

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 March 2021

Public Authority: Police Federation of England and Wales

Address: Federation House
Highbury Drive
Leatherhead
Surrey
KT22 7UY

Decision (including any steps ordered)

1. The complainant has requested from the Police Federation of England and Wales (the Federation) information about negotiations between its representatives and Surrey Police, on the issue of over-claimed rest days in lieu (RDIL).
2. The Federation withheld some information, which included meeting minutes and legal advice, under sections 36 (Prejudice to effective conduct of public affairs) and 42 (Legal professional privilege) of the FOIA. It also refused to confirm or deny whether it held some information, citing section 40(5B) (Personal information), and it said that it did not hold some information.
3. The Commissioner's decision is that the Federation was entitled to apply sections 36 and 42 to withhold information. However, she found that it was not entitled to rely on section 40(5B) to refuse to confirm or deny whether it held information in respect of part (6) of the request. She also found that it did hold some information in respect of part (7) of the request, which it had said that it did not hold, and to which it failed to apply a valid non-disclosure exemption. The Commissioner found breaches of sections 1 and 10 of the FOIA in respect of this information.

4. The Commissioner requires the Federation to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to part (6) of the request, which does not rely on section 40(5B)(a)(i) of the FOIA.
 - Disclose to the complainant the information it holds which falls within the scope of part (7) of the request.
5. The Federation must take these steps within 35 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

6. The Federation is the statutory staff association for police Constables, Sergeants, Inspectors and Chief Inspectors in the 43 territorial police forces in England and Wales. Under UK law, the police are prohibited from joining ordinary trade unions to address pay and working conditions. The Federation was established by the Police Act 1919 as an alternative system, to represent staff and resolve disputes through arbitration.
7. Each police force in England and Wales has a Federation branch. Branches are made up of local workplace representatives for that force, and act as the negotiation and consultative body when dealing with their force's Chief Constable, senior officers and the Police and Crime Commissioner.¹
8. As regards funding, the Federation's website states:

"The Police Federation of England and Wales (PFEW) is funded in part by police officers who pay subscriptions from their wages. We are not funded by the public, and we are the only staff association to be subject to Freedom of Information (FoI)".
9. The complainant, a police officer, explained that Surrey Police believes that its system for claiming RDIL (compensatory rest days offered where an officer is required to work on a pre-agreed rest day) has, in the past, resulted in some officers claiming RDIL that they were not entitled to.

¹ <https://www.polfed.org/about-us/whos-who/structure-of-the-federation/>

Surrey Police wishes to claim back several years' worth of excess RDIL from the officers concerned.

10. The Federation entered into negotiations with Surrey Police on this issue. The complainant said that subsequently, an agreement was reached that the employees in question would pay back RDIL which had been wrongly claimed over an 11 year period, either by surrendering annual leave or by working the excess time claimed back.
11. The complainant said that the monetary equivalent of what officers are being asked to repay is, "*...in the high hundreds of thousands of pounds, but in all likelihood it could well be over the million pound mark*". He also felt that: "*...any misallocation of days off, were primarily down to a failure by the employer rather than employees*".
12. He felt that the Federation had not acted in members' best interests in agreeing to this resolution and he wanted to find out more about who had made the decision, what had been discussed and what legal advice was being relied upon to make the decision.

Request and response

13. On 17 October 2019, in correspondence with the Federation about the matter, the complainant made the following request for information under the FOIA:

*"1) Provide a copy of the minutes of the negotiations meeting or if not, an explanation as to why not.
2) Provide all Federation emails, notes, memos, reports on the issue of RDIL matters.
3) Provide a copy of the legal advice produced for the Federation.
4) Provide a copy of the legal advice produced for Surrey Police or confirm the Federation are not in possession of it.
5) Provide a copy of the stated 'policy' that supposedly said the Fed advice couldn't be shared with members.
6) Confirm the Federation representatives or those people acting on the Federations behalf who attended the negotiations and state whether or not they had read the Federation legal advice prior to those negotiations.
7) Confirm the number of officers affected and the total RDILs owned [sic] and whether or not Federation representatives were aware of those numbers when entering negotiations."*

14. The Federation responded on 13 November 2019.
- It said that the information requested at parts (1) and (2) of the request was exempt from disclosure under section 36 (Prejudice to effective conduct of public affairs) of the FOIA.
 - It said that the information requested at parts (3), (4) and (5) was exempt from disclosure under section 42 (Legal professional privilege) of the FOIA.
 - It would neither confirm nor deny whether it held the information requested at part (6) of the request, citing section 40(5B) (Personal information) of the FOIA.
 - It said that it did not hold the information requested at part (7) of the request.
15. Following an internal review, the Federation wrote to the complainant on 10 December 2019. It maintained its position in respect of the request.

