

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 April 2025

Public Authority: Channel Four Television Corporation
Address: 124 Horseferry Road
London
SW1P 2TX

Decision (including any steps ordered)

1. The complainant has requested copies of settlement agreements. Channel Four Television Corporation ('Channel 4') disclosed redacted copies of 61 settlement agreements and relied on section 40(2) of FOIA (third party personal information) and section 43(2) of FOIA (commercial interests) to withhold the redacted information.
2. The Commissioner's decision is that Channel 4 was entitled to rely on sections 40(2) and 43(2) of FOIA to withhold the redacted information.
3. The Commissioner does not require further steps.

Request and response

4. On 16 October 2024, the complainant wrote to Channel 4 and requested information in the following terms:

"Please provide, under FOIA, a copy of the full terms of each and every settlement agreement. I note the agreements expressly cater for such a request. You may, obviously, redact any information that would identify the individuals involved, but only indenting [sic] information."
5. Channel 4 responded on 15 November 2024. It provided redacted copies of the requested settlement agreements and stated that it was relying on sections 40(2) and 43(2) of FOIA to withhold the redacted information.

6. The complainant requested an internal review on 15 November 2024 and again on 19 December 2024. They expressed dissatisfaction with the redactions made to the settlement agreements and stated that some of the pages were missing on one document.
7. Following an internal review, Channel 4 wrote to the complainant on 10 January 2025. It maintained its reliance on sections 40 and 43 of FOIA. It stated that it had marked all redactions using black boxes and that no information had been redacted unless a black box had been included.

Scope of the case

8. The complainant contacted the Commissioner on 22 January 2025 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to determine whether Channel 4 was entitled to rely on sections 40 and 43 of FOIA.

Reasons for decision

Section 40(2) – third party personal information

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 FOIA cannot apply.
13. 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?

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. 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.

17. 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 focus.

18. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that it is personal data. This is because the redacted information in the settlement agreement contains the names, signatures, and addresses of individuals that are subject to the agreements as well as the names of junior Channel 4 staff. It also contains work references and internal statements describing the individuals concerned to assist them in future employment and to inform other Channel 4 staff of the person's departure respectively.

19. In this case, the Commissioner notes that the withheld information also includes information that, when considered as a whole, could indirectly identify the individual. This includes, among others, gender identifier, job title, departments, working pattern, payments, dates, extension of healthcare, union memberships, specific employee benefits, and names of programmes or projects for which the relevant individual should receive credit.

20. The complainant has challenged the redaction of date information in particular. Channel 4 has explained that dates, including the dates of termination, grievances or internal announcements, could make the individuals identifiable to fellow employees in Channel 4 who have knowledge of dates of particular events. It could also make the individuals identifiable to motivated intruders based on publicly available information. The Commissioner agrees that in this case, date information is linked to the personal information of the individual.

21. The Commissioner notes that some of the documents contain larger redacted sections, however these comprise references and wording for

internal communications concerning the departure of the individual. These sections therefore contain biographical information about the individual and detail that could reveal their identity.

22. The Commissioner notes that the complainant has stated in the request wording that personal information can be redacted. However, the complainant has expressed concern that some of the redacted information does not appear to be personal data. The Commissioner has viewed the withheld information, and he is satisfied that only personal data, or information that Channel 4 considers to be commercially sensitive has been redacted.
23. The Commissioner notes that the complainant has also suggested that references like 'he' or 'she' should not be redacted as this would give insight into whether more women than men have been subject to such agreements. The Commissioner has considered this argument but as mentioned in paragraph 19, he is mindful that disclosing gender identifying information in individual settlement agreements could indirectly identify an individual when combined with other information or knowledge. He therefore doesn't consider disclosure of this type of personal data in individual documents to be the least intrusive way to gain such an understanding.
24. The withheld information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
25. 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.
26. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

27. 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"

28. 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.
29. 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

30. 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.

31. 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.

32. 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

33. 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.

34. 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

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”.

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.

35. The Commissioner acknowledges that the complainant has a legitimate interest in the requested information to ensure that Channel 4 is acting in an open and transparent manner. The Commissioner considers that the interest in transparency is met by disclosure of the redacted settlements, but he acknowledges that disclosing the unredacted agreements would shed further light on information about details like grade, gender, and circumstances.
36. The Commissioner is satisfied that there is a legitimate interest in the requested information and will go on to consider whether disclosure is necessary.

Is disclosure necessary?

