

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

### **Decision notice**

**Date:** 28 May 2024

**Public Authority:** Home Office  
**Address:** Peel Building  
2 Marsham Street  
London  
SW1P 4DF

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

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1. The complainant has requested information about the recipients of the Queen's or King's Police Medal. The Home Office refused to disclose the information, citing section 21(1) (information accessible to applicant by other means) and section 40(2) (personal information) of FOIA as its basis for doing so.
2. The Commissioner's decision is that the Home Office was correct to rely on sections 21(1) and 40(2) to refuse to disclose the requested information.
3. The Commissioner does not require the Home Office to take any further steps.

#### **Request and response**

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4. On 22 November 2023, the complainant wrote to the Home Office and requested information in the following terms:

"Regarding the Queen's/King's Police Medal (QPM and KPM), please provide a description of each of the recipients 2018-22 as follows:

[1] Police Force

- [2] Rank
- [3] Gender
- [4] Ethnicity

I do not require names or personal details.”

5. The Home Office responded on 18 December 2023. It confirmed that it holds the requested information, but that it was withholding the information at parts 1 and 2 of the request in accordance with section 21(1) of FOIA, and that it was withholding the information at parts 3 and 4 of the request in accordance with section 40(2) of FOIA.
6. Following an internal review the Home Office wrote to the complainant on 16 February 2024. It maintained its original position.

## Reasons for decision

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### Section 21 – information accessible to applicants by other means

7. The intended purpose of section 21 is to remove information which an applicant can access via another route from the general right of access under section 1 of FOIA.
8. Section 21 is an absolute exemption which means that there is no requirement to carry out a public interest test, if the requested information is exempt.
9. The Home Office explained to the complainant that the police force and rank of the recipients is already published. It provided the complainant with a link<sup>1</sup> to the page of the government website which contains all of the honours lists within the timeframe specified by the complainant in the request.
10. The Commissioner has viewed the published information and he is satisfied that each list within the specified timeframe can be accessed, and clearly states the police force and rank alongside the name of each recipient of the QPM or KPM. Compiling all the requested information from these sources would not be a quick task. However, section 21 relates to the ease with which the information can be accessed, not the ease with which the requester can re-use it for their chosen purpose.

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<sup>1</sup> [Honours: lists, reform and operation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/honours-lists-reform-and-operation)

11. The Commissioner therefore finds that the Home Office was entitled to rely on section 21(1) of FOIA to refuse to disclose the information at parts 1 and 2 of the request.

### **Section 40 – personal information**

12. 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.
13. 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').
14. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
15. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

### **Is the information personal data?**

16. Section 3(2) of the DPA defines personal data as:  
"any information relating to an identified or identifiable living individual".
17. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
18. 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.
19. 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.
20. The requests asks the Home Office to provide four individual pieces of data about each medal recipient – essentially creating a mini-profile of each recipient. Given that two of those pieces of data (force and rank)

are already in the public domain, comparing the information in the mini-profile to the published lists of recipients would allow a motivated individual to link a mini-profile to a named individual. Having done so based just on force and rank, the individual would then be able to determine each individual's ethnicity and gender – which is not in the public domain.

21. The information therefore relates to living individuals who can be identified and is thus their personal data.
22. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
23. The most relevant principle in this case is principle (a).

### **Would disclosure contravene principle (a)?**

24. Article 5(1)(a) of the UK GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

25. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
26. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

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

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, in particular where the data subject is a child”<sup>2</sup>

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<sup>2</sup> Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

28. As it is particularly sensitive, if the requested information is “special category” data, in order for disclosure to be lawful and compliant with principle (a), it also requires one of the ten conditions for processing set out in Article 9 of the UK GDPR to be met.

**Is the information special category data?**

29. Article 9 of the UK GDPR defines “special category” data as being personal data which reveals racial, political, religious, or philosophical beliefs, or trade union membership; and genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health, or data concerning a natural person’s sex life or sexual orientation.
30. Having considered the wording of the request, the Commissioner is satisfied that the ethnicity information sought by part 4 of the request meets the definition of special category data.
31. The Commissioner considers that the only Article 9 conditions that could be relevant to a disclosure under FOIA are condition (a) (explicit consent from the data subject) or condition (e) (data made manifestly public by the data subject).
32. The Commissioner has not been presented with any evidence that the individuals concerned have specifically consented to their ethnicity being disclosed to the world at large in response to the request, or that they have deliberately made this information available to the general public.
33. As none of the conditions required for processing special category data are satisfied, disclosure of the information at part 4 of the request would be unlawful, and therefore would breach principle (a). Consequently the Commissioner finds that the Home Office was entitled to refuse to disclose the information at part 4 of the request, in accordance with section 40(2) of FOIA.
34. With regard to the remaining information at part 3 of the request (gender of the data subjects), in considering the application of Article
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However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

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

### **Legitimate interests**

36. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.

37. Further a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

38. The Commissioner has understood the complainant's reason for seeking this data as determining whether or not there is any bias or inequality in how the medal recipients are chosen. He therefore accepts that the complainant has an interest in understanding the breakdown of the four categories listed in the request. There is also a general legitimate interest in public authorities demonstrating that they are open and transparent.

### **Is disclosure necessary?**

39. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

40. Whilst the Commissioner accepts that there is a legitimate interest in understanding whether this (or indeed any other) honour is being bestowed fairly, he is not satisfied that publishing every recipient's

gender alongside their name is a proportionate means of achieving this aim.

41. The legitimate interest the complainant has identified could be met by publication of statistics which show the gender of recipients, but which are properly anonymised. It is not clear whether the Home Office currently publishes such a breakdown but, even if it does not, it does not mean that publishing each recipient's gender is necessary to meet the legitimate interest.
42. As processing is not necessary, it would be unlawful and consequently section 40(2) of FOIA applies to this information.

### **Other matters**

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43. The Commissioner notes that the very precise format in which the complainant asked to receive their information is what has caused half of it to be exempt. They may have had their own reasons for asking for the data in that format, but it is what has made this request unsuccessful.
44. Were the complainant to request separate tables of statistical data (for example one table breaking down recipients by rank and by gender, another by rank and by ethnicity), it is much less likely that some or even any of that information would be personal data.

## **Right of appeal**

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45. 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)

46. 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.
47. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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