Scope of the case

16. The complainant contacted the Commissioner on 9 February 2020 to complain about the way his request for information had been handled. He disagreed with the Federation's decision to refuse the request.
17. During the Commissioner's investigation, the Federation revised its position on several parts of the request.
18. For part (4) of the request, the Federation clarified that it did not hold a copy of any legal advice obtained by Surrey Police.
19. For part (5) of the request, the Federation said that it did not hold a policy which states that its own legal advice should not be shared with members. It said it was simply relying on the established convention of client/legal adviser confidentiality by refusing to disclose its own legally privileged advice. The complainant was notified of the revised position and these parts of the request have been excluded from the scope of this decision notice.
20. For part (6) of the request, the Federation withdrew its reliance on section 40(5B) of the FOIA and told the Commissioner that it was willing to issue a fresh response to the complainant. However, it did not do so.
21. The analysis below considers whether the Federation was entitled to apply sections 36 and 42 of the FOIA to refuse parts (1), (2) and (3) of the request. The Commissioner has also considered whether section 40(5B)(a)(i) of the FOIA applies to part (6) of the request. She has also

considered the Federation's claim that it does not hold the information requested at part (7) of the request.

Reasons for decision

Section 36 – prejudice to effective conduct of public affairs

22. The Federation applied section 36(2)(b)(i) and (c) of the FOIA to withhold the information requested at parts (1) and (2) of the request (minutes of the negotiations meeting and all Federation emails, notes, memos, reports on the issue of RDIL matters). The Commissioner has viewed the withheld information.

23. Sections 36(2)(b)(i) and (c) state:

"(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—

(b) would, or would be likely to, inhibit—

(i) the free and frank provision of advice

...

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."

24. Section 36(2)(b)(i) is concerned with the processes that may be inhibited by disclosing the information. The Commissioner's guidance on section 36 states²:

"Information may be exempt under section 36(2)(b)(i) or (ii) if its disclosure would, or would be likely to inhibit the ability of public authority staff and others to express themselves openly, honestly and completely, or to explore extreme options, when providing advice or giving their views as part of the process of deliberation. The rationale for this is that inhibiting the provision of advice or the exchange of views may impair the quality of decision making by the public authority".

² <https://ico.org.uk/media/for-organisations/documents/2260075/prejudice-to-the-effective-conduct-of-public-affairs-section-36-v31.pdf>

25. Section 36(2)(c) is concerned with the effects of making the information public. On that point, the Commissioner's guidance states:

"Prejudice to the effective conduct of public affairs could refer to an adverse effect on the public authority's ability to offer an effective public service or to meet its wider objectives or purpose, but the effect does not have to be on the authority in question; it could be an effect on other bodies or the wider public sector. It may refer to the disruptive effects of disclosure, for example the diversion of resources in managing the effect of disclosure."

26. In order to engage section 36(2), it is necessary for a public authority to obtain the opinion of its qualified person (QP). The opinion must be on whether inhibition or prejudice (relevant to the subsection cited) would, or would be likely to, occur as a result of the information in question being disclosed.

27. The Federation confirmed that its QP was its National Secretary, who was authorised as such under section 36(o)(iii) of the FOIA. It provided a copy of its submission to him, showing that his opinion was requested on 22 October 2019 and obtained on the same date. The submission included copies of the withheld information and arguments for and against its disclosure.

28. The Commissioner is satisfied that the QP's opinion on the application of section 36(2)(b)(i) and (c) was sought and given. She has gone on to consider whether this opinion was a reasonable opinion to hold.

29. It is important to note that it is not necessary for the Commissioner to agree with the opinion of the QP in a particular case. Furthermore, the opinion does not have to be the only reasonable opinion that could be held, or the 'most' reasonable opinion. The Commissioner only needs to satisfy herself that the opinion was reasonable or, in other words, that it was an opinion that a reasonable person could hold.

