

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 January 2019

Public Authority: Department for International Trade
Address: 55 Whitehall
London
SW1A 2HP

Decision (including any steps ordered)

1. The complainant has requested the work travel expenses for the Chief Executive (Deborah Kobewka), of Healthcare UK.
2. The Commissioner's decision is that Department for International Trade (DIT) was not correct to apply section 40 to the information which it withheld from disclosure.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with the withheld information save for it is not to disclose Deborah Kobewka's sensitive personal data (if such there is) contained therein.
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.

Background

5. Healthcare UK is part of the Department of Health and Social Care and the Department for International Trade (DIT). Its stated aim is to help UK healthcare providers to do more business overseas. It seeks to do

this by promoting the UK healthcare sector to overseas markets and supporting healthcare partnerships between the UK and overseas healthcare providers¹. On behalf of DIT the Healthcare UK team coordinates FOI responses on behalf of the healthcare sector. As requests need to be centrally tracked and managed by the central DIT FOI Team.

6. Deborah Kobewka was appointed as Managing Director of Healthcare UK in March 2016. As Managing Director she is ultimately responsible for the delivery of Healthcare UK services.
7. The Managing Director is also responsible for:
 - implementing Healthcare UK's current strategy
 - representing Healthcare UK to ministers and senior levels of government
 - establishing and managing Healthcare UK's relationships across the healthcare sector

Request and response

8. On 26 November 2017, the complainant wrote to DIT and requested information in the following terms:

"In respect of Deborah Kobewka, CEO of Healthcare UK, please provide the following:

Part A

The total number of flights taken between March 2016 and the date of this request in her role as CEO of Healthcare UK

- for each flight the total cost of the flight, the departure point and arrival destination (to include all international and domestic flights)
- for each flight, the class of travel

¹ <https://www.gov.uk/government/organisations/healthcare-uk>

- the hotel cost during each international stay and the total cost for each hotel, to be broken down per trip.

Part B

The total cost of all expense claims submitted between March 2016 and the date of this request for Deborah Kobewka.

Part C

In respect of Healthcare UK, please provide the total value of business wins / export wins for the following years:

- 2013/2014
- 2014/2015
- 2015/2016
- 2016/2017
- 2017- to date of this request

9. DIT responded on 21 December 2017. It stated as follows

Part A & B

"We can confirm that the Department holds the data requested. However, the information is exempt from disclosure under Section 40(2) of the Act because the information constitutes personal data and officials below SCS2, like Deborah Kobewka, would not reasonably expect their personal data to be disseminated to the public in the performance of their duties and occupying sensitive roles. This information is therefore being withheld".

Part C

We can confirm that the Department holds the data requested. However, the information is exempt from disclosure under Section 43(2) of the Act due to commercial sensitivity.

10. The complainant requested an internal review of DIT's decision. DIT sent her the outcome of its internal review on 22 February 2018. It maintained its position regarding its replies to requests A and B, but changed its position as to request C where it rescinded its reliance on section 43 and released all non-publicly available information to the complainant.

Scope of the case

11. The complainant contacted the Commissioner on 7 March 2018 to complain about the way her request for information had been handled.
12. The withheld information consists of travel, hotel and ancillary expenses incurred by Deborah Kobewka, during the course of her employment, between 2016 and 2018.

Reasons for decision

Section 40(2) – third party personal data

13. The public's right of access to the personal data of third parties is in effect governed by the Data Protection Act. At the time the request was made and dealt with by DIT the relevant Data Protection Act was the 1998 Act. Since that time the Data Protection Act 2018 has come into force and section 40(2) of the FOIA has been amended to accommodate the changes it has introduced. However the Commissioner's role is to determine whether DIT correctly applied the legislation that was in force at the time it was handling the request.
14. At that time section 40(2) of the FOIA provided that a public authority is entitled to refuse a request for information which constitutes the personal data of someone other than the person making the request, if disclosing that information would breach any of the data protection principles set out in Schedule 1 of the Data Protection Act 1998.
15. In order to determine whether section 40(2) is engaged the Commissioner will need to determine the following:
 - Whether the information is personal data.
 - Whether disclosure would contravene any of the data protection principle.
16. For the purposes of her decision the Commissioner has focussed on the first data protection principle. This states that personal data can only be disclosed where it is fair and lawful to do so, and where one of the conditions in schedule 2 of the Data Protection Act is met.
17. As part of her investigation the Commissioner asked a series of questions of DIT. The questions and answers are laid out below.
18. Does the information relate to the individual's public life (i.e. their work as a public official or employee) or their private life (i.e. their home, family, social life)?

The information relates to their work as a public official.

