

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 February 2017

**Public Authority:** Department for Environment, Food and Rural Affairs

**Address:** Noble House  
17 Smith Square  
London  
SW1P 3JR

### Decision (including any steps ordered)

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1. The complainant has requested information from the Department for Environment, Food and Rural Affairs ("Defra") relating to compensation payments made in relation to voluntary exits of Defra senior civil servants.
2. The Commissioner's decision is that Defra has correctly applied section 40(2) (third party personal data) of the FOIA to the withheld information.
3. The Commissioner requires Defra to take no steps.

### Request and response

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4. On 2 June 2016, the complainant wrote to Defra and requested information in the following terms:

*"a) a list, and corresponding amounts, of all compensation or ex gratia payments made or approved in relation to voluntary exits of Defra senior civil servants (Permanent Secretary, Director General, Director, Deputy Director) between 1 April 2015 and 4 June 2016. I will accept anonymised figures, e.g. payment of £x to Director, payment of £x to Deputy Director. For any payment over £95,000 please let me know what considerations or criteria were used to determine the amount.*

*b) For all Defra senior civil servants who took a voluntary exit between 1 April 2015 and 4 June 2016, details of their performance scores awarded*

*in the April 2015 to March 2016 appraisal year in the format - x% box 3, x% box 2, x% box 1 compared with the equivalent figures for all other remaining Defra senior civil servants who received a performance score in that year.*

5. Defra responded on 30 June 2016 and disclosed some of the requested information. This consisted of some information falling within the scope of request a) and the information sought in request b). Defra withheld the remainder of the information sought in request a) relating to compensation payments made in relation to voluntary exits of senior civil servants at Director level and above under section 40(2) of the FOIA. Defra provided the complainant with some advice and assistance under section 16. It explained that it could provide an average of the amounts received by those at Director level and above without disclosing information that would enable people to be identified.
6. The complainant subsequently asked Defra to review its decision not to disclose the individual compensation payments for voluntary exits for senior civil servants at Director level and above. In his internal review request, the complainant referred to the Employer Pensions Notice 327. He argued that this requires disclosure of payments made to members of the senior management team within the scope of the Remuneration Report. The complainant also explained that he *"would accept details of exit payments at Director and above banded according to the exit cost along the lines of the table used by the Environment Agency"*.
7. Defra sent the outcome of its internal review on 17 August 2016. It explained that the complainant's request for the withheld information in bands would normally constitute a new request. However, Defra explained that it would consider the request as part of the internal review. Defra further maintained its position that the information was exempt under section 40 of the FOIA. It explained:

*"...it is not just that the number of individuals within the scope of your request is small (and so they would be identifiable) that exempts the information from disclosure under the FOIA, but that disclosure would be contrary to individuals' legitimate and reasonable expectations about the processing (including disclosure) of their personal data, and, therefore disclosure would contravene their rights under the DPA..."*

## **Scope of the case**

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8. The complainant contacted the Commissioner on 2 September 2016 to complain about the way his request for information had been handled.

9. The complainant disputed Defra's application of section 40(2) to the information sought on compensation payments made in relation to voluntary exits of senior civil servants at Director level and above.
10. The Commissioner has had to consider whether Defra was correct to withhold the compensation payments made in relation to voluntary exits of senior civil servants at Director level and above under section 40(2).

## Reasons for decision

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11. Section 40 of the FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles.
12. Taking into account her dual role as regulator of both the FOIA and the Data Protection Act 1998 (the "DPA") the Commissioner has considered whether Defra was correct to withhold the compensation payments made in relation to voluntary exits of senior civil servants at Director level and above.