37. '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.
38. Channel 4 has stated that any legitimate interest has already been served by disclosures which it has already made available under FOIA. This includes the redacted copies of the agreements, and the cumulative total value paid out in settlement agreements disclosed to the same requester in 2024. Channel 4 therefore doesn't consider that disclosure is necessary to serve any legitimate interest.
39. Channel 4 considers that any disclosure of the proposed personal data is not the least intrusive means to serve any unidentified legitimate interest. It stated that, on the contrary, it is highly intrusive to identify the individuals who are the subject of these confidential settlement agreements which would be likely to have a significant impact on those individuals if their identifiable personal data was disclosed by their former employer.
40. The Commissioner agrees that the information that Channel 4 has already disclosed under FOIA can be seen to satisfy the general public interest in transparency and accountability. However, he considers that the complainant has a legitimate interest in wanting to know if more women than men were subject to the settlement agreements, and they would need to see the gender identifying details to do this. He therefore

considers that disclosure of this part of the requested information would be necessary.

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

41. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject 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.
42. In the Commissioner's view, a key issue is whether the individual concerned has 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.
43. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
44. The Commissioner considers that the individuals subject to the settlement agreements would have a reasonable expectation that their personal information would not be disclosed. The agreements are linked to the end of employment so the individuals concerned would consider the information they contain to be highly personal and confidential. It follows that these individuals would not want information that could directly, or indirectly, identify them to be put into the public domain.
45. Channel 4 has explained that disclosure of the redacted information in the agreements would be likely to cause significant distress to individuals involved. It considers that disclosure would also cause distress to people who had previously entered into such agreements with Channel 4 outside of the date range specified by the request. These individuals would reasonably assume that details of their own settlements could be published by Channel 4 at any time.
46. Channel 4 also considers that disclosure could negatively impact the relationships with friends and family, for example, if the former employees chose not to share information of the precise award agreed, if it were even shared at all.
47. The Commissioner agrees that disclosure of the personal information within the settlement agreements would likely cause distress to the individuals concerned. The Commissioner is not aware of the reasons for

each of the individual agreements being required, but it is reasonable to assume that some individuals would not want details of the end of their employment to be disclosed.

48. The Commissioner is also mindful that the withheld information also contains the personal information of junior staff at Channel 4, and they too would not expect their personal information to be disclosed.
49. Therefore, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals concerned. He considers that there is no legal basis for Channel 4 to disclose the withheld information and to do so would be in breach of principle (a).
50. The Commissioner has therefore decided that Channel 4 was entitled to withhold the redacted information concerning personal information under section 40(2).

Section 43 – commercial interests

51. 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.
52. For section 43(2) to be engaged, three criteria must be met:
 - the harm which the public authority envisages must relate to a legal person's commercial interests;
 - the public authority must be able to demonstrate a causal relationship between disclosure and prejudice to those commercial interests. The resultant prejudice must be real, actual or of substance; and
 - the level of likelihood of prejudice being relied upon by the public authority must be met (that is, it must be shown that disclosure would, or would be likely to, result in prejudice occurring).
53. Channel 4 has explained that much of the information withheld under section 43 has also been withheld under section 40(2) as it relates to payment amounts to former employees. The remainder of the information Channel 4 has withheld under section 43 is payment amounts by Channel 4 to the former employee's independent legal advisors, and references to specific benefits provided to some former employees as part of the settlement agreement.
54. Channel 4 considers that disclosing this information it would be likely to result in prejudice to its own commercial interests.

55. Channel 4 explained that disclosure of the withheld information would likely impair its ability to negotiate settlement agreements with future employees from a fair starting point in which the standard position is commercially confidential.
56. It explained that disclosure of details settlements, including payments, would impact the ability to negotiate future awards. Negotiators would know Channel 4's confidential position and seek to make comparisons to previous amounts or benefits made in other settlement agreements. It considers that this would prejudice Channel 4's ability to negotiate the best and most appropriate terms in each given case and would likely lead to inflation of settlement fees.
57. Channel 4 considers that the harm relates to its own commercial interests as it would reduce the ability for Channel 4 to participate competitively in commercial activity.
58. It explained that should information about settlement packages be made public, Channel 4 would lose negotiating strength, and be put at a disadvantage.
59. It explained that the agreements also include the amounts paid to the former employee's advisor to support with legal fees. It considers that disclosing such a figure would likely undermine Channel 4's ability to negotiate for lower legal fees in other cases and would be likely to increase Channel 4's costs as it would reveal the amount of legal costs which Channel 4 may be willing to pay in settlement agreement negotiations. Such figures would be used against Channel 4 in future negotiations by their lawyers to seek similar or equivalent costs.
60. Channel 4 added that if it couldn't keep this commercially sensitive information confidential, it could incentivise parties to litigate the circumstances of an employee's departure rather than resolve them privately and amicably. This could in turn increase the costs which Channel 4 would have to pay to conclude an employee's employment on fair and commercially reasonable terms.
61. Channel 4 added that its commercial rivals are not subject to FOIA and would not need to disclose such information. This would likely put Channel 4 at a commercial disadvantage.
62. Having seen the information being withheld under section 43, the Commissioner agrees that it relates to payment amounts made to former employees, their legal representatives and specific benefits in some cases.
63. The Commissioner is satisfied, first, that the harm Channel 4 envisages relates to its own commercial interests.

64. Second, the Commissioner accepts that a causal link exists between disclosing the information about individual settlement packages and commercial prejudice. The information is related to Channel 4's approach to these agreements and disclosure could affect its ability negotiate in similar situations.
65. In its submission to the Commissioner, Channel 4 has stated that it considers the prejudice would be likely to happen and the Commissioner accepts the lower threshold of likelihood in this case; that the envisioned prejudice would be likely to happen.
66. Since the three criteria above have been satisfied, the Commissioner accepts that disclosing information about the financial aspects of the settlement agreements would be likely to result in commercial prejudice to Channel 4. The exemption at section 43(2) is engaged for this part of the withheld information.
67. The Commissioner will now consider the public interest factors in favour of disclosing the redacted information or continuing to withhold it.

Public interest test

68. Section 43(2) is subject to the public interest test, as set out in section 2 of FOIA. This means that although the exemption is engaged, the requested information must be disclosed unless the public interest in maintaining the exemption is stronger than the public interest in disclosure.

Public interest factors in favour of disclosing the requested information

69. Channel 4 acknowledged that there is a general public interest in understanding the types of agreements negotiated and awarded by a publicly owned company to departing employees.

Public interest factors in favour of maintaining the exemption

70. Channel 4 considers that the public interest in its arrangements with departing staff is met to a significant degree by the information it has already provided on this subject under FOIA. As Channel 4 has provided the cumulative value of the settlement agreements broken down by year, it does not consider that there is any specific public interest in disclosing individual settlement amounts.
71. Channel 4 explained that as part of its response it has disclosed the detailed terms of the settlement in full apart from the limited redactions, so it considers that any public interest in knowing how Channel 4 settles employment disputes has been met.

72. Channel 4 has acknowledged that there is public interest regarding how public funds are spent. However, unlike many organisations covered by FOIA, Channel 4 is publicly owned but commercially funded with 100% of its income deriving from its commercial activities including, from the sale of advertising. It confirmed that none of the payments made to departing staff were made using public funds.
73. Channel 4 considers that there is a significant public interest in maintaining its ability to negotiate future payments to departing staff. It explained that minimising expenditure on settlement agreements where possible will maximise the income available to Channel 4 to deliver its public service remit by providing high quality content to the viewing public. It added that its ability to operate efficiently is also vital to ensuring the continued success of its funding model, free from public subsidy.
74. Channel 4 considers that there is also a considerable public interest in parties being able to negotiate confidential terms relating to payment which are not in the public domain. It explained that this acts as an important brake on potential litigation in which further costs and court resources are used. It considers that it's in the general public interest to promote compromise and minimise disputes, not encourage disputes and litigation.

Balance of the public interest

75. Whilst the Commissioner accepts that there is public interest in transparency about how Channel 4 approaches its settlement agreements with departing staff, he also understands the importance of Channel 4 being able to maintain its ability to negotiate in future settlement agreements.
76. The Commissioner considers that the redacted versions of the settlement agreements and accompanying financial information that Channel 4 has disclosed meets the public interest in transparency to a satisfactory degree. He considers that the balance of the public interest is weighted in favour of non-disclosure as he agrees that the release of this information is likely to result in a reduction in Channel 4's ability to negotiate, and to remain competitive. These factors are not in the public interest.
77. The Commissioner's decision therefore is that Channel 4 is entitled to rely on section 43 of FOIA to withhold the redacted information concerning the financial details of individual settlement agreements.

Other matters

78. The complainant has expressed dissatisfaction with the way that the redactions have been made to the settlement agreements. Channel 4 has used black boxes to redact the information it has withheld. The complainant considers that, rather than black boxes, the redacted area should contain a description of the type of information that has been redacted.
79. The Commissioner notes that there is no requirement under FOIA for public authorities to redact information in a particular way or to provide a description of each redacted section. The Commissioner's [guidance](#) sets out good practice guidelines for redacting information.
80. The complainant also expressed concern that some information is missing from document 38 of the 61 redacted settlement agreements disclosed by Channel 4.
81. Channel 4 has explained that all the pages are present in document 38 but some of the pages are out of order and this is the way the document is held.
82. The Commissioner has reviewed document 38 and is satisfied that all pages are present albeit with some out of order.

Right of appeal

83. 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

84. 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.
85. 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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