

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 June 2016

Public Authority: Post Office Limited
Address: 20 Finsbury Street
London
EC27 9AQ

Decision (including any steps ordered)

1. The complainant has requested information relating to the number and types of transactions at a specific Post Office branch and information relating to local branches offering similar services. The Post Office refused to disclose the requested information under section 43(2) FOIA.
2. The Commissioner's decision is that the Post Office correctly applied section 43(2) FOIA to the withheld information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 8 December 2015 the complainant requested information of the following description:
 1. Number of daily transactions currently undertaken for the period 1st to 30th November 2015.
 2. Analysis of the different types of transactions on a daily basis eg. pension withdrawals, money paid in, benefits withdrawn, parcels taken, general queries, DVLA and similar all for the same period i.e 1st to 30th November 2015.
 3. Proximity in miles and location of neighbouring post offices providing an identical range of services.

5. On 18 December 2015, the Post Office responded. It refused to provide information detailing the type and number of transactions under section 43(2) FOIA. It provided a link to branch finder to search for local branches.
6. The complainant requested an internal review on 4 and 22 January 2016. The Post Office sent the outcome of its internal review on 15 February 2016. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 19 January 2016 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the Post Office was correct to apply section 43(2) FOIA to the withheld information.

Background

9. The Post Office explained that there has been a change to services at Bishops Caundle which were forced by the anticipated resignation of the temporary Postmaster – who was only required to give 7 days' notice – thereby potentially leaving the village with no service at all. Also, it said that despite discussions with the Community Shop operators they did not feel, at that time, that they could take on the running of the Post Office directly. The only alternative was therefore to arrange for a neighbouring Postmaster to visit Bishops Caundle each week to provide service and they were only in a position to provide a service for 2 hours per week.

Reasons for decision

Section 43 – commercial interests

10. Section 43(2) of the FOIA provides an exemption from disclosure of information which would or would be likely to prejudice the commercial interests of any person (including the public authority holding it). This is a qualified exemption and is, therefore, subject to the public interest test.
11. The term 'commercial interests' is not defined in the FOIA, however, the Commissioner has considered his awareness guidance on the application of section 43. This comments that:

"...a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services."¹

12. Upon viewing the withheld information the Commissioner considers that it relates to services provided by a particular post office branch and the level of usage of those services. This does therefore fall within the scope of the exemption.
13. Having concluded that the withheld information falls within the scope of the exemption the Commissioner has gone onto consider the prejudice which disclosure would cause and the relevant party or parties which would be affected.

The nature of the prejudice

Prejudice to Post Office Limited's commercial interests

14. Post Office Limited explained that it operates in a range of commercial competitive markets. It argued that the number of transactions overall, and the daily number and mix of transactions, is information that is considered to be valuable information to competitors.
15. It explained that as the level of Government subsidy has decreased in recent years, the vast majority of Post Office revenues are attributable to income from its commercial activities. It is therefore crucial for the ongoing commercial viability of Post Office Limited that it is able to operate in those commercial markets in a fair way and on a level playing field with its competitors. It said that this is the case across the entire Post Office network as a whole, as well as at individual Post Office branch level.
16. It went on that were Post Office to reveal the transaction numbers and mix of products/services at a specific branch, this would be very useful information to its competitors as it would give them specific information on the levels of business at that branch which they would use to target particular geographical areas, seeking to draw business away from the Post Office. It argued that this would be the case in any of the markets in which the Post Office operates and for any of the

¹ See here:

http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/AWARENESS_GUIDANCE_5_V3_07_03_08.aspx

products/services that the Post Office offers such as banking, travel, mails, financial services etc.

17. It said in particular, the Post Office faces significant competition in local areas from alternative bill payment providers and alternative mail returns operators. It said that travel is also a very competitive local market with competitors varying exchange rates in local areas based on the level of alternative competition. It said that the release of detailed transactional information at a branch level would provide competitors with an advantage in terms of targeting their offer to maximise their network coverage. It said that this would place the Post Office at a significant disadvantage, particularly when its competitors are not required to publish their own branch level information as they are not subject to the FOIA by virtue of their ownership structure.
18. It said that the targeting of business by competitors based on the Post Office branch level information would lead to a decrease in business at individual branches, which on a wider scale would decrease overall revenues to Post Office Limited. It explained that Post Office uses its revenues to support the UK wide branch network and a reduction in revenues would either require larger Government subsidies to maintain the network, or failing that would lead to branch closures. It reasoned that as the Government is committed to reducing taxpayer subsidy the result can only be branch network closures.
19. It argued that to safeguard the commercial interests of Post Office Limited, the principle that branch level information is commercially sensitive and confers a competitive advantage on Post Office Limited which would be prejudiced if disclosed, needs to be in place across the entire Post Office branch network, from the largest branch to the smallest branch.
20. It acknowledged that the Bishops Caundle branch itself is a relatively small branch in terms of the overall UK wide network of over 11,500 post offices, and that the level of competitive trading is relatively small compared with more densely populated areas and branches, however it is still of the position that Post Office's commercial interests would be prejudiced in relation to that particular branch by the release of the branch level information for the above reasons, because all of the services provided there operate in a competitive market (however relatively small). It argued that the requested information is all the more valuable in relation to a small and less commercially secure branch like this, for whom any shift in market share would be highly damaging to its commercial viability in terms of maintaining its service there.

Prejudice to Post Office Clients' commercial interests

21. The Post Office also believes that the commercial interests of its clients would be likely to be prejudiced by the release of individual branch level information. It said that this information would be valuable to its clients' competitors and could be used by them to build a picture of demand and business levels in a particular geographical area to allow them to target that business to the detriment of its clients' interests. It explained that equivalent information on its clients' competitors business levels would not be available, thereby removing the level playing field.

Prejudice to postmaster's/prospective postmaster's commercial interests

22. The Post Office explained that it operates a network of over 11,600 branches. Around 300 branches are operated directly by Post Office Limited with its own direct employees. The rest, and the vast majority of the network is operated under agency agreements with individuals/private business people often referred to as Postmasters and Agents. They will hold the contract to provide Post Office services in their own name or a company name. Typically these will be independent business people who run a convenience retail store, but they could also be small companies that run a chain of stores or newsagents and, in certain cases, Agents will be large corporations.
23. It explained that for each of these Postmasters there is a Contract for Services between Post Office Limited and the Postmaster – with the Postmaster providing premises and staff and Post Office Limited making specific payments for the Post Office services provided – typically based on the type and level of transactions carried out.
24. It went on that the Post Office network serves all parts of the UK, but it has faced reductions in customer numbers and loss of branches due to economic pressures. The Post Office also faces direct competitive pressure from rival networks such as PayPoint, Payzone or myHermes that offer competitive services such as bill payment or parcel collections.
25. It said that in many cases the local Postmaster will also be a resident in the area in which they operate their Post Office branch and will have combined the Post Office service offer within their own private retail business.
26. Post Office believes that the provision of the information requested would be likely to prejudice the commercial interests of existing Postmasters as the detailed transaction information would be valuable

to competitors and would enable competitors to target their own service offer in a particular area to the detriment of the individual Postmaster who operates that branch as his/her business. This could be a national competitor seeking to target specific areas or products/services or it could be a local competitor, such as another retailer, who would be interested in understanding the level of business conducted in their local area, such as bill payments or mail transactions, so that they could tailor their own offer accordingly to seek to obtain the Post Office's business.

27. It also said that detailed transaction information and the scale of business carried out at a specific branch could also prejudice the commercial interests of the individual Postmaster should it be made available to customers who may make personal judgments about the success or otherwise of the branch based on this information. This could impact on customer behaviour in terms of usage of the branch, again impacting the Postmaster in terms of level of Post Office business and revenue but this could also have a knock on effect on the retail business as well.
28. As it believes that the release of branch transactional information would be likely to cause prejudice to Postmasters commercial interests it obtained the view of the National Federation of SubPostmasters (NFSP) on this issue. The NFSP is the national representative body for Postmasters. It provided the Commissioner with an email from NFSP dated 17 May 2016 which sets out the views of the NFSP. It stated that:

"The NFSP position in respect of the release of transactional level information at an individual branch level is that this action would prejudice the commercial interests of Postmasters as this would be valuable information to competitors which could be used to the detriment of the individual Postmaster. In effect the Postmaster would be revealing commercially confidential information about their business that would enable others to target their business in terms of seeking to take business away from the post office and the subsequent knock on impact on the private retail side. Postmasters operate in competitive markets and any requirement to release branch level information would place them at a significant disadvantage and would be very damaging to their business.

Furthermore, as the majority of post office contracts are now based on fully variable pay we believe that there is a clear link between the level of business conducted at an individual branch and the Postmasters' individual remuneration. Therefore we believe that branch transactional information is the personal information of individual Postmasters who

would have an expectation that the information would not be released publically.”

Likelihood of prejudice

29. In *Hogan and Oxford City Council v the Information Commissioner* [EA/2005/0026 and 0030] at paragraph 33 the Tribunal said:

“there are two possible limbs on which a prejudice-based exemption might be engaged. Firstly the occurrence of prejudice to the specified interest is more probable than not, and secondly there is a real and significant risk of prejudice, even if it cannot be said that the occurrence of prejudice is more probable than not.”

30. In this case the Post Office has argued that disclosure would prejudice its own commercial interests and would be likely to prejudice the commercial interests of its clients and the Postmaster/prospective Postmaster.

