

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 February 2022

Public Authority: Post Office Limited
Address: Ground Floor
Finsbury Dials
20 Finsbury Street
London
EC2Y 9AQ

Decision (including any steps ordered)

1. The complainant has requested information about a specific Post Office.
2. The Post Office disclosed some information but withheld the remainder under section 40(2) (personal information), section 43(2) (commercial interests) and section 41(1) (information provided in confidence). The Post Office subsequently withdrew its reliance upon section 41(1).
3. The Commissioner's decision is that the Post Office is entitled to withhold information under section 40(2). The Post Office is also entitled to withhold information under section 43 and the public interest lies in maintaining this exemption.
4. The Commissioner does not require the Post Office to take any steps.

Request and response

5. On 28 February 2021 the complainant wrote to the Post Office and requested:

"All documents, including relevant correspondence showing the action taken by Post Office Ltd since 1st March 2020 to secure the re-opening on a full-time basis of the Post Office, High Street, Neston, Cheshire. This includes, [sic] but is not restricted to, a definition of any support given to the postmaster of the said office and a list of that support."

6. For background, the majority of Post Offices are operated by independent retailers known as Postmasters.
7. The Post Office responded on 31 March 2021 and disclosed emails that fell within the scope of the request. The Post Office explained that the names and job titles of Post Office staff within the emails had been redacted in line with section 40(2) (personal information).
8. The Post Office confirmed that further redactions had been made in line with section 43(2) (commercial interests) and section 41(1) (information provided in confidence).
9. The Post Office confirmed that 'we can neither confirm nor deny whether Neston Post Office has received assistance and this information in itself would be a breach of both section 40(2) and section 41(1).'
10. Following an internal review the Post Office wrote to the complainant on 26 May 2021. It upheld its previous position.

Scope of the case

11. The complainant contacted the Commissioner on 22 June 2021 to complain about the way that their request for information had been handled. The complainant noted that since the request was made, Neston Post Office ('the Neston branch') had closed.
12. During the Commissioner's investigation, the Post Office withdrew its reliance upon section 41(1). It also clarified that it was incorrect to neither confirm nor deny that it held information about any support that the Neston branch had received. It confirmed that it held this information but was withholding this information under section 43(2).
13. The Commissioner therefore considers the scope of his investigation to be to determine whether the Post Office is entitled to rely upon section 40(2) as a basis for refusing to disclose the names and job titles of its staff. The Commissioner will also consider if the Post Office is entitled to rely upon section 43(2) as a basis for refusing to disclose details of any support it provided to the Neston branch.

Reasons for decision

Section 40(2) Personal information

14. Section 40(2) of the FOIA states:

“Any information to which a request for information relates is also exempt information if-

- (a) It constitutes personal data which does not fall within subsection (1), and
- (b) The first, second or third condition below is satisfied.”

Subsection (1) refers to exempt information that constitutes personal data of which the applicant is the data subject.

15. In this instance the relevant condition is contained in section 40(3A)(a) which states:

“The first condition is that the disclosure of the information to a member if the public otherwise than under this Act-

- (a) Would contravene any of the data protection principles.”

16. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA18'). If this is not the case then section 40 cannot be used as a basis for refusing to disclose the information.

17. Secondly, and only if the Commissioner is satisfied that the requested information constitutes personal data, he must establish whether disclosure of that information would breach any of the data protection principles.

Is the requested information personal data?

18. Part 1, Section 3(2) of the DPA18 defines personal data as:

“any information relating to an identified or identifiable living individual.”

19. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable from that information.

20. 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.

21. An identifiable living individual is one who can be identified, either 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.
22. The Commissioner has considered the information that has been redacted in line with section 40(2). Having done so, he is satisfied that names and job titles both relate to and identifies those Post Office staff who were involved in the decision to aware support to the Neston branch. The Commissioner is therefore satisfied that this information falls within the definition of 'personal data'.
23. The fact that information constitutes personal data does not automatically exclude it from disclosure under FOIA. The Commissioner must now consider whether disclosure of the requested information would contravene any of the data protection principles.
24. The most relevant data protection principle in this case is principle (a) which states that "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

Would disclosure contravene principle (a)?

