

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 November 2016

**Public Authority:** Post Office Limited

**Address:** 20 Finsbury Dials  
Finsbury Street  
London  
EC2Y 9AQ

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to the names and addresses of agents. The Post Office refused to provide the requested information citing the exemption under section 40(2) of the FOIA (third party personal data) as its basis for doing so. The Commissioner's decision is that the Post Office has correctly applied section 40(2) of FOIA to the withheld information.
2. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

#### Request and response

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3. On 17 May 2016 the complainant made the following request for information:

*'I would be grateful if you could send me the lists of Agents and Company who hold Contacts; the list should show all their names, postal addresses, and email addresses.'*

4. On 3 June 2016 the Post Office refused the request citing section 40(2) (Personal Information) of the FOIA.
5. On 24 June the complainant requested a review and stated that he wanted the information in the interest of fairness and equal opportunities of ethnic monitoring which should be carried out by the Post Office.

6. On 14 July 2016 the Post Office provided the outcome of the internal review which upheld the decision to refuse the request under section 40(2) of the FOIA.

7. On 28 July 2016 the complainant wrote to the Information Commissioner.

8. The Commissioner invited the complainant to withdraw his case on 14 September 2016 as it was her initial view that the Post Office was correct in its refusal to disclose this information. However, the complainant declined to withdraw his case. He commented that

*'My complain is that the way the Post Office has managed/monitored the activities of agents, et al, will lead to charges of racial discrimination when it is clearly seen that most of the people/staff who are employed in Post Offices in London are Asians. Very few are white, black or Chinese British.*

*If the names and addresses of agents, et al are not disclosed, they will regard their employment practices and policies as legal, but openly seen by the public as racist.'*

9. The Commissioner understands that this request follows a previous request in January 2016 concerning the numbers and ethnicity of staff employed in Agency Post Office Branches. The Post Office provided information on the numbers of branches and explained that the Post Office did not hold the information on ethnic breakdown as the employees of Agency branches are directly employed by the postmaster or company who hold the contract for services.

## **Scope of the case**

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10. The Commissioner considers that the scope of this case to be to determine if the Post Office has correctly applied section 40(2) FOIA to the withheld information.

## Reasons for decision

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### Section 40(2) – Third party personal data

11. This exemption provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act (DPA).

#### **Is the withheld information personal data**

12. Personal data is defined by the DPA as any information relating to a living and identifiable individual.
13. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
14. The Post Office has explained that many of its Agents live and work from the same address so that it is unable to separate personal information from business information.
15. In a previous decision notice ([FS50546660](#) paragraphs 39 and 40) the Commissioner accepted that the majority of Postmasters operate as sole traders.
16. Therefore, the Commissioner considers that as many Postmasters live and work from the same physical address, that the requested information for the names, postal addresses and email addresses is personal data from which living data subjects would be identifiable.

#### **Would disclosure breach the Data Protection Principles?**

17. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
18. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individuals, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

### **Reasonable expectations**

19. Whether an individual might reasonably expect to have their personal data released depends on a number of factors. These include whether the information relates to an employee in their professional role or to them as individuals, the individual's seniority or whether they are in a public facing role.
20. The information in this case concerns the names and addresses of individuals and the Post Office explained that there is no expectation from these individuals that their personal information would be made publicly available.

*'... the name of the Postmaster and/or the contract between Post Office and the Postmaster is exempt under Section 40(2) concerning personal information of a third party. Further you have asked for the address which is biographical information and emails, most of which are likely to be personal email addresses rather than business emails all of which would contravene the first and second principles of the Data Protection Act 1988 as this would identify a living individual, providing you with where these individuals live and the means to contact them thereby causing intrusion.'*

21. The Commissioner understands and accepts that the individuals to whom the personal data relates would expect the information to be withheld and that this expectation is reasonable.

### **Consequences of disclosure**

22. Disclosure is unlikely to be fair if it would have unjustified adverse effects on the individuals.
23. The complainant has argued that he wishes to check the ethnicity of staff employed within the London Post Office branches. The Post Office did not hold this information as the employees of Agency branches are directly employed by the postmaster or company who hold the contract for services. Therefore, the complainant had asked for names and contact details of all the Agents.
24. The Post Office has argued that disclosure of personal names and addresses would cause intrusion.
25. The Commissioner has referred the complainant to previous decision notices ([FS50534959](#), [FS50585183](#), [FS50619908](#) ) where the refusal to provide lists of names and addresses was upheld by the Commissioner.

26. The Commissioner has considered that similar arguments would apply in this case and that disclosure of the personal names and addresses would be distressing for the individuals.

**Balancing the rights and freedoms of the individuals with the legitimate interests in disclosure**

27. Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individuals. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
28. In this case, the Commissioner is not convinced that the specific information requested is of sufficient wider public interest to warrant overriding the protection of the third party personal data of those concerned.
29. Having considered the Post Office's submission and the views of the complainant the Commissioner is satisfied that the complainant's arguments for disclosing the specific information in this case are not as compelling as those that the Post Office has put forward for protecting the individuals' personal data, namely:
- the individuals' likely expectation about how their personal data will be managed
  - the individuals' lack of consent to its release; and
  - the possible negative consequences to the individuals of releasing the information.
30. The Commissioner is satisfied that on balance, the legitimate public interest would not outweigh the interests of the individuals named within the file and that it would not be fair to disclose the requested information in this case.

**Conclusions**

31. The Commissioner is satisfied that the withheld information is personal data and that disclosure would breach the first data protection principle as it would be unfair to the individuals concerned. The Commissioner upholds the Post Office's application of the exemption provided at section 40(2) of the FOIA.

## Right of appeal

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32. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. 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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**