

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 August 2013

Public Authority: Royal Mail Group
Address: Information Rights Team
2nd Floor
Royal Mail Sheffield
Pond Street
Sheffield
S98 6HR

Decision (including any steps ordered)

1. The complainant requested information from the Royal Mail in relation to the percentage first time delivery rate by its Parcelforce depot in Deeside.
2. The Commissioner's decision is that the exemption in section 43(2) of the FOIA is engaged in respect of this information with the public interest being balanced in favour of the exemption being maintained.
3. The Commissioner therefore does not require the Royal Mail to take further any steps in this matter.

Request and response

4. On 21 September 2012 the complainant wrote to the Royal Mail and requested information in the following terms:

"Please provide answers to the following questions, which are made under the Freedom of Information Act.

1. *In the past 12 months to date, what is the percentage first time delivery rate of deliveries conducted by the Parcelforce Deeside depot?*
2. *In the past 12 months to date, what is the percentage first time delivery rate of deliveries conducted by the Parcelforce Deeside depot to postcodes beginning LL?*

3. *In the past 12 months to date, what is the percentage first time delivery rate of deliveries conducted by any Parcelforce depot to postcodes beginning LL?*
4. *In the past 6 months to date, what is the percentage first time delivery rate of deliveries conducted by the Parcelforce Deeside depot?*
5. *In the past 6 months to date, what is the percentage first time delivery rate of deliveries conducted by the Parcelforce Deeside depot to postcodes beginning LL?*
6. *In the past 6 months to date, what is the percentage first time delivery rate of deliveries conducted by any Parcelforce depot to postcodes beginning LL?"*
5. The Royal Mail responded on 9 October 2012. It stated that it did not hold any recorded information falling within the scope of questions 2, 3, 5 and 6 of the request but did hold information in relation to questions 1 and 4 which it was withholding under section 43(2) of the FOIA.
6. The complainant wrote to the Royal Mail on 22 October 2012 and said he accepted that it did not hold any recorded information in relation to questions 2, 3, 5 and 6 of his request. However, in relation to its response to questions 1 and 4 he requested an internal review.
7. Following an internal review the Royal Mail wrote to the complainant on 19 November 2012 upholding its original decision to withhold the requested information under section 43(2) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner 6 December 2012 to complain about the way his request for information had been handled. In particular, he said that he wanted to Commissioner to investigate the Royal Mail's decision to apply the exemption under section 43(2) of the FOIA to questions 1 and 4 of his information request dated 21 September 2012.
9. The scope of the Commissioner's investigation is therefore confined to the Royal Mail's response to questions 1 and 4 of the complainant's request.

Chronology

10. On 30 January 2013 the Commissioner wrote to the Royal Mail to request a copy of the withheld information together with its further arguments in relation to its application of section 43(2) of the FOIA.
11. The Royal Mail responded on 14 February 2013 with a copy of the withheld information together with its further and more detailed arguments in relation to section 43(2) of the FOIA. It reiterated its view that the disclosure of this information would be likely to prejudice its commercial interests and those of Parcel Force under section 43(2) of the FOIA.
12. On 7 March 2013 the Commissioner shared the Royal Mail's further arguments with the complainant who confirmed on 15 March that despite these he still wished to proceed with his complaint.

Findings of fact

13. Parcelforce Worldwide is a division of the Royal Mail Group Limited of which the Royal Mail is also a part¹.
14. Parcelforce Worldwide has a separate UK network. According to the Royal Mail it has one of the highest quality of service performances in the UK express parcel market, with a first-time delivery rate for the year ending March 2012 of 96.8 per cent²

Reasons for decision

Section 43(2) of the FOIA

15. Section 43(2) of the FOIA states that:
-

¹ <http://www.parcelforce.com/help-information/about-us/our-company>

²

<http://www.royalmailgroup.com/sites/default/files/RMG%20FULL%20YEAR%20RESULTS%20STATEMENT%202012.pdf>

"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)."

16. Section 43(2) is a qualified exemption and is therefore subject to the public interest test.

Commercial interests

17. The term 'commercial interests' is not defined in the FOIA. However the Commissioner considers that a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services.
18. The withheld information consists of performance data relating to the percentage of first time deliveries conducted by the Parcelforce Deeside depot for the 6 and 12 month periods up to September 2012.
19. The Royal Mail has pointed out this performance data relates to Parcelforce's ability to participate competitively in the commercial activity of providing a parcel collection and delivery service.
20. The complainant does not believe that the information requested is commercial as he has argued that it relates to performance rather than operations or finance.
21. The Commissioner has considered all the arguments and is satisfied this information relates to the commercial interests of Parcelforce and those of Royal Mail and therefore that it falls within the scope of the exemption under section 43(2) of the FOIA.
22. However, for this exemption to be engaged disclosure would have to prejudice or be likely to prejudice the commercial interests of Parcelforce and the Royal Mail.
23. In this case the Royal Mail has argued that the prejudice caused by disclosure would be likely to occur.
24. In reaching a decision on the question of the likelihood of prejudice the Commissioner is mindful of the Tribunal's comments in the case of John Connor Press Associates Limited v ICO [EA/2005/0005] where it interpreted the expression 'likely to prejudice' within the context of the section 43 exemption as meaning that, 'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk'.
25. In reaching a decision on the likelihood of prejudice the Commissioner also believes that the public authority should be able to show some

causal link between the potential disclosure of the withheld information and the prejudice it has argued is likely to occur.