25. Personal data is processed when it is disclosed in response to the request. This means that a public authority can only disclose personal data in response to an FOI request if to do so would be lawful, fair and transparent.
26. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK General Data Protection Regulation (UK GDPR) must apply to the processing.

Lawful processing: Article 6(1)(f) of the UK GDPR

27. 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."
28. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information made under the 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.

29. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interest test

30. The Commissioner must first consider the legitimate interest in disclosing the personal data to the public and what purpose this serves. 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 represent legitimate interests; they can be the requester's own interests, third party interests, or wider societal benefits. These interests can include the broad principles of accountability and transparency that underpin FOIA, or may represent the private concerns of the requestor.
31. It is important to remember that disclosure under FOIA is effectively disclosure to the world at large. The Commissioner is of the opinion that, if the requester is pursuing a purely private concern which is unrelated to any broader public interest then disclosure is unlikely to be proportionate. Legitimate interests may be compelling or trivial, but trivial interests may be more easily overridden by the fundamental rights and freedoms of the data subject during the test under stage (iii).
32. It is clear that the complainant is distressed at the inefficiency of the Neston branch. At the time that the request was made, the Neston branch was not open on a full time basis due to the pandemic.
33. The Post Office has explained there it there no legitimate interest to support the disclosure of the names and job titles of its staff. It argues that the complainant is 'concerned primarily with the actions taken by the Post Office as an organisation to secure the reopening of post office branch in Neston, Cheshire. He has not sought the identities of individual staff members, and the disclosure of the identities of those individuals identified in the email correspondence does not, it is suggested, serve the purposes for which the complainant is seeking the information he describes.'
34. The Commissioner agrees. The Commissioner has had sight of the complaint that led the complainant to make the request for information. During this correspondence, the complainant expressed concern about

the Post Office's processes to support the Neston branch and not individual staff.

35. The Commissioner accepts that other individuals affected by the Neston branch closure may be interested to know what support was offered to it. However, the Commissioner also believes that staff names and job titles contained within these emails are only representatives of the public authority and the identity of such individuals may only be of limited interest to the general public.
36. However, the Commissioner also accepts that legitimate interests may be represented by the broad principles of accountability and transparency that underpin FOIA. Therefore, the Commissioner will proceed to the necessity test.

Necessity test

37. The Commissioner must now consider if disclosure is necessary or if there is an alternative method of meeting this legitimate interest.
38. 'Necessary' means more than desirable but less than indispensable or absolute necessity. The necessity test is a means of considering whether disclosure under FOIA is necessary to meet the legitimate interest identified, or whether there is another way to do so that would interfere less with the privacy of individuals.
39. Having reviewed the emails in question, the Commissioner is not convinced that disclosure of the staff names and job titles are necessary to meet what appear to be the complainant's main interests, or any wider legitimate interest.
40. At the time of writing this notice, 1007 signatures had been gathered on an online petition calling on the Post Office to provide the Neston branch with further support. Furthermore, the Post Office Consultation Hub ('the Hub') provides instructions on the six week local consultation period that the Post Office undertakes before making any decisions on local branches. Such consultations are carried out in accordance with the Post Office's principles of community engagement. The Hub also provides details of how to raise a complaint if there are any concerns that the principles of community engagement were followed.
41. The Hub also provides contact information for the Post Office's National Consultation team, should any individual wish to make representations about the Neston branch.
42. The Commissioner also notes that Justin Madders, MP for Ellesmere Port and Neston, is campaigning to have the Neston branch reopened and has raised the matter in Parliament. Any constituent wishing to express their views may do so via their MP.

