

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 October 2018

Public Authority: Post Office Limited
Address: 20 Finsbury Street
London
EC2Y 9AQ

Decision (including any steps ordered)

1. The complainant has requested the name and job title of the most senior member of staff present at the meeting where the decision was made to appoint a temporary operator at the St Leonards on Sea Post Office.
2. The Commissioner's decision is that Post Office Limited (Post Office) has incorrectly applied section 40(2) of the FOIA to withhold the requested information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose to the complainant the name and job title of the most senior member of staff present at the meeting where the decision was made to appoint a temporary operator at the St Leonards on Sea Post Office.
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

5. On 17 November 2017, the complainant wrote to Post Office and requested information in the following terms:

"Are you able to tell me if the minutes of the meeting in which the decision concerning St Leonards Crown Post Office was determined, are available for public scrutiny? If so, please would you be kind enough to forward me a copy"

6. Post Office responded to the request on 20 December 2017. It failed to confirm or deny holding the requested information and instead disclosed portions of a document presented at the meeting.
7. The complainant wrote to Post Office on 21 December 2017 requesting a review of its handling of the request. He subsequently wrote to Post Office on 22 December 2017 and requested the same information again.
8. Post Office completed a review of its handling of the request and wrote to the complainant on 23 January 2018 upholding its original decision.
9. Post Office wrote to the complainant on 24 January 2018 in relation to his email of 22 December 2017. It said that it is treating this as a request for information under the FOIA. It provided a slide from the 'DMB Network Development Programme Executive Steering Group slide deck report pack' recording the decision made in the meeting concerned and also a pack of information that was provided to the decision makers. It said that it had withheld some of the requested information under section 40(2), 42 and 43(2) of the FOIA.
10. The complainant wrote to Post Office on 25 January 2018. They said:

"While I have been considering this response you have kindly forwarded from [redacted], and whether there is a need to seek an internal review, it occurs to me that simply disclosing the name and position of the most senior member of PO Ltd staff involved in interposing Potent Solutions without any further public consultation, might be a compromise position that PO Ltd could accede to. For the avoidance of doubt, it is simply the name and role of that person that I require and should satisfy issues of concern for the PO and for the Commissioner. This would seem to be a reasonable compromise and should matters reach the stage of a judicial review, then I am confident both the Commissioner and any Judge would consider this the better approach rather than any alternative and unnecessary recourse. I therefore await your, or rather [redacted's] reply, before I request an Internal Review."

11. The Complainant wrote to Post Office again on 2 February 2018. They said:

"Since there has been no response to the suggestion below, please could I now formally request an internal review. For the avoidance of doubt, I am simply seeking the name and status of the most senior member of staff who signed off the decision. I require no information about third parties and no personal information about staff, simply the name and role of the of the post holder who signed the decision off"

12. Post Office completed a review of its handling of the request and wrote to the complainant on 2 March 2018 upholding its original decision.
13. Post Office revisited its handling of the request during the course of the Commissioner's investigation and wrote to the complainant on 26 July 2018. It referred to the emails of 25 January and 2 February 2018 and said that, on the condition that the data subject agrees, as a compromise and due to the passage of time it is prepared to release the 'status' of the most senior member of staff present at the meeting. The data subject did not however consent to the information being released.

Scope of the case

14. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
15. In regard to the complainant's information request dated 22 December 2017, the Commissioner notes that in the emails of 25 January 2018 and 2 February 2018, the complainant refined the scope of the request to the name and job title of the most senior member of staff present at the meeting where the decision was made to appoint a temporary operator at the St Leonards on Sea Post Office. Post Office has confirmed to the Commissioner that there are no minutes of the meeting and that the slide from the 'DMB Network Development Programme Executive Steering Group slide deck report pack' is the only recorded information it holds about the decision made during the meeting. Post Office has applied section 40(2) of the FOIA to withhold [via redaction] the most senior member of staff's details from the slide. The Commissioner has reviewed the withheld information and is satisfied that it falls within the scope of the refined request. The Commissioner has therefore focused her investigation on the refined request and Post Office's application of section 40(2) of the FOIA to withhold the

requested information. The complainant has agreed the scope of the Commissioner's investigation.

