 21, 31(1)(a) and (e), 40(2), and 43(2) of FOIA.
6. On 30 May 2024 the complainant requested an internal review, questioning the citing of all the exemptions.
7. Following an internal review, the DHSC wrote to the complainant on 1 August 2024. It upheld its citing of sections 43(2), 31(1)(a) and (e) but withdrew its citing of section 21. Regarding the withdrawing of section 21, the DHSC agreed with the complainant that not all the information

was in the public domain but continued to withhold some of that information under sections 31(1)(a) and (e) and 43(2) of FOIA. The DHSC concluded the following regarding section 40(2):

“Removing the details of the sponsors, means this information is no longer sensitive and the risk of individuals being identified no longer arises. In this respect, we have enclosed a dataset in csv format...which (anonymously) lists sponsors are or have been investigated by the UKVI, the number of workers affected and whether the sponsor is CQC registered or not.”

Scope of the case

8. The complainant contacted the Commissioner on 28 August 2024 to complain about the way their request for information had been handled.
9. During the investigation the DHSC provided a submission to the Commissioner in which it stated that section 23 (information relating to security bodies) may be applicable to some of the information. However, without further detail this exemption will not be considered in the following decision notice.
10. The Commissioner considers that the scope of his investigation is to look at the DHSC's citing of sections 31(1) and 43(2) of FOIA.

Reasons for decision

Section 31 – law enforcement

11. This reasoning covers why the DHSC was entitled to rely on sections 31(1)(a) and (e) of FOIA to refuse to provide information relating to the request. In its response to the complainant it specified information relating to the 'reasons for revocation'. The DHSC has provided this information to the Commissioner. The data set concerned is based on information held by the DHSC on 11 April 2024, the date of the request. The spreadsheet is “updated regularly based on new information provided by UK Visas and Immigration (UKVI)”.
12. Section 31(1) states:

“(1)Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(a) the prevention or detection of crime...

(e) the operation of the immigration controls..."

13. In order for a prejudice based exemption such as section 31(1)(a) and (e) to be engaged, the Commissioner considers that three criteria must be met:

- Firstly, the actual harms which the public authority alleges would, or would be likely to, occur if the withheld information is disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold, the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view; this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.

14. The Commissioner's [Section 31 guidance](#) explains that -

"Section 31(1)(a) covers all aspects of the prevention and detection of crime. It could apply to information on general policies and methods adopted by law enforcement agencies, as well as information about specific investigations."

The public authority does not need to have responsibilities to investigate crime itself to rely on the exemption. It doesn't need to demonstrate that it is holding the information for the purpose of preventing or detecting crime. A public authority only has to demonstrate that disclosing the information could harm efforts to prevent or detect crime.

15. The Commissioner's guidance states that Section 31(1)(e) can be used -

"...where disclosure could undermine:

- physical immigration controls at points of entry into the UK;
- measures taken to avoid people travelling to the UK if they do not have the correct paperwork; or
- efforts made to deport those with no right to remain in the country..."

The complainant's view

16. The complainant argues that the DHSC claiming that -

"the reasons for revocations should be withheld as they 'would allow those who want to evade immigration enforcement activity to identify how investigations are carried out. This list would give insight into which non-compliant activities can be more easily identified or investigated'"

is "fanciful". Their view is that -

"revealing which immigration requirements have been broken would not reveal the techniques used to identify such breaches. In fact, the opposite is true. Publicly identifying providers who have lost their licences and the reasons they have lost them will reinforce the incentive on providers to comply with both standards of care and immigration rules. Conversely, withholding this information reduces the deterrent effect of revocation as a sanction".

The DHSC's view

17. UKVI identifies and investigates immigration non-compliance. The DHSC explains that "the reasons for revocations and suspensions give an insight into UKVI operations. This list would give insight into which noncompliant activities can be more easily identified or investigated." Its view is that if the information was released it "would allow those who want to evade immigration enforcement activity to identify how investigations are carried out, and compromise UKVI's ability to carry out its activities".

18. It goes on to explain that "where criminal activity is identified through UKVI's processes it is referred to the relevant intelligence teams and law enforcement authorities". The DHSC lists some of these investigative teams within the Home Office – [The National Referral Mechanism](#), the police, the Gangmasters and Labour Abuse Authority (GLAA) and the

National Crime Agency (NCA). It provides an example of an [investigation](#) and explains that -

“even where UKVI compliance activity has been completed there may be additional criminal investigations ongoing which could be prejudiced by disclosure of the provider’s names, addresses, and reasons for revocation”.