43. Ultimately, the Commissioner believes that any decision made regarding the Neston branch will be made by an individual acting in their official capacity and representing the Post Office. The names and job titles of the staff in question does not make the Post Office any more transparent as to why it decided to provide the support it did – this information has in fact been disclosed to the complainant.
44. Furthermore, there have been many opportunities and avenues for individuals to express their views about the Neston branch. Any representations that a member of the public wishes to make should be done via the routes outlined above; they do not require the personal data contained in the emails to do so.

The Commissioner's view

45. The Commissioner has therefore decided that disclosure is not necessary to meet any legitimate interest in disclosure and he has not gone on to conduct the balancing test.
46. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a). The Commissioner has therefore decided that the Post Office was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

Section 43(2) Commercial Interests

47. Section 43(2) states:

'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).'

48. The Commissioner's guidance¹ 'Section 43 - Commercial interests' states 'A commercial interest relates to a legal person's ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent.' For this purpose, the Post Office represents the legal person in question.
49. In order for a prejudice based exemption such as section 43(2) to be engaged there must be likelihood that disclosure would, or would be likely to, cause prejudice to the interest that the exemption protects. In

¹ [Section 43 - Commercial interests | ICO](#)

the Commissioner's view, three criteria must be met in order to engage a prejudice based exemption:

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and,
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

50. Consideration of the exemption at section 43(2) is a two-stage process: even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

51. The Commissioner has seen the information that is being withheld under section 43(2). It outlines the support that the Post Office provided to the Neston branch, referred to within the request.

The applicable interests

52. The Post Office believes that disclosure 'would or would likely be prejudicial to the commercial interests of the Post Office itself.'

53. The Commissioner is satisfied that the arguments presented by the Post Office outline how disclosure would prejudice the applicable interests within the relevant exemption.

The nature of the prejudice

54. The Commissioner must now consider if there is a causal link between the information that is being withheld and the prejudice that section 43(2) is designed to protect.

55. The Post Office has explained 'The email contains information that impliedly refers to a discretionary support scheme established by the Post Office to support Postmasters who experienced financial difficulties as a result of the difficult trading conditions brought about by Covid-19 pandemic. There is explicit reference to two "hardship" applications made by the Neston Postmaster and the sums of money paid on two occasions.'

56. The Post Office has explained that its relationship with Postmasters has been damaged by the Post Office's association with the Horizon IT system.² As a result of this flawed IT system, many Postmasters were wrongfully convicted of crimes and some even served jail sentences. These criminal convictions have since been overturned. The Post Office Horizon IT inquiry, led by Sir Wyn Williams, was launched in September 2020.
57. The Post Office has explained that it is also carrying out work examining the employment status of all Postmasters.
58. The Post Office is concerned that disclosure, against the backgroup of these events, could further damage its relationships with Postmasters and deter Postmasters from willingly sharing information with the Post Office.
59. The Commissioner is not persuaded by this argument. Firstly, the support offered to the Neston branch is not linked to the Horizon IT system in any way. The Post Office cannot cite any fractious relationship it may have as a basis for refusing to disclose information. The Post Office has failed to explain why disclosure would cause the relationship to become further damaged.
60. The Commissioner is also not convinced that disclosure would deter any Postmasters from engaging willingly with the Post Office as all Postmasters should be aware of the potential disclosure of information under FOIA. The Horizon IT system damaged the relationship as it accused Postmasters of crimes they did not commit; not because of the disclosure of any internal communication.
61. Furthermore, even though the argument might seem obvious, the Post Office has not explained to the Commissioner how further damage to its relationship with Postmasters would affect its own commercial interests. The Commissioner does not accept this argument.
62. The Commissioner would argue that disclosure may actually improve the relationship, demonstrating the Post Office's support to its Postmasters during the pandemic.
63. The Post Office has explained that 'Determinations of whether to award extraordinary support and the amount to be paid are determined individually on a case-by-case basis, with reference to the specific facts of each case.'