Reasons for decision

Section 40(2) of the FOIA – personal information

16. Information is exempt from disclosure under section 40(2) of the FOIA if it constitutes third party personal data (i.e. the personal data of anyone other than the individual making the request) and either the first or second condition in section 40(3) is satisfied.

Is the information personal data?

17. The Commissioner has considered the definition of personal data under the Data Protection Act 1998 (DPA) which was the relevant legislation at the time when the request was received and considered by Post Office. Personal data is defined in section 1 of the DPA as follows:

"... data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into possession of, the data controller; and includes any expression of opinion about the individual and indication of the intentions of the data controller or any person in respect of the individual."

18. In this case, the requested information is the name and job title of the most senior member of staff present at the meeting where the decision was made to appoint a temporary operator at the St Leonards on Sea Post Office. This information clearly relates to an individual who can be identified from it and the Commissioner is therefore satisfied that it is personal data.

Would the disclosure of the information breach any of the data protection principles?

19. For section 40(2) of the FOIA to apply, either the first or second condition in section 40(3) of the FOIA must be satisfied. The first condition states that disclosure of personal data would contravene any of the protection principle or section 10 of the DPA.
20. The relevant principle in this case is the first data protection principle. It states:

"personal data shall be processed fairly and lawfully and, in particular shall not be processed unless –

At least one of the conditions in schedule 2 [DPA] is met ..."

21. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a arrange of factors; including:
- the reasonable expectations of the individual in terms of what would happen to their personal data; and
 - the consequences of disclosing the information, e.g., what damage or distress would the individual suffer if the information was disclosed?
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

Reasonable expectations of the data subject

22. Post Office has argued that the data subject would not expect the requested information (name and job title) to be released because the decision concerning the St Leonards on Sea Post Office was made collectively by the Steering Group during the meeting and not solely by the data subject and that the Chief Executive of Post Office is ultimately responsible for the decision and concerns about it can be raised with her directly.
23. The complainant has argued that a senior member of Post Office staff involved in the decision to franchise one of its local branches where there has been strong local interest and opposition [see paragraph 25 for further information] would not expect their personal data to be exempt from disclosure in the same way that a junior member of staff with less responsibilities would.
24. Although the requested information relates to the data subject's involvement in a collective decision, the Commissioner notes that the information relates to their public life and their seniority at the time. She also notes the issue that was the focus of the decision [to appoint a temporary operator at a branch which Post Office was aware had a strong local interest and opposition concerning the decisions that had been made up to that point] and Post Office's overall aims of accountability and transparency for decisions made and she is therefore satisfied that the data subject would reasonably expect the requested information to be disclosed.

Consequences of disclosure

25. Post Office has said that a local campaign group was formed because of opposition to plans to franchise the St Leonards on Sea Post Office. It said that the group has become very active on social media where it has its own Facebook page. It said that the group has collected customer boycott pledges against using retail services if the branch were franchised, written campaign letters in protest of Post Office's plans, and attended customer forum events. However over time the actions of the group have become more intrusive and targeted. This includes; members entering the St Leonards On Sea Post Office and taking photographs and videos of staff and customers some of which were then posted on Facebook, taking part in repeated demonstrations and protests outside the branch including flyposting, and on one occasion due to fear of a "flash mob" gathering additional security had to be hired and a one-in-one-out policy had to be adopted to ensure the safety of staff and customers. Due to confidentiality the Commissioner has provided further information in the annex accompanying this decision notice. Post Office argues that if it were to release the requested information, then the data subject could also become the focus of activities by the group.
26. The Commissioner notes that there is information published online about the public's response to Post Office franchising some of its local branches and opposition to these plans being aimed at its senior staff. She also notes that there has been press coverage about the St Leonards on Sea Post Office and the campaign group's work which has also been published online. Due to confidentiality the Commissioner has also included her observations about this information in the annex accompanying this decision notice.
27. The Commissioner acknowledges that there has been public criticism of Post Office in relation to St Leonards on Sea Post Office and accepts its concern about release of the requested information causing the data subject some distress, e.g., them becoming the focus of activities of the campaign group. She however notes that the St Leonards on Sea Post Office is an ongoing matter for Post Office. She also notes the wording of the refined request e.g., "the name and position of the most senior member of PO Ltd staff involved in interposing Potent Solutions ...") and that it cannot be inferred from this and also any information released in response to it, that the data subject alone is responsible for the decision made in the meeting. She also notes the Post Office's earlier argument about the decision being made by the Steering Group as a collective and it's Chief Executive being ultimately responsible for the decision and therefore any concerns about it being raised to her directly. The Commissioner therefore accepts that although some distress could still