19. Its view is that the “harm is real and likely to occur if the information is disclosed” as it “would be likely to prejudice or harm the interests of immigration and law enforcement bodies in the course of their investigation and enforcement activities”. It could risk “prejudicing ongoing Home Office investigations as the investigations continue” and “may prejudice the public’s perception and understanding of those licence holders who had their licence revoked at the time that the FOI request was made”.
20. The DHSC explains that it is possible for sponsors to be “reinstated to the licence if subsequently they are able to show that they can be compliant and have the proper infrastructure in place”. These details are recorded on a spreadsheet that is updated regularly (sometimes daily or several times a week) making any release of information “out of date” by the time a request is processed and providing an inaccurate picture of a care provider.

The Commissioner’s view

21. The Commissioner has reviewed the information being withheld under sections 31(1)(a) and (e).
22. With regards to the first criterion, the Commissioner is satisfied that the harm envisaged relates to the interest that section 31(1)(a) seeks to protect against, specifically, the prevention or detection of crime. He is also satisfied that the harm envisaged relates to the interest that section 31(1)(e) seeks to protect against. He also accepts that disclosure would be likely to compromise UKVI’s ability to conduct its activities.
23. The Commissioner then moved on to whether the prejudice being claimed is “real, actual or of substance”, not trivial and whether there is a causal link between disclosure and the prejudice claimed. He accepts that the prejudice being claimed is not trivial or insignificant and he agrees that there is a causal link between disclosure of the withheld information and the prejudice occurring. The prejudice in this case would be to UKVI’s ability to prevent and detect crime evasion and effectively operate immigration controls.

24. Although he understands the complainant's arguments and they have a certain logic, this data is updated several times a week, subject to changes of status and is therefore not definitive. It also has the potential to affect other law enforcement investigations. The exemption is engaged at the lower level of prejudice.
25. The Commissioner will now consider whether it is in the public interest to release this information.

Public interest factors in favour of disclosing the requested information

26. The complainant's view is that withholding the information "reduces its deterrent effect". They contend that in publicly identifying those providers "who have lost their licences and the reasons they have lost them will reinforce the incentive on providers to comply with both standards of care and immigration rules".
27. The DHSC accepts the "inherent public interest in transparency and accountability of public authorities". It also recognises the public interest "in furthering public understanding of the issues which public authorities deal with" and it gives the example of "the compliance activity being taken across government to address issues in the social care sector". The DHSC contends that scrutinising the work of government departments increases diligence, particularly the release of factual information used to monitor the compliance of companies providing care. It recognises that "people working in adult social care, is a high-profile issue which generates significant discussion, and attracts public, parliamentary, and media attention".
28. The disclosure of this particular information would provide information to the public about the companies and organisations that have had their Home Office sponsor licence revoked or suspended, the reasons for their revocation or suspension, and the number of workers that have been impacted by this. The DHSC "is well aware of the importance of the Health and Care visa in addressing the issue of workforce shortages in the Adult Social care sector".

Public interest factors in favour of maintaining the exemption

29. Nonetheless it argues that "there is a strong public interest in detecting and preventing non-compliance with immigration rules". The DHSC's view is that UKVI compliance activities "are essential to identify those looking to undermine the immigration system" and for the safeguarding of "vulnerable workers, vulnerable service users and the general public". If the requested information was disclosed it "could hinder this activity".

30. The revocation is open to challenge and the licence holder can go to judicial review which means that the decision could be overturned. Revocation of a sponsor licence does not necessarily indicate "criminal activity and may only be evidence of non-compliance with UKVI regulations".
31. The DHSC stresses that it is not in the public interest to harm legitimate providers in instances where a company name and address has been fraudulently used in acquiring sponsor licences or those that are now compliant following UKVI's investigations or challenge by judicial review. The DHSC does not consider it to be in the public interest -

"to disadvantage care providers and risk the sustainability and delivery of services if those contracting care and the recipients of care rely on immigration compliance decisions as indicators of quality of care".
32. Releasing the data "could hinder the cross-government work between the Home Office and DHSC, and other public bodies carrying out investigative or regulatory functions". UKVI has referred "numerous cases to Crime Development Teams for further investigation" – if details of sponsors who have been revoked are released it could impede their investigations. This data sharing between departments is considered to be "critical" in addressing issues connected to "international recruitment into the care sector" and "concerns around exploitation and abuse of international recruits" that include "risks around unethical treatment and modern slavery". "UKVI compliance activities are essential to identify non-compliant organisations and safeguard workers..." Disclosure of the requested information could compromise or harm these activities.
33. The DHSC refers to the complainant's argument in the internal review concerning the public interest in disclosing this information "as some sponsored workers may not be informed in a timely manner that their sponsor's licence has been revoked if the Home Office does not have their current contact details". The complainant's view was disclosure is essential in order that workers can comply with immigration rules. The DHSC states that - "UKVI is required to issue notifications to all impacted workers, following appeal decision [Pathan & Anor v Secretary of State for the Home Department \[2018\] EWCA Civ 2103 \(02 October 2018\)](#)." They are notified by the most recent email address held and the Home Office informs visa holders that they must keep contact details updated. The DHSC also explains that "a notice of cancellation on file is only issued where the worker's visa has expired before UKVI issues the notification". There is a list of current sponsor licence holders published at [Register of licensed sponsors: workers - GOV.UK](#) which is updated daily, apart from weekends and bank holidays. Sponsors with revoked

licenses are removed from this register and a worker can check whether their sponsor is included.

34. To support its argument the DHSC points the Commissioner to a similar request that was the subject of a previous decision. The DHSC quotes from [IC-311116-W7M2](#) where the public authority was the Care Quality Commission -

“In the Commissioner’s view there is a strong public interest in ensuring the free flow of information between the public authority and UKVI to allow the public authority to perform its regulatory functions effectively. That flow would be likely to be damaged by disclosure and therefore the Commissioner concludes that the balance of the public interest should favour maintaining the exemption.”

The DHSC maintains that it is not in the public interest to release information if doing so “would damage the functions of a regulatory body”.

Balance of public interest

35. There is always a public interest in transparency and accountability but the Commissioner has concluded that the public interest in deterrence via disclosure is not as persuasive as the potential harm to the UKVI’s and cross-government compliance activities.

Section 43 – commercial interests

36. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
37. The DHSC explained in its response to the complainant that “data on sponsor licence suspensions is commercially sensitive information, as this type of information would cause harm to the sponsors in question”. The DHSC has provided the information it withheld under this exemption to the Commissioner.
38. The Commissioner has defined the meaning of the term “commercial interests” in his guidance on the application of [Section 43](#) as follows: “A commercial interest relates to a legal person’s ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent.”
39. Most commercial activity relates to the purchase and sale of goods but it also extends to other fields such as services.

40. The Commissioner's guidance says that there are many circumstances in which a public authority might hold information with the potential to prejudice commercial interests. The actual harm that the public authority alleges would or would be likely to occur if the withheld information was disclosed has to relate to commercial interests.
41. The public authority must demonstrate a clear link between disclosure and the commercial interests of either itself, a third party or both. There must also be a real and significant risk of the prejudice to commercial interests occurring for it to be successfully engaged.
42. The exemption is subject to the public interest test. This means that, even if the exemption is engaged, the Commissioner needs to assess whether it is in the public interest to release the information.

The complainant's view

43. The complainant argues that the DHSC "has failed to show how disclosure would impact the relevant companies' commercial interests". Their belief is that the information has nothing to do with commercial interests as it relates to compliance with immigration law. They contend that it is not the "DHSC's job to shield providers from any loss of income caused by their own failures – this appears to be their approach".
44. The complainant also points out that the DHSC has provided no evidence that it has consulted with providers when "public authorities should not argue a section 43 case on behalf of a third party unless that third party has made that case to them".

The DHSC's view

45. The Commissioner does not intend to repeat the DHSC's explanation concerning data changes, reinstatement or revocation following the conclusion of UKVI's compliance activity as set out under the section 31 section of this decision notice.
46. The DHSC states that the information "could be incomplete and/or inaccurate" and put providers that are compliant and have had their licence restored "at risk of commercial harm based on out-of-date information" which would mislead the public. It considers the names and addresses of providers to be commercially sensitive information. Whilst UKVI investigates potential indicators of wrongdoing the sponsors are suspended. If no evidence is found the sponsor's licence is restored and the suspension is lifted. Whilst these investigations are ongoing releasing names and addresses "could cause commercial harm if the information is relied upon when placing care packages". This may lead to loss of income for the provider "if those placing care packages or self-funders choose not to contract with these providers".