30. In determining whether the QP's opinion was a reasonable one, the Commissioner has considered the following:

- whether the prejudice relates to the specific subsections that have been cited, in this case 36(2)(b)(i) and 36(2)(c). If the inhibition or the prejudice is not related to the specific subsections, the opinion is unlikely to be reasonable;
- the nature of the information and the timing of the request; and
- the qualified person's knowledge of, or involvement in, the issue.

31. In order for the opinion to be reasonable, it must be clear as to precisely how the envisioned prejudice may arise.

32. The submission to the QP notes that the Federation regularly negotiates on behalf of its members with police forces, the Government and other bodies to achieve the best outcomes on a range of matters for police officers across England and Wales.
33. The QP's opinion was that it is vital that the confidentiality surrounding negotiations regarding terms and conditions for police officers be preserved. Disclosure into the public domain of information about the Federation's negotiations on this matter would undermine future negotiations and it would also undermine public opinion of the Federation.
34. With regard to section 36(2)(b)(i), the Federation's position is that disclosing information on its discussions about RDIL reclaim would, in future, inhibit the free and frank provision of advice offered by Federation representatives by diminishing the candour with which they would express their views and opinions, due to concerns that they could be disclosed into the public domain. This is known as the 'chilling effect' argument.
35. The Federation explained that while it employs a number of full time officers to represent members at a national level, branch Federation representatives are serving police officers and that:

"There are a number of individuals that publicly disagree with the approach and decisions of the Federation and make this clear to us directly as well as on many different social media platforms. Many of our Officials have a presence on social media and are often personally attacked via this method. In order to ensure that our Officials remain fully engaged and feel able to debate the matter in an uninhibited manner we remain of the view that Section 36(2)(b)(i) applies."
36. The Federation also cited section 36(2)(c), that disclosure of the requested information would otherwise prejudice the effective conduct of public affairs. It contended that disclosure would adversely affect its ability to meet its wider objectives, which include negotiating on a range of issues nationally and with individual forces.
37. The Federation suggested that police forces and other bodies would become wary of engaging with it if confidential communications on a contentious matter were disclosed in response to FOIA requests. It argued that this would: *"... cause a level of distrust and suspicion that we do not respect the nature of confidentiality expected of us."*
38. It also felt that disclosure of information which looked at how the RDIL issue had arisen would, unfairly, reflect negatively on police officers as a whole, and create a climate in which it was harder for the police to carry out core policing duties:

"Publishing information to the public ... would give the incorrect impression that police officers cannot be trusted. There is already some feeling of animosity among some members of the public towards the police in general and we do not wish to inadvertently add fuel to any negative opinion. RIDL [sic] is an internal matter and has little to no impact on the efficiency of officers to carry out their duties and protect the public on a daily basis."

39. The Commissioner has considered all relevant factors to assess whether the QP's opinion was reasonable. In this case, she is satisfied that the QP had knowledge of relevant matters in order to give his opinion. She is also satisfied that the prejudice that he envisaged is relevant to the subsections of the exemptions that are being claimed.
40. The Commissioner has reviewed the withheld information and notes that it contains detailed information about discussions on the recovery of overclaimed RDIL by Surrey Police. It includes information about the scale of the issue, how to manage communications about the issue, the pros and cons of particular approaches, desired outcomes and strategies for management and matters about which legal advice has been sought. Individuals are also identifiable as having made particular contributions to certain parts of the discussions.
41. The Commissioner's established view on the chilling effect is that civil servants and other public officials should be expected to be impartial and robust when giving advice, and not easily deterred from expressing their views by the possibility of future disclosure. However, in this case she has had regard to the fact that branch representatives undertake Federation work alongside their duties as full-time police officers, and often work closely with the colleagues they represent.
42. In the circumstances of the case, and having reviewed the withheld information, the Commissioner is satisfied that it was reasonable for the QP to hold the opinion that inhibition and prejudice relevant to sections 36(2)(b)(i) and 36(2)(c) would occur if the information was disclosed.
43. The Commissioner is therefore satisfied that the exemptions at sections 36(2)(b)(i) and 36(2)(c) are engaged.

Public interest test

44. Section 36 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption contained at section 36 outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the requested information

45. The Federation acknowledged the public interest in openness and transparency surrounding bodies that are concerned with policing.