occur through disclosure, that this is likely to be minor and would not be contrary to the data subject's limited expectation of confidentiality given the senior position they held at Post Office and their involvement in the decision made and she does not consider that any material damage would be likely to occur.

Balancing rights and freedoms with legitimate public interest

28. Assessing fairness also involves balancing the individuals' rights and freedoms against the legitimate interest in disclosure to the public. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.
29. As disclosure under the FOIA is considered to be disclosure to the world at large and not to the individual applicant, it is the legitimate interest of the public in disclosure that must be balanced against the interest of the data subjects, including their right to privacy.
30. The interest in disclosure must be a public interest, not the private interest of the individual requester. The requester's interests are only relevant in so far as they reflect a wider public interest. While the complainant may have personal reasons for wanting access to the requested information, the Commissioner must consider whether or not it is appropriate for the requested information to be released to the general public.
31. The Commissioner accepts that legitimate interests include the general public interest in transparency. In that respect, the complainant has argued that decisions made about the St Leonard's on Sea Post Office were at the time of the request and continue to be a matter of great local interest and opposition and therefore there is a strong public interest in knowing that the decision to appoint a temporary operator was made at the appropriate level within the organisation.
32. Post Office accepts that there is legitimate public interest in knowing the process by which the decision was arrived at including that the decision was made at a senior level, and argues that this was satisfied by disclosure of the slide recording the decision and the accompanying pack of information, which, indicate that the decision was made by a group of senior employees in the organisation [e.g., the 'Executive Steering Group']. It therefore does not consider there to be a need for the name and job title of individual members of the group to be released to satisfy the public interest. It said:

"It was a collective decision and unless there are compelling reasons for breaching the concept of "collective responsibility" in relation to the Decision which would justify focussing on the specific individuals in question, there is, in our view, no necessity to identify those individuals to meet any legitimate interest around the decision making process."

33. In reaching a decision on fairness, the Commissioner is mindful of the nature of the information and the role of the data subject.
34. She has also taken into account her guidance with regard to balancing rights and freedoms with legitimate interests when dealing with a request for personal data about public authority employees which states:

"Under the DPA, the exercise of balancing the rights and freedoms of the employees against the legitimate interest in disclosure is different to the public interest test that is required for the qualified exemptions listed in section 2(3) FOIA. In the public interest test, there is an assumption in favour of disclosure because the public authority must disclose the information unless the public interest in maintaining the exemption outweighs the public interest in disclosure. In the case of section 40(2) the interaction with the DPA means the assumption is reversed; a justification is needed for disclosure".

35. The Commissioner recognises that information about an individual acting in an official or work capacity – their public life is likely to attain less protection than information about their private life. She also acknowledges that the more senior a person is, the less likely it is that disclosing information about their public duties will be unwarranted or unfair.
36. In the circumstances of this case, with due regard to the nature of the requested information relating to the data subject's position of seniority in his public life, his involvement in a decision of ongoing local interest and Post Office's Chief Executive assuming responsibility for a decision which was made in her absence and therefore the need for any public scrutiny about it to be well informed and proportionate, the Commissioner is satisfied that the legitimate interests of the public outweigh any negative impact to the rights, freedoms and interests of the individual concerned and disclosure of the information would be fair.
37. Therefore the Commissioner considers that section 40(2) of the FOIA has been incorrectly applied to the requested information and does not provide an exemption from disclosure.

Right of appeal

38. 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

39. 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.
40. 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

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