² [Post Office scandal: What the Horizon saga is all about - BBC News](#)

64. The Post Office is concerned that, should details of the support offered to the Neston branch be made public, this may create an expectation as to the amount of support that other Postmasters are entitled to request or receive.
65. The Commissioner acknowledges that a Postmaster applying for a grant may not be aware of the specifics of the Neston branch's application, such as performance, finances etc, in order to replicate it. However, the Commissioner accepts that a Postmasters application for support may be influenced by disclosure of the amount paid to the Neston branch.
66. The Commissioner also accepts that the Post Office must grant support on a purely on the circumstances on the case and not based on expectations created by any previous support provided to another branch. The Commissioner accepts this argument.

Likelihood of the prejudice

67. The Post Office has confirmed it assesses 'the risk of harm as being real and significant, given the level of exposure to potential applications for support.' The Post Office appears to be relying on the lower threshold of prejudice – would be likely to.
68. The Commissioner's guidance 'The Prejudice Test'³ defines this level of prejudice as 'there must be more than a hypothetical or remote possibility of prejudice occurring; there must be a real and significant risk of prejudice, even though the probability of prejudice occurring is less than 50%.'
69. The Post Office has explained that it anticipates to receive a high level of applications for support and this is why it considers the potential for prejudice as real and significant. The Commissioner notes the effect that the coronavirus has had on the Post Office, including reduced operating hours and the closing of branches.⁴

Is the exemption engaged?

70. The Commissioner agrees that disclosure of the support offered to the Neston branch would be likely to create an expectation as to the support that other branches might receive. In turn, this would be likely to affect the Post Office's ability to award such grants on a case by case basis.

³ [the_prejudice_test.pdf \(ico.org.uk\)](https://ico.org.uk/for-the-public/transparency/the-prejudice-test.pdf)

⁴⁴ [Two Post Offices shut each week as rural branches disappear \(telegraph.co.uk\)](https://www.telegraph.co.uk/news/health/coronavirus/2020/04/23/two-post-offices-shut-each-week-as-rural-branches-disappear/)

The Commissioner accepts that this would be likely to prejudice the Post Office's commercial interests.

71. The exemption is engaged and therefore the Commissioner has gone onto consider whether the public interest lies in disclosure or the maintaining of the exemption.

Public interest test

Public interest in disclosing the information

72. The Post Office has acknowledged 'there is a strong, inherent case to be made for openness and transparency in the conduct of the Post Office's business.'
73. The Commissioner also acknowledges that disclosure would help to inform debate surrounding the support offered to branches during the pandemic, including the Neston branch.

Public interest in maintaining the exemption

74. The Post Office has explained that it proactively publishes information about its governance processes and financial performance in order to be open and transparent.
75. The Post Office also acknowledged that while it is publicly-owned, it is ultimately a commercial organisation and a limited company and its ability to operate as such should not be compromised by its obligations under FOIA.
76. The Post Office has explained that it is within the public interest to maintain its own financial performance and profitability so it can remain viable and continue to offer the range of public services that it does.

Balancing the public interest arguments

77. The Commissioner considers that the public interest lies in maintaining the exemption.
78. He acknowledges the complainant's concerns about the efficiency of their local branch which has now closed. The complainant is concerned that the Post Office has a duty to its Postmasters and their customers and wants to know how the Post Office carried out that duty.
79. However, there are many ways that the complainant, and others, can make representations to the Post Office about this matter and hold it accountable. The amount of support offered does not seem relevant in comparison to the fact that it was offered, even though it was insufficient to keep the branch operational.

80. However, it is that exact information that would be likely to prejudice the commercial interests of the Post Office and the Commissioner is mindful of the important services it offers to the public.
81. Whilst the Post Office is publicly owned, it is also a commercial enterprise responsible for over 11,500 branches, making it the biggest retail network in the U.K. The Commissioner accepts that the exempt information could potentially be used to the commercial detriment of the Post Office. He considers that such consequences are not in the public interest and is satisfied that the exempt information may be withheld.

Right of appeal

82. 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

83. 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.
84. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF