

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 March 2015

Public Authority: Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant requested the name of a Community Centre whose statement in support of the Government's Mandatory Work Placement Scheme was quoted by the public authority in its guide for other organisations considering whether to join the scheme. The public authority withheld the name of the centre on the basis of the exemptions at sections 29(1)(a), 29(1)(b), 36(2)(c), 38(1) and 43(2) FOIA.
2. The Commissioner's decision is that the public authority was not entitled to withhold the name of the Community Centre in reliance on the exemptions at sections 29(1)(a), 29(1)(b), 36(2)(c), 38(1) and 43(2).
3. The Commissioner also finds the public authority in breach of section 17(1) FOIA.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the name of the Community Centre.
5. 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 FOIA and may be dealt with as a contempt of court.

Request and response

6. On 6 July 2014, the complainant wrote to the public authority and requested information in the following terms:

'I refer to your publication "Mandatory work placements: a guide for potential host organisations" accessible at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/313720/mandatory-work-placements-factsheet.pdf

which says in part:

"Most of the participants may have the wrong attitude to the government's plan for getting work experience to get a job. However by the end of the four weeks, 95% of the participants want to remain on the placements"

Community Centre Manager

- 1. From your records, please advise the name of the person quoted and the Community Centre concerned.*
 - 2. How many of the participants subsequently decided to become volunteers with that Community Centre?'*
7. The public authority responded on 23 September 2014. It withheld the name of the Community Centre Manager on the basis of the exemption at section 40(2) FOIA. The name of the Community Centre was withheld on the basis of the exemptions at sections 29(1)(a), 29(1)(b), 36(2)(c) and 43(2) FOIA. The public authority also explained that it did not hold information about the number of participants who subsequently became volunteers at the Community Centre.
8. The complainant requested an internal review on 23 September 2014.
9. The public authority wrote to the complainant on 14 October 2014 with details of the internal review. It upheld the original decision above.

Scope of the case

10. The complainant contacted the Commissioner on 16 October 2014 to complain about the way his request for information had been handled.

11. He subsequently clarified on 1 December 2014 that he wanted the Commissioner's investigation to focus primarily on the public authority's refusal to disclose the name of the Community Centre in question.
12. The public authority subsequently also introduced the exemption at section 38(1) FOIA in addition to the other exemptions it had relied on to withhold the name of the Community Centre.
13. The scope of the Commissioner's investigation therefore was to consider whether the public authority was entitled to withhold the name of the Community Centre on the basis of the exemptions at sections 29(1)(a), 29(1)(b), 36(2)(c), 38(1) and 43(2).

Reasons for decision

14. The public authority pointed out that its reasons for withholding the name of the Community Centre are substantially similar to the reasons previously provided to the Commissioner in August 2012 in relation to case FS50438037. This case, along with 2 other similar cases involving the same complainant, had been heard by the Upper Tribunal following the public authority's appeal of the decisions by the Commissioner and the First-Tier (Information Rights) Tribunal.¹ The Upper Tribunal upheld the First-Tier Tribunal's decisions, and consequently, the Commissioner's decisions, to order disclosure of the requested information.² The Commissioner understands that the public authority has submitted an application for permission to appeal the Upper Tribunal's decision to the Court of Appeal, and is still awaiting a decision.
15. In the meantime, the Commissioner issued his decision in case FS50520380, another substantially similar complaint to the 3 mentioned above. That decision, along with the decisions in 2 other similar complaints, in terms of what disclosure would reveal, all against the

¹ GIA/2560/2013, GIA/2568/2013 & GIA/2569/2013.

