

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 28 November 2012

**Public Authority:** Department for Transport  
**Address:** Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

#### Decision (including any steps ordered)

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1. The complainant requested workplace contact details of a Department for Transport (DfT) official. The DfT refused to disclose this information and cited the exemption provided by section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that the DfT cited the exemption provided by section 40(2) incorrectly and that this information should have been disclosed.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose to the complainant the requested information.
4. The public authority 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.

#### Request and response

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5. On 6 July 2012, the complainant wrote to the DfT and requested information in the following terms:

*"Please supply the email address and direct telephone number of [named individual] blue badge team."*

6. The DfT responded on 26 July 2012. The request was refused, with the exemption provided by section 40(2) (personal information) of the FOIA cited.
7. The complainant responded on 4 August 2012 and requested an internal review. It responded with the outcome of the review on 13 August 2012 and stated that the refusal of the request was upheld.

## Scope of the case

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8. The complainant contacted the Commissioner on 13 August 2012 to complain about the way his request for information had been handled. The complainant argued that the information he had requested should have been disclosed as the individual named in the request was not, as the DfT had suggested, a junior employee and that it was legitimate for members of the public to be able to contact that individual.

## Reasons for decision

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### Section 40

9. Section 40(2) of the FOIA provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. The task for the Commissioner when considering this exemption is twofold; first, it must be addressed whether the requested information constitutes the personal data of any third party. Secondly, it must be considered whether the disclosure of this information would be in breach of the data protection principles.
10. Covering first whether the requested information is the personal data of any third party, the definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA):

*"personal data' means data which relate to a living individual who can be identified-*

*(a) from those data, or*

*(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller".*

11. The view of the Commissioner is that it is clear that the information requested would constitute the personal data of the individual named in the request. The wording of the request means that any information

falling within the scope of it would both identify and relate to the individual named in the request. This information would, therefore, constitute the personal data of that individual in accordance with the definition given in section 1(1) of the DPA.

12. Turning to whether disclosure of that personal data would be in breach of any of the data protection principles, the Commissioner has focussed here on the first data protection principle. The first principle requires that personal data be processed fairly and lawfully and the particular focus here is on whether disclosure would be, in general, fair to the data subject. In forming a view on whether disclosure would be fair, the Commissioner has taken into account the reasonable expectations of the data subject, the consequences of disclosure upon the data subject and whether there is legitimate public interest in the disclosure of the information in question.
13. On the issue of the reasonable expectations of the data subject, the DfT has stated that it has consulted the data subject and that this individual did not consent to the disclosure of their contact details. Whilst this is relevant here, it is important that the DfT does not give the impression to its staff that withholding their consent to the disclosure of their personal data has the result of removing that information from the sphere of the FOIA entirely. Even in the absence of consent, circumstances may mean that disclosure is nonetheless fair.
14. In this case the DfT referred to the data subject having 'reluctantly' agreed to the disclosure of his name. Whilst this may suggest that the data subject prefers to maintain a high degree of privacy about his occupation, the Commissioner notes that details of the occupation of this individual are publicly available to view on the website LinkedIn. Given this, and given that knowledge that an individual works as an official within the DfT would not generally be considered sensitive, the Commissioner does not accept that there is any unusually high expectation of privacy held by the data subject in relation to their occupation.
15. The DfT has described the data subject as a junior official as he is not at Senior Civil Service level. However, this individual has a job title - Head of the Regulatory Services and Information Branch - that does not concur with what the description of 'junior official' would commonly be taken to mean. Whilst this individual may not hold a position that is within the entity known as the Senior Civil Service, the Commissioner's view is that their position of "Head of..." means that describing this individual as a junior official is not accurate.
16. The DfT has stated that this individual is not in a public-facing role. However, it has also stated that their role is to lead a team that "*handle correspondence on general traffic management issues*". Given this

description it appears likely that there will be circumstances where this individual is required to communicate with the public, even if their role does not generally involve responding to correspondence personally. This could be, for example, where complaints are made about responses provided by members of their team. For this reason the Commissioner is of the view that it is unlikely to be entirely accurate to describe the role of this individual as not public facing.

17. In general the approach of the Commissioner is that information that relates to an individual in their professional capacity will be subject to a significantly lower expectation of privacy than information concerning their private life. In particular, in this case he believes that it would be a reasonable expectation for an official at the level suggested by the job title of the data subject that their work contact details may be subject to disclosure. Although the DfT may have created an expectation that this information would not be disclosed by seeking consent to disclosure, this expectation was not realistic for the reasons given above.
18. As to the consequences of disclosure upon the data subject, the DfT has suggested that disclosure of the contact details may lead to the data subject receiving a high volume of telephone calls and that this may be a distraction from their day-to-day work. In response to this point the Commissioner refers to an example given in his published guidance on requests for personal data about public authority employees<sup>1</sup>.
19. In that example, the Commissioner found that it would be fair to disclose the workplace telephone numbers of public authority employees as the employees in question were of sufficient seniority that they would be capable of coping with any unwelcome phone calls that resulted. The Commissioner believes the situation to be similar here; whilst it may be the case that the disclosure of this telephone number will lead to the data subject receiving a higher volume of telephone calls, and that some of these may be unwelcome or the behaviour of the callers inappropriate, the data subject should be of sufficient seniority to cope with this without distress.
20. In response to the point made by the DfT that this could lead to a distraction from the day-to-day work of the data subject, the Commissioner would expect that the DfT will have measures in place to deal with problems arising from telephone contact. Such measures could be, for example, informing a caller that they may only communicate in

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[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/freedom\\_of\\_information\\_and\\_environmental\\_information.aspx](http://www.ico.gov.uk/for_organisations/guidance_index/freedom_of_information_and_environmental_information.aspx)

writing in future. The Commissioner would also stress that if the primary concern of the DfT was that the complainant may use the telephone number inappropriately, by making an excessive volume of calls for example, it would have been more appropriate to refuse the request as vexatious under section 14 of the FOIA.

21. The Commissioner is of the view, therefore, that even were disclosure to lead to a significant increase in the volume of telephone calls received by the data subject, this is not likely to result in distress to that individual. As to whether disclosure would be likely to lead to distress in other ways, the Commissioner believes not, as this information relates to the data subject solely in their professional capacity and so is not of any particular sensitivity.
22. As to whether there is any legitimate public interest in this information, whilst the exemption provided by section 40(2) is not qualified by the public interest, in relation to any disclosure of personal data it is necessary for a condition from Schedule 2 of the DPA to be fulfilled in order to comply with the first data protection principle. The Commissioner has considered here the sixth condition, which is satisfied if the disclosure is necessary in the public interest.
23. The Commissioner believes that there is a public interest in favour of disclosure as this would facilitate ease of contact with a public authority and, in particular, with an official whose role involves responding to correspondence from the public. The DfT has argued that this public interest is met through generic contact details, not relating to any individual, that were disclosed to the complainant. In response to this point the Commissioner would note that it is a standard approach for an organisation to provide both generic contact details, such as a telephone helpline number and a departmental email address, but also to provide the contact details of individuals in order to simplify the process of communicating with the correct individual. There is, therefore, public interest in disclosure of the information in question, even if there is also disclosure of generic contact details.
24. As to whether disclosure of the information would be necessary for the purposes of that public interest, the issue here is whether this public interest could be served through other means without any impact upon the privacy of the data subject. The stance of the DfT in response to this request suggests that this information is not available elsewhere so the Commissioner finds that it would be necessary for this to be disclosed in response to the complainant's request in order to satisfy this public interest.
25. The Commissioner has found that the data subject could not hold a reasonable expectation that the information in question would not be disclosed and that this disclosure would not result in distress to the data

subject. He has also found that disclosure is necessary for the purposes of a legitimate public interest. He therefore concludes that disclosure would be fair and in accordance with the first data protection principle.

26. As disclosure would not be in breach of the first data protection principle, the overall finding of the Commissioner is that the exemption provided by section 40(2) is not engaged. At paragraph 3 above the DfT is required to disclose this information.

## **Other matters**

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27. When corresponding with the ICO the DfT stated that if the ICO did not agree that section 40(2) was engaged, it wished to have the opportunity to consider other exemptions, in particular section 36(2)(c) (prejudice to the effective conduct of public affairs). The Commissioner did not, however, revert to the DfT to offer it the opportunity to cite additional exemptions prior to issuing this notice.
28. The approach of the ICO is to offer a public authority one further opportunity to explain its position following the receipt of a complaint made under section 50 of the FOIA. Where a public authority wishes to cite further exemptions, it should do so at the earliest opportunity. This is particularly important where section 36 is cited owing to the additional period of time that is likely to be taken whilst the qualified person considers their opinion.
29. In the interests of resolving cases promptly, the ICO will not generally revert again to a public authority to offer the chance to cite further exemptions prior to issuing a decision notice.

## Right of appeal

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30. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

31. 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.
32. 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** .....

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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