Public interest arguments in favour of maintaining the exemption

46. The Federation provided the following arguments:

"The public interest argument against disclosing in this instance was based on:

- *Relevance of the data to the public domain against retaining the sensitivity within our membership.*
- *Expectation of privacy from our members with regard to negotiation terms relating to active police officers*
- *Expectation of trust between the Federation and the Force*
- *Public opinion of active police officers – we assist in providing information which leads to a better understanding of the roles of officers in the community. The negotiations surrounding rest days in lieu is not considered to be a matter of wider public relevance as it could feed into the media and other agencies that seek to create a negative view of working officers."*

Balance of the public interest

47. As discussed above, the Commissioner accepts the QP's opinion that the prejudice envisioned under the exemptions at section 36(2)(b)(i) and 36(2)(c) would occur. That being so, the public interest in disclosing the requested information must be greater than the public interest in preventing the envisioned prejudice by withholding the information.
48. The complainant may have a personal interest in the information and he clearly disagrees with the outcome of the negotiations on RDIL reclaim, but he has not made a case that disclosure into the public domain is in the wider public interest.
49. There is no public interest in having scrutiny over public spending that would be served by disclosure, as the Federation is funded largely by its membership and not by the public purse. However, the Commissioner acknowledges that the general public interest in openness and transparency for its own sake would be served by disclosure.

50. In contrast, the Commissioner considers that the Federation has shown that disclosing sensitive information about personnel matters would undermine Sussex Police's ability to manage important staffing and resource issues, and the Federation's ability to represent its members (who are legally prevented from obtaining union-type representation by other means) over such issues. It would impact negatively on the standing of the police and would make it harder for the Federation to enter into productive dialogues with police forces and other bodies.
51. The Commissioner also considers that there is a public interest in Federation representatives being able to give advice and exchange views freely with other parties without being inhibited from doing so by the possibility that their communications will be put in the public domain. It is likely that members will receive the most effective representation that way.
52. Taking all the above into account, the Commissioner is satisfied that the public interest arguments in favour of maintaining the exemption carry more weight than those in favour of disclosing the information.
53. Her conclusion is therefore that the Federation was entitled to rely on sections 36(2)(b)(i) and 36(2)(c) to withhold the information requested at parts (1) and (2) of the request.

Section 40(5B) – personal information

54. The Federation applied section 40(5B)(a)(i) to neither confirm nor deny whether it held the information requested at part (6) of the request (the identity of any Federation representatives, or anyone acting on the Federation's behalf, who attended the RDIL negotiations and whether or not they had read the Federation legal advice prior to those negotiations).
55. During the investigation, the Federation told the Commissioner that it had changed its position on this part of the request, saying that it recognised that section 40(5B)(a)(i) was an "*incorrect exemption*". The Federation told the Commissioner that it was prepared to issue a fresh response to the complainant. However, although the Commissioner twice asked the Federation to notify the complainant of its revised position with regard to part (6) of the request, it did not do so. The Federation has not responded to the Commissioner's requests for an explanation as to why it has not issued the fresh response.
56. The Commissioner has therefore considered whether a claim that section 40(5B)(a)(i) applies could be maintained.
57. Section 40(5B)(a)(i) of the FOIA provides that the duty to confirm or deny whether information is held does not arise if it would contravene any of the principles relating to the processing of personal data set out

in Article 5 of the General Data Protection Regulation EU2016/679 to provide that confirmation or denial.

58. For the Federation to be entitled to rely on section 40(5B)(a)(i) of the FOIA to neither confirm nor deny whether it holds the information requested at part (6) of the request, the following two criteria must be met:
- confirming or denying whether the requested information is held must constitute the disclosure of a third party's personal data; and
 - providing this confirmation or denial must contravene one of the data protection principles.

Would confirming or denying that the requested information is held constitute the disclosure of a third party's personal data?

59. Section 3(2) of the Data Protection Act 2018 defines personal data as:-

"any information relating to an identified or identifiable living individual".

60. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
61. 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.
62. 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.
63. The main focus of the request in this case is the identity of the person(s) who represented the Federation at the RDIL negotiations and whether or not they had read the Federation legal advice prior to those negotiations.
64. For section 40(5B)(a)(i) to be engaged, the act of confirming or denying whether this information is held must, itself, involve the disclosure of personal data.
65. The Commissioner has had considerable experience of the circumstances in which this exemption is likely to be engaged. However, in this case, the Commissioner cannot see how an individual might be rendered identifiable as a result of the Federation merely confirming or denying whether it holds the name(s) of representatives, or anyone else acting

on its behalf, who were involved in RDIL negotiations and whether or not they viewed the legal advice. Furthermore, the Federation has not offered any arguments capable of supporting this position.