## Is the withheld information personal data?

13. Personal data is defined by section 1 of the DPA as:

*"...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, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual..."*

14. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA.
15. Defra explained that significant information about how to calculate voluntary exit payments is available on the Civil Service Pension website. As a result of this, Defra explained that it needed to take into account the information known to the complainant or available to him, and any information known by or available to any other individual including members of staff employed by Defra or former members of staff.
16. To support its position that the withheld information constituted personal data, Defra stated that the information that would be known or available to the complainant or other persons, which combined with the

withheld information may lead the identification of individuals, are as follows:

- *the names of the individuals who left on voluntary exit terms;*
  - *the scheme terms;*
  - *the individuals' ages (either sufficiently, approximately or exactly);*
  - *the individuals' length of service (either sufficiently, approximately or exactly);*
  - *salary band details available from the publically available Defra organogram showing post titles and associated salary bands for all SCS level staff.*
17. The Commissioner considers that the figures alone would not constitute personal data. However, after reviewing the withheld information, the Commissioner notes that the information relates to a small number of individuals. Bearing this in mind and taking into account the information known to or available to the complainant and other people, it may lead to the identification of the individuals to which the withheld information relates to. The Commissioner is therefore satisfied that the withheld information constitutes personal data in accordance with section 1 of the DPA.

### **Would disclosure breach the data protection principles?**

18. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
19. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

### **Reasonable expectations of the data subject**

20. When considering whether a disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
21. Defra explained that the individuals would not have a reasonable expectation that the withheld information would be disclosed because they are not board members; they are employed members of staff.

22. Defra explained:

*“With regard to public disclosure of information consisting of the remuneration, including exit payments, of senior staff, there is a demonstrable and clear distinction between board members and non-board members: board members can expect their remuneration details, including any exit payments, to be publicly disclosed, whereas non-board members would not have such an expectation. The reason for this is that in Defra and other part of the Defra group it is only board members whose exit payments have been made public available.*

23. Defra further explained:

*“In his request for an internal review, part of [redacted name] argument was to refer to the disclosure of information of the exit payments made to senior staff in Natural England and the Gangmasters’ Licensing Authority. However, these disclosures were of exit payments made to Executive Board members only, and not salaried members of staff. Moreover, the only individuals whose remuneration details are disclosed in Defra’s Annual Report and Accounts are those few senior officials who are (Executive) Board members. The individuals who are the data subjects of the withheld information would be well aware that it is Defra’s clear policy and consistent practice that only Board members’ exit payments were or would be disclosed. None of the withheld information details refer to staff who were Board members. Senior individuals leaving the Defra group would have a natural and reasonable expectation that details of their exit payments would not be made publicly available, as they were not board members”.*

### **The consequences of disclosure**

24. Defra explained that if the withheld information was disclosed, the consequences would be *“most serious”*.

25. Defra argued that the consequences for the individuals would be that contrary to their *“perfectly reasonable expectations”*, the amount of their exit payment would be disclosed to the general public. Defra further argued that if the information was disclosed it may lead to harassment by the press of ex-salaried members of staff, as has happened for some board level staff recently. Defra states that it has an obligation and a responsibility to protect non-board members as an employer/recent employer.

Defra also explained that voluntary exit payments are made under terms of an expectation of confidentiality on both parties for staff who are not Board members. Defra argued that it could be liable to an actionable breach of confidence if it disclosed the withheld information.

### **The legitimate public interest**

26. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms or legitimate interests of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information.
27. There is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities. This in turn may assist members of the public in understanding decisions taken by public authorities and perhaps even to participate more in decision-making processes.
28. The Commissioner has considered all arguments provided by Defra and the complainant. However, having considered the circumstances of this case, the Commissioner has concluded that releasing the withheld information would not be within the expectations of the individual to whom it pertains.
29. The withheld information relates to very few individuals and the Commissioner considers that these individuals could be identified if the information was disclosed.
30. The Commissioner does not consider that there is a legitimate public interest in the withheld information that outweighs the reasonable expectations of the data subjects, the damage and distress that would be caused by disclosure and the unwarranted intrusion into the private life of the individuals.
31. The Commissioner therefore determines that Defra was correct to withhold the information sought relating to compensation payments made in relation to voluntary exits of senior civil servants at Director level and above.

## **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:

Reference: FS50644636

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 .....

**Alun Johnson**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**