19. What reasonable expectations does the individual have about what will happen to their personal data?

The individual has a reasonable expectation that their personal information is not shared with the public when they are conducting a public task below the Grade of Senior Civil Servant Level 2 (SCS2).

20. Has the individual named been asked whether they are willing to consent to the disclosure of their personal data?

Yes, the individual was consulted, and they wished for their name and personal details to be withheld.

21. Have DIT considered whether any of the conditions in schedule 2 would allow the information to be disclosed, for example the sixth condition?

Principle one lawfulness, fairness and transparency, individuals have the right to have to the personal data protected and should not be processed, unless there is a lawful basis to process the information. Releasing an individual's data regarding the expenses would go against the fairness principle of their data being released into the public domain and any outcomes as a result. Also, under the Government transparency policy all individuals below SCS2 should have their data protected and not released into the public domain and those at SCS2 and above would have theirs released. Therefore, DIT should withhold this information under the current transparency agreement.

Is the information third party personal data?

22. Personal data is defined in 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,”

23. The request is for data connected to a named individual (Deborah Kobewka) it is therefore third party personal data. That is, the information sought is not the personal data of the requester.

24. In order to determine whether disclosure of the personal data would contravene the first data protection principle the Commissioner will consider the following:

- Nature of the information
- Reasonable expectations of the data subjects

- Consequences of disclosure
- Legitimate interests in disclosure

Nature of the information

The information held within the forms relates for the most part to the travel and hotel claims of the Chief Executive. In essence this is information about how and where the Chief Executive has carried out her public duties.

Reasonable expectations of the data subject

25. The Commissioner notes that the individual does not wish or expect for the withheld information to be released. However this wish/expectation is not conclusive as to whether the information is to be released. The Commissioner is of the view that considering the position and role of Deborah Kobewka it is not unreasonable to expect that information connected to her work may be disclosed under the Act. In this sense Deborah Kobewka expectation, that the information would not be released, is unreasonable.

Consequences of disclosure

26. Disclosure is unlikely to be fair if it would have unjustified adverse effects on the employees concerned. Although employees may regard the disclosure of personal information about them as an intrusion into their privacy, this may often not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life. If an authority wishes to claim that disclosure would be unfair because of the adverse consequences on the employees concerned, it must be able to put forward some justification for this claim.
27. The Commissioner has not been able to identify an unjustified adverse effects, on Deborah Kobewka, if the withheld information is released.

Legitimate interests in disclosure

28. Where the personal data is about the individual carrying out their public duties, and does not impinge upon their private life to any great degree then the individual should have a stronger expectation that information might need to be disclosed, particularly where they hold a senior post within an authority.
29. The Commissioner has produced guidance on information relating to public authority employees. This guidance recognises that public authority employees should expect that some information about them

may be published as there is a legitimate public interest in accountability and transparency.

30. The Commissioner considers that there is a clear and definite legitimate interest in disclosing the withheld information. Deborah Kobewka is the Chief Executive of a governmental body. It is in the public interest that details of work related travel and expenses are known and thus held up to proper appropriate scrutiny.
31. The information held within the forms relates for the most part to the travel claims themselves. In essence this is information about how and where the Chief Executive has carried out her public duties.
32. Over recent years the importance of transparency on senior public officials' salaries, bonuses and the expenses they claim has been growing in importance to the public. It has become an issue of such importance that the public's trust in public authorities relies to an extent on the transparency it demonstrates on such issues.

Balancing the rights and freedoms of the individual with the legitimate interests in disclosure

33. 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 individual. 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.
34. It is reasonable to expect that a public authority would disclose more information relating to senior employees than more junior ones. Senior employees should expect their posts to carry a greater level of accountability, since they are likely to be responsible for major policy decisions and the expenditure of public funds. However, the terms 'senior' and 'junior' are relative. It is not possible to set an absolute level across the public sector below which personal information will not be released; it is always necessary to consider the nature of the information and the responsibilities of the employees in question.
35. The Commissioner has little hesitation in finding here, that there are compelling interests in disclosure that overrides her usual default position.
36. For the reasons given above, the Commissioner does not consider that disclosing the withheld information would be unfair and therefore section 40(2) does not provide a basis for withholding this.

Sensitive personal data

37. Within the withheld information if there are references to DK's sensitive personal data these are not to be released by DTI. To do so would be an unwarranted and unlawful disclosure of DK's sensitive personal data as defined by, and contrary, to the DPA that was operative at the time of the request.

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: 0116 249 4253

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

[Name of signatory]

[Job title of signatory]

Information Commissioner's Office

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Cheshire

SK9 5AF