47. The DHSC considers that it would be “especially harmful” whilst a suspension or revocation is being reviewed and the licence could be reinstated. There are instances where a provider’s name has been fraudulently used to obtain a licence and releasing details could cause harm to the “genuine provider”. Revocation may be used as an indication of the quality of care when placing care packages with a “legitimate provider who has not been subject to immigration compliance activity”.
48. The DHSC cannot identify providers who have been victims of fraud based on UKVI information and it is unable to redact the names of genuine providers from the data. It provided an example of when this occurred to a provider whose name and address had been “used fraudulently to obtain sponsor licences and bring in international workers”. After UKVI compliance activity the licence was revoked. The genuine provider, local authority, and the Integrated Care Board raised concerns that the name of the provider “is now associated with malpractice and fraud, and their inclusion in a list of revoked providers intimates they are a poor employer and delivering poor quality of care”.
49. Sponsors who lose their licence are removed from UKVI’s published register. This cannot be appealed but revoked sponsors can request a judicial review which can be a lengthy process. The DHSC is not,

“privity to information on whether legal representations have been made by the sponsor and therefore cannot determine where a decision on suspension or revocation is subject to a judicial review”.
50. The UKVI compliance investigations are focused on compliance with the immigration system. Non-compliance with their sponsorship duty is not an indication of the provider’s ability as a care deliverer or whether their business is sustainable. The interpretation the public and care users put on this may be that the “providers are ‘bad actors’ or non-compliant”. The release of the names and addresses on the spreadsheet may cause commercial harm because they do “not necessarily reflect final immigration enforcement decisions”. The DHSC argues that “a genuine provider may lose contracts of work, care packages, and staff while awaiting the outcome of a judicial review which could reinstate their licence”.

The Commissioner’s view

51. Although the Commissioner understands the complainant’s view that the requested information has nothing to do with commercial interests, he is persuaded that the DHSC has provided the causal link between disclosure and potential commercial harm to providers. The complainant is correct that the Commissioner generally expects a third party to have

been consulted but, in this instance he doesn't consider it practical to do so, not just because of the numbers involved as a sample could have been conducted but because of the nature of the information. His view is that the exemption is engaged at the lower level of prejudice and has gone on to consider the public interest.

Public interest factors in favour of disclosing the requested information

52. The complainant argued in their internal review request that "the health and care visa is essential for covering shortages in the healthcare sector". Their view is that "the ability to scrutinise how compliance around the visa has been applied is not only a matter of transparency and accountability, but also will contribute to good decision making by public bodies". The disclosure of the information would facilitate scrutiny. It would also protect the public by providing "transparency around companies that have been sanctioned by having sponsor licences revoked, and the reasons for the revocations..."
53. The DHSC accepts the inherent public interest in transparency and accountability of public authorities. It recognises the "broad public interest in furthering public understanding of the issues which public authorities deal with" which would include compliance activity across government in addressing issues in the social care sector.
54. There is a public interest in government departments being open to scrutiny in order to increase diligence, especially when it concerns factual information to monitor compliance with companies providing care. Adult social care and those who work in the sector is a high-profile issue attracting "public, parliamentary and media attention". The requested information "would give the public more information on UKVI compliance activity in the sector".

Public interest factors in favour of maintaining the exemption

55. However, the DHSC does not consider that it is in the public interest to disclose this information and "harm legitimate providers based on immigration compliance decisions, a proportion of which may still be under judicial review and could have their licence reinstated".
56. It argues that "care providers are integral to the health and care system" and that it is not in the public interest to disadvantage these care providers which would put at risk "the sustainability and delivery of services if those contracting care and care recipients rely on immigration compliance decisions as indicators of quality of care".

Balance of public interest

57. The Commissioner accepts that there is a public interest in facilitating scrutiny of an important subject. However, he is not persuaded that the risk of detriment to the commercial interests of the care sector is outweighed by the ability of the public to do so.

Other matters

58. The [section 45 code of practice](#) recommends that public authorities complete the internal review process and notify the complainant of its findings within 20 working days, and certainly no later than 40 working days from the receipt.
59. In this case the DHSC provided an internal review beyond the maximum recommended timeframe.

Right of appeal

60. 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

61. 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.
62. 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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