26. The Royal Mail has pointed out that Parcelforce Worldwide is an entirely commercial organisation operating in a highly competitive market place providing a collection and delivery service for express packages and parcels within the UK and throughout the world.
27. The Royal Mail has argued that disclosure of the requested information would be likely to prejudice its commercial interests and those of Royal Mail for a variety of reasons.
28. Firstly, the Royal Mail believes that disclosure of information relating to Parcelforce's first time delivery rates for a specific depot would place it at a significant disadvantage to its competitors which are not required to publish equivalent performance data themselves. It has argued that the publication of this information would provide its competitors with an unfair insight into Parcelforce's local performance whilst being able to control what information about its own performance is made available to its customers and rivals. For this reason the Royal Mail does not believe that Parcelforce would be competing on a level playing field with other parcel carriers.
29. Secondly, the Royal Mail believes that the publication of the requested information would allow its competitors to use the local performance information to identify areas where performance is strong and those areas where it is weak. This would provide its competitors with the opportunity to adapt their own services, sales and marketing strategies and target those areas where potential advantages might be made. Royal Mail does not therefore believe that this would allow Parcelforce to compete with these companies on a like for like basis.

Conclusion

30. The Commissioner having considered all the arguments cited above has concluded that disclosure of the requested information would be likely to prejudice the commercial interests of the Royal Mail and Parcelforce by placing them at an unfair advantage to its competitors and not allowing competition on a level playing field.
31. As section 43(2) of the FOIA is a qualified exemption the Commissioner has gone on to consider the public interest in relation to the application of this exemption. Specifically, he has considered whether the public interest in maintaining the exemption outweighs the public information in disclosing the information.

Public interests in favour of maintaining the exemption

32. The Royal Mail has argued that there is a significant public interest in allowing companies to compete fairly with each other on a level playing field and does not believe that it would serve the interests of the public to place Parcelforce at a commercial disadvantage by the disclosure of the requested information. The Royal Mail has argued that there is a public interest in promoting fair competition and ensuring public bodies are allowed parity of treatment with competitors in the private sector.
33. The Royal Mail does not believe that the publication of the performance figures for the Deeside depot (which is the subject of the request) or indeed the performance figures for any other depot would be in the public interest as it would be likely to prejudice Parcelforce's commercial interests. Parcelforce operates in a very competitive market and the Royal Mail believes that the publication of the requested information would allow its competitors to inform their own business strategy and help to market and promote their own services.
34. The Commissioner understands that the Royal Mail Group, of which the Royal Mail is a part, is reliant on all revenue generated by its commercial products and services including those from Parcelforce to support the provision of the universal (one price goes anywhere) postal service on which the public depends. The Royal Mail does not believe that it would be in the public interest to place Parcelforce at a disadvantage in competing for those revenues regardless of whether or not the impact was a local level only. It has added that no loss of revenue would be viewed as trivial.
35. It could be argued that the public interest in openness, transparency and accountability is already satisfied by the information published in the Royal Mail Group's annual report which includes the national first time delivery rate.

Public interests in favour of disclosing the requested information

36. The Royal Mail accepts that there is a general public interest in publicly owned bodies being open, transparent and accountable in relation to the performance of their functions which it recognises can help to inform the public debate. However, it believes that this interest must be balanced against the public interest in the maintenance of fair competition, a level playing field and its own commercial success.
37. The Royal Mail recognises that the disclosure of the requested information might arguably serve the interests of actual customers and prospective ones in deciding whether to use Parcelforce's services. It recognises that the performance in a particular area is vitally important to customers and can be a selling point for a company when compared to other parcel delivery companies. However, in the absence of

comparative information from its rival companies, the Royal Mail does not believe that this information would fairly inform a customer's choice. Furthermore, it believes that disclosure of the performance figures for local depots would be likely to prejudice Parcelforce's commercial interests.

38. It could also be argued that it is in the public interest for the requested information to be published to see whether the first time delivery rate for a particular depot is significantly better or worse than the national average which is published in the Royal Mail Group's annual report. (See above). This would inform the public as to how well or otherwise, a particular depot was performing against the national average. It would also give the Royal Mail an opportunity to explain the reasons for any variances.
39. It could be argued that the public interest in openness, transparency and accountability is already satisfied by the information published in the Royal Mail Group's annual report which includes the national first time delivery rate.

The balance of the public interest

40. The Commissioner accepts there is a public interest in the Royal Mail (including Parcelforce) being open, transparent and accountable for its actions and recognises that the publication of the first time delivery rate for Parcelforce's Deeside depot would assist with this at a local level.
41. However, the Commissioner believes that the public interest in openness, transparency and accountability is satisfied to a certain extent by the information (including Parcelforce's national first time delivery rate) which is published in the Royal Mail Group's annual report.
42. The Commissioner also recognises the strong public interest in allowing public organisation to compete with the private sector on a level playing field with parity of treatment with its competitors and accepts this is not possible if Parcelforce is required to publish its local performance figures while its competitors are not.
43. The Commissioner is also mindful that the Royal Mail Group is reliant on all revenue generated by its commercial services including those of Parcelforce to support the provision of the universal (one price goes anywhere) postal service on which the public depends. The Commissioner recognises that it would not be in the public interest to place Parcelforce at a disadvantage in competing for those revenues which he accepts might happen if the requested information was published.

44. Although finally balanced the Commissioner's conclusion is that the public interest in disclosure is outweighed by the public interest in maintaining the exemption.

Right of appeal

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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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.

Signed

Rachael Cragg
Group Manager

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF