

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2021

Public Authority: The Executive Office

Address: Victims and Survivors Unit
Block 2
Knockview Buildings
Stormont Estate
Belfast BT4 3SL

Decision (including any steps ordered)

1. The complainant has requested information from the Executive Office (EONI) regarding the amount of money provided to SAVIA (Survivors and Victims of Institutional Abuse). The EONI disclosed some of the requested information to the complainant, with personal information redacted as per the provisions of section 40 of the FOIA. It also withheld some information, citing section 30 of the FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the EONI has correctly applied the exemptions as set out at sections 30(1)(a) and 40(2) of the FOIA. The Commissioner therefore requires no steps to be taken.

Request and response

3. On 8 August 2019, the complainant wrote to the EONI and requested information in the following terms:
 - Total amount provided to SAVIA
 - Total amount that was checked out and confirmed as being spent on actual survivors

4. The EONI responded on 6 September 2019. It stated that some of the requested information was exempt from disclosure under section 30 of the FOIA and that it had made some redactions under section 40 of the FOIA. It provided the complainant with the remaining requested information, which answered his first question in full and provided several pieces of information in response to his second question, some of which were redacted.
5. The complainant sought an internal review of this decision on 6 September 2019, the result of which was provided to him on 4 October 2019. The reviewer upheld the original decision. When the complainant sought an internal review, he also asked a number of follow-up questions, which are outlined in an Annex to this Notice.
6. The reviewer upheld the original decision in respect of the complainant's original request. In relation to the new information sought via the follow-up questions, the EONI stated that it did not hold recorded information regarding some of the questions and it applied sections 30 and 40(2) of the FOIA to the questions for which it did hold recorded information.

Scope of the case

7. The complainant contacted the Commissioner on 9 October 2019 to complain about the way his request for information had been handled, in particular the EONI's application of the exemptions as set out in sections 30(1)(a) and 40 of the FOIA.
8. The Commissioner has considered the EONI's handling of the complainant's request, in particular its application of the exemptions specified above.

Reasons for decision

Section 30 – investigations and proceedings

9. The EONI has confirmed that it has applied section 30(1)(a) to information it is withholding. Under this section, information held by a public authority is exempt information if it has at any time been held for the purpose of any investigation which the public authority has a duty to conduct with a view to it being ascertained:-
 - (i) whether a person should be charged with an offence; or

- (ii) whether a person charged with an offence is guilty of it.
10. The Commissioner considers that the phrase "at any time" means information may be exempt under section 30(1) of the FOIA if it relates to an ongoing, closed or abandoned investigation. It extends to information that has been obtained prior to an investigation commencing, if it is subsequently held and used for this purpose.
 11. Consideration of section 30(1) is a two-stage process. First, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test. This involves determining whether, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Is the exemption at section 30(1)(a)(i) engaged?

12. In order for the exemption to be engaged, information must first be held for a specific or particular investigation and not for investigations in general.
13. The EONI has informed the Commissioner that some of the requested information was held for the purpose of conducting an investigation relating to an allegation of fraud made via whistleblowing procedures against SAVIA NI.
14. The EONI referred to the ICO guidance¹ which states the following:

"Section 30(1) can only be claimed by public authorities that have a duty to investigate whether someone should be charged with an offence, or the power to conduct such investigations and/or institute criminal proceedings."
15. The EONI informed the Commissioner that Managing Public Money NI (MPMNI), the Internal Audit Charter and the Data Sharing Agreement (DSA) between Group Internal Audit and Fraud Investigation Service (GIAFIS) and the EONI gives Internal Audit (and Group Fraud Service) the duty to undertake "special reviews/investigations (in conjunction

¹ (<https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>)

with Fraud Investigation staff from the Group Service where appropriate)".

16. The EONI further stated that "MPMNI is guidance from the Department of Finance (DoF) which is designed to help the Executive and its public servants meet Assembly expectations in a transparent, responsible and consistent fashion. This includes the personal responsibilities of Accounting Officers in order to assure the Assembly and the public of high standards of probity in the management of public funds. To this end, it places a responsibility on Accounting Officers to use Internal Audit to improve its internal controls and performance." This wording is contained in the DSA.
17. The EONI also informed the Commissioner that Internal Audit, acting on behalf of the EONI, also has a right, as part of its duty to investigate, to review all records/ supporting documentation of an organisation in receipt of monies from the Department – SAVIA's letters of offer allow for this. It was agreed that internal audit should be used in the first instance to investigate the whistleblowing allegation of suspected fraud. Should evidence of such fraud have been found, documentation would have been prepared for submission to the Police Service of Northern Ireland ("PSNI") with a view to the PSNI ascertaining whether or not someone should be charged with the offence of fraud. Due to the nature of the allegation and EONI's duty to investigate it, and due to the fact that the investigation was conducted with a view to it potentially being ascertained by the PSNI whether an individual or individuals should be charged with an offence, the EONI determined that section 30 was an appropriate exemption to use as a basis for non-disclosure.
18. Based on the above, the Commissioner considers that the EONI was conducting an investigation to determine whether the offence of fraud had been committed – and if it had been found to be committed, with a view to it being ascertained by the PSNI whether a person or persons should be charged with that offence. This meets the criteria of section 30(1)(a)(i) of the FOIA and therefore the Commissioner finds that the exemption is engaged in this case.