[http://www.informationtribunal.gov.uk/DBFiles/Decision/i1016/EA-2012-0207\(+2\)_Judgment_17-05-2013.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1016/EA-2012-0207(+2)_Judgment_17-05-2013.pdf)

² Department for Work and Pensions v (1) The Information Commissioner, (2) FZ [2014] UKUT 0334 (AAC)

same public authority was subsequently upheld by the First-Tier Tribunal following an appeal by the public authority.³

16. The common denominator in almost all of the decisions in these complaints was; the public authority was not entitled to refuse to disclose the identity of certain organisations that had participated in government schemes designed to help unemployed people back into work. The public authority's reliance on the exemptions at sections 29(1)(a) and (b), 36(2)(c) and 43(2) to withhold the specific information requested in the relevant cases was not upheld by the Commissioner and subsequently by neither the First-Tier and Upper Tribunals.
17. The request in this complaint is therefore not too dissimilar to the requests in the previous complaints and as the public authority has mentioned, its position in this case is also not substantially different to the position it took in the previous complaints.
18. The Mandatory Work Placement Scheme was introduced by the Government in 2011 and was primarily designed to help unemployed people get back to work. The public authority implements the scheme primarily through contracts with organisations that are prepared to offer opportunities to unemployed people on benefits. The Community Centre which is the subject of the request in this case is one such organisation.
19. The Commissioner has carefully considered the public authority's submissions in this complaint on the application of the exemptions at sections 29(1)(a) and (b), 36(2)(c) and 43(2) and he is not persuaded that any of the exemptions were correctly engaged for the same reasons he found the exemptions were not engaged in the previous complaints mentioned above.

³ EA/2014/0073, 0109 & 0130

[http://www.informationtribunal.gov.uk/DBFiles/Decision/i1437/Department%20for%20Work%20&%20Pensions%20EA.2014.0073,%200109%20&%200130%20\(22.12.2014\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1437/Department%20for%20Work%20&%20Pensions%20EA.2014.0073,%200109%20&%200130%20(22.12.2014).pdf)

Section 38(1)

20. The Commissioner did not however consider the applicability of any of the exemptions at section 38(1) to the information requested in the previous complaints because the public authority had not relied on them, and as far as he is aware, neither has the First-Tier or Upper Tribunal.
21. Therefore, he has considered for the first time in this complaint whether any of the exemptions was correctly engaged by the public authority.
22. The Commissioner has taken this approach in the circumstances of this case because although it is clear from the wording in section 38 that a public authority is only able to rely on either the exemption at section 38(1)(a) or (b), the public authority failed to specify the subsection of section 38(1) it was relying on in its submissions. However, given that both exemptions are not materially different, the arguments that the public authority provided could be used to justify reliance on either of the exemptions.
23. Information is exempt from disclosure on the basis of section 38(1) if its disclosure would, or would be likely to, (a) endanger the physical or mental health of any individual, or (b) endanger the safety of any individual.
24. The public authority argued that if the name of the Community Centre was revealed, there was a real risk that the centre may be vandalised and staff and participants in work placements could be put at risk of being harmed during an attack. It claimed there was evidence on some websites that some campaigners against mandatory work placements are prepared to carry out criminal damage to property which could place staff and participants at risk.
25. The Commissioner acknowledges that the tone of the debates in relation to the Government's workfare programmes, including the Mandatory Work Placement Scheme, is sometimes highly charged and emotive language has been used by those who are uncomfortable with the programmes or at least some aspects. However, he is not aware of any evidence which suggests individuals have had their physical and/or mental well-being or indeed their general safety compromised. While he is not completely dismissive of the public authority's concerns in that regard in light of the tone of some of the debates, the Commissioner must make a judgement as to whether he considers that there is a real and significant possibility of staff at the Community Centre in question and/or participants in work placements offered by the centre having their safety (including physical and mental) compromised should the name of the centre be revealed.

26. On the evidence provided by the public authority, he is not persuaded that would be the case. It is highly likely already well known within the community that the Community Centre in question offers work placements under the auspices of the Government's workfare programmes. However, no specific evidence has been provided by the public authority to suggest that the risk of criminal damage to the centre and/or to the physical and mental well-being of individuals has significantly increased as a result.
27. The Commissioner consequently finds that the public authority was also not entitled to withhold the name of the Community Centre on the basis of either the exemptions at section 38(1)(a) or (b). Having found that neither exemption was engaged, the Commissioner did not have to conduct a public interest test.

Procedural matters

28. Section 17(1) FOIA states that a public authority must issue a refusal notice promptly and no later than 20 working days following a request.
29. The Commissioner finds the public authority in breach of section 17(1) for failing to issue its refusal notice within the statutory time limit.

Right of appeal

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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
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