

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

### **Decision notice**

**Date:** 24 March 2025

**Public Authority:** UK Health Security Agency  
**Address:** 10 South Colonnade  
London  
E14 4PU

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

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1. The complainant sent a request for information following-on from the decision notice (IC-297834-V6B6) response, to UK Health Security Agency (UKHSA) where they required specific information about employees. UKHSA explained that the information requested was redacted as it related to third party individuals under section 40(2) – personal information and therefore withheld the requested information.
2. The Commissioner's decision is that UKHSA was entitled to rely on section 40(2) of FOIA to withhold information in scope of the request in this case. However, he finds UKHSA breached section 10(1) and 17(1) of FOIA in that it failed to provide its response and refusal notice within 20 working days of the request.
3. The Commissioner does not require any steps as a result of this decision.

## Request and response

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4. On 30 September 2024, the complainant requested information in the following terms:

"Further to your email letter on 18/09/2024, you have not provided the requested FOIA information for 3 records, highlighted in yellow below (the "Three Records"):

- you claim the job title for Three Records are "Senior Responsible Officer & Others"; however, I require the actual job title for these records, rather than 'Others', as 'Others' is not a recognised job title in the civil service;
- you claim the job grade for Three Records are "non consultant"; however, I require the actual job grade, as "non consultant" is not a recognised job grade in the civil service;
- you claim dates for "Date SARD account opened", and "Annual professional Appraisal date" are Yes or No, however, I require the actual dates, for the Three Records, as Yes and No are not recognised calendar dates Please send me this missing information for the Three Records forthwith. To help you process this information quickly."

5. UKHSA responded on 20 February 2025. It apologised for the delayed response and explained that information in scope of the request was being withheld under section 40(2) of FOIA.

## Scope of the case

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6. The complainant contacted the Commissioner on 6 November 2024, to complain about the way their request for information had been handled.

The Commissioner considers that the scope of his investigation is to determine if UKHSA 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

7. 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.

8. 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").
9. 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.
10. 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?**

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

"any information relating to an identified or identifiable living individual."
12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
13. Having considered the nature of the withheld information, job titles, account opening and appraisals of third-party individual employees, 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.
14. The complainant has argued that: "the probability of identifying individuals from this information is miniscule or theoretical; thereby disclosure does not breach Section 40(2) of the Act."
15. 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.
16. 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.
17. The most relevant DP principle in this case is principle (a).

### Legitimate interests

18. 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.
19. The requester wishes to know job titles, account opening and appraisals of employees in order for transparency and accountability. The Commissioner therefore accepts that the complainant has a legitimate interest in the information.

### Is disclosure necessary?

20. '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.
21. The Commissioner is aware that disclosure under FOIA is disclosure to the world at large. It is the equivalent of UKHSA 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.
22. The Commissioner notes that UKHSA has demonstrated that the information is regarding specific individuals' employment details including appraisals. He is therefore satisfied that disclosure of the withheld information is necessary to meet the requester's legitimate interests.

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

23. It is necessary to balance the legitimate interests in disclosure against the individual's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the 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.

24. 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.
25. In the Commissioner's view, a key issue is whether the 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.
26. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to the individuals mentioned.
27. The Commissioner considers that the individuals involved have a strong and reasonable expectation that personal information about them will remain confidential and indeed have been promised a level of confidentiality when taking up their employment, given the nature and scope of work undertaken by UKHSA.
28. The Commissioner accepts that there is an expectation that the personal information of individual employees who are not customer facing will remain private. The Commissioner has seen no indication that the data has been made public by the individuals.
29. 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.
30. Given the above, the Commissioner is satisfied that UKHSA is entitled to rely on section 40(2) of FOIA to withhold information in scope of the request.

## **Other matters**

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31. Section 10(1) of FOIA states that a public authority will provide its substantive response along with any refusal notice it is reliant upon to withhold information within 20 working days of receipt of a valid request for information. UKHSA took almost five months to respond to the request, without any justification or explanation for the unacceptable delay, therefore, breaching section 10(1) and 17(1) of FOIA.

## **Right of appeal**

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32. 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)

33. 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.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Deirdre Collins**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**