31. The Commissioner considers that whilst the arguments relating to prejudice to the Post Office’s own commercial interests are compelling, to demonstrate that the prejudice would occur, the Post Office must show that the prejudice is more probable than not. This is a fairly high burden to meet. The services available at the branch are publicly available however it is the amount those services are being utilised that is being withheld. The Commissioner does consider that the Post Office has demonstrated that if this information were disclosed, it is more probable than not that its competitors would use this information to target provision of services in this specific area. The Post Office has provided the Commissioner with a specific concern in this regard contained within the confidential annex attached to this Notice.

32. In relation to its clients’ and the Postmaster’s/prospective Postmaster’s commercial interests, the Post Office has argued that the prejudice would be likely to occur. The Commissioner must therefore be satisfied that there is a real and significant risk of the prejudice occurring. The Commissioner does consider that disclosing the amount certain services are utilised at a certain branch would be likely to be used by its clients’ competitors who may use this to target their own services in direct competition with its clients’ services currently on offer. In relation to the Postmaster’s/prospective Postmaster’s commercial interests, it is not clear to the Commissioner whether there is currently a full time postmaster in place at the branch which is the subject of this request. However once a prospective Postmaster does take over, he also considers that it would be likely to prejudice the commercial interest of the postmaster/prospective Postmaster for the same reasons the Commissioner has found the Post Office’s own commercial

interests would be prejudiced based upon the arguments contained within the Confidential Annex attached to this Notice. The Commissioner does therefore find that section 43(2) FOIA is engaged in this case.

33. As section 43(2) is a qualified exemption, the Commissioner has gone on to consider the public interest in this case.

Public interest test

Public interest arguments in favour of disclosure

34. The Post Office said that it knows it plays an important role in communities across the UK and acknowledges that, where Post Office is making a commercial decision to make changes at a branch, there is a public interest in understanding the background and impact of such a change, and alternative options considered. That is why, when making changes to branches Post Office carries out a public consultation or customer communication exercise in order to gather feedback and comments from customers in order that these can be considered ahead of making any change. Additionally, the Post Office Limited has a detailed Code of Practice which it follows prior to making changes to its branch network, which supports public engagement in proposed changes. A copy of the Code of Practice can be accessed at

<http://www.corporate.postoffice.co.uk/sites/default/files/Code%20of%20PracticeSept2013.pdf>

35. The Post Office said that it also understands there is an inherent public interest in understanding and being able to scrutinise the spending of public funds. Post Office Limited also provides information on how it spends its money in compliance with all accounting requirements. The Post Office Report and Accounts can be found at:

<http://corporate.postoffice.co.uk/annualreport1415>

36. The Post Office however explained that in the case of Bishops Caundle the proposed change was not based on a commercial decision by Post Office, and Post Office believes that the provision of the information requested would have served very little public interest as putting it in the public domain would have had no bearing on the specific proposed change or the subsequent outcome in this case.

Public interest arguments in favour of maintaining the exemption

37. The prejudice to Post Office's commercial interests caused by disclosure, and the likely prejudice to clients' and

Postmasters'/prospective Postmaster's commercial interests caused by disclosure would damage Post Office's ability to make revenue from the services it provides at Post Offices which is essential to reducing the public subsidy funded by tax payers for providing the Post Office service. It is not in the public interest for Post Office to require more public subsidy, or for post offices to close, or services which benefit the community to be withdrawn due to damage to the commercial interests of the parties concerned.

38. There is, however, a strong public interest in the Post Office being able to maintain its branch network and for communities to still be able to have post offices to provide them with important services. The Post Office is required to meet Government-mandated network access criteria, for example, ensuring that 99% of the UK population is within 3 miles and 90% of the population is within 1 mile of their nearest Post Office branch.
39. It believes that the release of branch level information would, for the reasons set out above, have a significant impact on the ability of Post Office Limited overall to compete and would lead to reduced revenues, jeopardising the ability of Post Office to support its UK-wide network, and in turn put at risk Post Office's ability to meet its UK wide access criteria. Reduced revenues would require either increased Government subsidy to support weaker branches (i.e. additional spending of public money), or alternatively lead to branch closures, neither of which outcomes serve the public interest. A reduction in the number of Post Offices can only result in a poorer service to the public, and the requirement for increased public subsidy is both unlikely (given the Government's stated intention to reduce subsidies) and would require additional public money to be spent.

Balance of the public interest arguments

40. The Commissioner considers that there is a public interest in disclosure of the withheld information as it informs the local community served by the branch which is the subject of the request.
41. However, equally, the Commissioner does not consider that it would be in the public interest to damage the Post Office's, its clients' and the postmaster/prospective postmaster's commercial position by disclosure of current commercially sensitive information which would or would be likely to be relied upon by their competitors to obtain a commercial advantage when choosing where to target business directly in competition with these parties.
42. On balance the Commissioner considers that the public interest in favour of disclosure is outweighed by the public interest in favour of

maintaining the exemption in this case. Section 43(2) FOIA was therefore correctly applied to withhold the requested information.

Right of appeal

43. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

44. 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.
45. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Gemma Garvey
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