66. For the reasons set out above the Commissioner has concluded that, if the Federation was to confirm or deny whether it holds the requested information, this would not result in the disclosure of any third party's personal data. Therefore, the first criterion set out in paragraph 58 is not met and the Federation cannot rely on section 40(5B)(a)(i) of the FOIA in the circumstances of this case to refuse to confirm or deny whether it holds the information at part (6) of the request.

67. The Federation must now take the action at paragraph 4.

Section 42 – legal professional privilege

68. The Commissioner has considered the application of section 42 of the FOIA to withhold the information specified at part (3) of the request. Namely, the legal advice obtained by the Federation on the issue of RDIL reclaim.

69. Section 42(1) of the FOIA provides that information is exempt from disclosure if the information is protected by legal professional privilege (LPP) and this claim to privilege could be maintained in legal proceedings.

70. LPP protects the confidentiality of communications between a lawyer and client. It has been described by the *Information Tribunal in the case of Bellamy v The Information Commissioner and the DTI (EA/2005/0023)* ("Bellamy") as:

"... a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, her or its lawyers, as well as exchanges which contain or refer to legal advice which might be imparted to the client, and even exchanges between the clients and their parties if such communications or exchanges come into being for the purposes of preparing for litigation."

71. There are two categories of legal professional privilege – litigation privilege and legal advice privilege. The Federation maintains that the information in this case attracts legal advice privilege. Legal advice privilege covers confidential communications between a client and their professional legal adviser (who is acting in their professional capacity) which are made for the sole or dominant purpose of obtaining legal advice.

72. The Federation confirmed that it considered the information to be subject to legal advice privilege. It stated that the information is legal

advice on the subject of RDIL reclaim which was requested by the Federation's in-house legal team and provided to it by external solicitors.

73. The Commissioner has viewed the withheld information and is satisfied that it comprises formal legal advice that was sought by the Federation from a professional legal adviser. She therefore accepts that there was a professional legal adviser and client relationship between the two parties.
74. The Commissioner's guidance on section 42 states that LPP will be lost if there has been a previous, unrestricted disclosure of the information to the world at large, and it can no longer be considered to be confidential³.
75. The Commissioner is satisfied from the information she has seen that the legal advice has not been the subject of such a disclosure. The Commissioner is therefore satisfied that the legal advice attracts LPP. This is because the information in the legal advice is not publicly known and there is no suggestion that privilege has been lost or deliberately waived. The Commissioner therefore finds that section 42(1) is engaged.

Public interest test

76. Section 42 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption contained at section 42(1) outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the requested information

77. The complainant has sought to argue that, as a paying member of Surrey Police Federation:

"I am the client of the legal advice, the Federation is only my representative on my behalf. Legal privilege does not extend to bar the client from obtaining his own legal advice that was obtained on his behalf."

³ https://ico.org.uk/media/for-organisations/documents/1208/legal_professional_privilege_exemption_s42.pdf, paragraph 25 onwards

78. He also said that it was in the public interest for him, and other staff, to have access to the legal advice so as to properly defend themselves against Surrey Police's proposed recovery of the perceived debt.

79. The Federation said:

"The requirement to be transparent is paramount and assists in creating public confidence in our processes and procedures."

Public interest arguments in favour of maintaining the exemption

80. The Federation said:

"Legally privileged advice provided to the Federation in order to undertake negotiations are not disclosable under the FoIA legislation and would undermine any relationship between the PFEW and our lawyers."

81. It added:

"Any advice sought by the Federation is for the benefit and support of our members and as such serves no wider public interest."

Balance of the public interest

82. In balancing the opposing public interest factors under section 42, the Commissioner considers it necessary to take into account the in-built public interest in this exemption: that is, the public interest in the maintenance of LPP. The general public interest inherent in this exemption will always be strong due to the importance of the principle behind LPP: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice. A weakening of the confidence that parties have that legal advice will remain confidential undermines the ability of parties to seek advice and conduct litigation appropriately and thus erodes the rule of law and the individual rights it guarantees.

83. It is well established that where section 42(1) of the FOIA is engaged, the public interest in maintaining the exemption carries strong, in-built weight, such that very strong countervailing factors are required for disclosure to be appropriate. The Commissioner notes the decision in *Council v Information Commissioner and Gavin Aitchison (GIA 4281 2012)* where, at paragraph 58, Upper Tribunal Judge Williams said:

"...it is also, in my view, difficult to imagine anything other than the rarest case where legal professional privilege should be waived in favour of public disclosure without the consent of the two parties to it".

84. The Commissioner recognises the public interest in openness and transparency and she acknowledges the value in providing access to information to enable the public to understand more fully the conduct of public authorities and to encourage public debate and scrutiny.
85. However, with regard to the complainant's argument that he has client status and that disclosure to him would not mean the loss of the legal advice's legally privileged status, the Commissioner's established position is that disclosure under the FOIA is disclosure to the world at large, ie it is not a disclosure to him personally. This positions such disclosures as 'unrestricted' and, for the reasons set out in the Commissioner's guidance on section 42, the resultant loss of confidentiality would cause the loss of the legal advice's legally privileged status.
86. In weighing the complainant's interests against those of the Federation and its ability to seek confidential legal advice in furtherance of its wider responsibilities, the Commissioner does not consider that the interests of the complainant, or the public interest, are sufficiently strong to warrant the disclosure of information which is subject to LPP. She is satisfied that the public interest in maintaining the exemption outweighs the public interest in disclosure.
87. Her decision is therefore that the Federation was entitled to rely on section 42(1) of the FOIA to withhold the legal advice.

Section 1 – general right of access

Section 10 – time for compliance

88. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
89. Section 10(1) of the FOIA states that on receipt of a request for information, a public authority should respond to the applicant within 20 working days.
90. The Federation told the complainant that it did not hold the information he had requested at part (7) of the request, which asked the Federation to:

"Confirm the number of officers affected and the total RDILs owned [sic] and whether or not Federation representatives were aware of those numbers when entering negotiations."
91. The Commissioner asked the Federation a series of detailed questions aimed at understanding its reasons for believing it did not hold this information. The Federation confirmed that it did not hold any

information falling within the scope of point (7) and it briefly described the searches it had undertaken which led it to this conclusion.

92. The Commissioner then asked the Federation to reconsider its response to part (7), in light of information she had noticed in the meeting minutes it had withheld under section 36 (a copy of which it had supplied to the Commissioner) regarding the likely number of officers affected.

93. The Federation then responded:

"It is agreed that the we hold some information relating to the numbers of officers affected by the RDIL negotiations, however, as also indicated we hold only a small amount of information with regard to the overall matter. We did not wish to make public a number which may have been amended in subsequent documentation. We were not involved in ascertaining the numbers affected and therefore have no way to confirm the accuracy of the data we hold."

94. Having acknowledged that it held information falling within the scope of part (7) of the request, the Federation did not cite a valid exemption under which it may be withheld, or describe a reason which might allow the Commissioner to identify one which might be applicable. It offered no further comment on its response to part (7) of the request.

95. During the course of the investigation, the Commissioner wrote to the Federation eight times, asking it to answer questions that it had not responded to, or to expand on answers it had given which were lacking in detail or were otherwise unclear. She also had to issue an information notice, requiring the Federation to provide her with a copy of some of the information it was withholding. The Commissioner therefore considers that the Federation has had ample opportunity to clarify its final position with regard to each part of the request. It is not the Commissioner's job to apply exemptions on behalf of public authorities, where they have failed to do so.

96. The Commissioner also notes that the FOIA is concerned with transparency and it does not matter whether or not the information held is accurate. Where a public authority has concerns about the accuracy of the information it holds, it is still required to disclose any non-exempt information, although it may wish to explain or contextualise its position when responding.

97. By failing to confirm to the complainant that it holds information in respect of part (7) of the request, the Federation breached section 1(1) of the FOIA.

98. By failing to disclose to the complainant the information it holds in respect of part (7) of the request, to which it has not applied a non-

disclosure exemption, the Federation breached section 10(1) of the FOIA.

99. The Commissioner now requires the Federation to take the action set out in paragraph 4.

Other matters

100. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft Openness by Design strategy⁴ to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our Regulatory Action Policy⁵.

⁴ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁵ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

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

102. 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.

103. 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

**Samantha Bracegirdle
Senior Case Officer
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SK9 5AF**