Public interest test

19. As section 30(1) is a qualified exemption it is subject to the public interest test: in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

20. The EONI accepts that there is a strong public interest in accountability, transparency and openness within public authorities, particularly in respect of decisions which are being made around the allocation and expenditure of public funds. The Commissioner considers that this is a significant factor in favour of disclosure of the withheld information.
21. The EONI also stated that in a democratic society it is important that offences can be effectively investigated and prosecuted. It is necessary for the public to have confidence in the ability of the responsible public authorities to uphold the law and disclosure of the withheld information could increase such confidence. The Commissioner agrees that it is necessary in a democracy for the public to have confidence that those responsible for upholding the law are doing so effectively.

Public interest arguments in favour of maintaining the exemption

22. The EONI states that it considers that there continues to be a public interest in providing a safe space to encourage and protect the rights of both whistle-blowers and those being investigated to privacy, especially where no evidence of fraud or wrong doing has been found.
23. The EONI considers that it is important that individuals who wish to raise issues feel confident that the proceedings will be kept private to protect their information. It is also important for those being accused of wrong doing to know that until such times as evidence can be found to prove them guilty their names will not be sullied.
24. Furthermore, the EONI is of the view that providing detailed information into the workings and actions of an investigation would provide others with information as to how they would be able to avoid detection should they be investigated, which would not be in the public interest.

Balance of public interest arguments

25. The Commissioner has considered all of the arguments put forward both in favour of disclosure of the withheld information and of maintaining the exemption.
26. Whilst the Commissioner attaches significant weight to the public interest in accountability, transparency and openness with regard to public funds, she also agrees that it is extremely important that those who wish to raise issues regarding the allegation of fraud or

wrongdoing in relation to such funds have the space and privacy in which to do so, without fearing that the details of this will be disclosed into the public domain.

27. The Commissioner notes that the EONI disclosed several pieces of information to the complainant, including information which answered the first part of his request of 8 August 2019, namely the total amount of money provided to SAVIA. In its response to the complainant of 6 September 2019, the EONI provided the complainant with a summary of the whistleblowing fraud allegation regarding SAVIA funds, explained that there had been an investigation, and disclosed a copy of the letter to the SAVIA Chairperson detailing the outcome of the investigation, which was ultimately that no evidence of fraud was uncovered, although issues of governance were identified. In the Commissioner's view, this should go a long way towards satisfying the public interest in decisions made regarding propriety and the expenditure of public funds, without compromising the privacy of those involved in the investigation.
28. Having considered all factors in favour of disclosure and of maintaining the exemption, the Commissioner has concluded that the balance of public interest is, in all the circumstances of the case, in favour of maintaining the exemption.

Section 40 – personal data of third parties

29. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A), 40(3B) or 40(4A) is satisfied.
30. In this case the relevant condition is contained in section 40(3A)(a) . This applies where disclosing the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
31. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data, then section 40 of the FOIA cannot apply.
32. Second, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles. Of relevance here is

Article 6(1)(f) of the General Data Protection Regulation which concerns lawful processing.

33. The EONI stated to the Commissioner that there were 6 instances in which information was redacted from information disclosed to the complainant as it was not within the scope of the complainant's request. Having read the EONI's explanatory notes for each of these instances, the Commissioner accepts that the redacted information did not fall within the scope of the complainant's request.
34. The EONI is of the opinion that the rest of the redacted information is third party personal information. It has detailed these redactions for the Commissioner. The redacted information consists of names of third parties involved with SAVIA, also signatures and contact details. The names of some junior members of staff in OFMDFM have also been redacted. The Commissioner is satisfied that this information can be categorised as personal data as individuals could be identified from the information and the information relates to them.
35. With regard to lawful processing, the Commissioner must consider the following: whether a legitimate interest is being pursued; if so, whether disclosing the information is necessary to meet the legitimate interest in disclosure and whether those interests override the legitimate interests or fundamental rights of the data subjects.
36. The Executive Office informed the Commissioner that, in considering the specifics of the complainant's request, it accepts that the broad general principles of accountability and transparency apply: people have a right to know that public money is being managed with propriety. However, the request did not ask for any third party personal information, nor would the provision of such information have been of relevance to the request or given any clarity to The Executive Office's response. The Executive Office does not consider that there would have been a legitimate interest in any third party personal information.
37. The Commissioner accepts that the complainant did have a legitimate interest in requesting the information as a whole, as it is of course a matter of interest to the public how public funds are spent and managed. With regard to the particular information which was redacted under section 40 of the FOIA, the Commissioner also considers that the complainant would have a legitimate interest in the disclosure of that information, as his legitimate interest in the allocation of funds to SAVIA and whether this was carried out with propriety would extend to details of any individuals who were involved in this process. However, the outcome of the investigation showed

that there had not been fraud, therefore this should be sufficient to satisfy both the legitimate interest of the complainant and the wider public interest into whether the funds had been managed with probity. Therefore the Commissioner does not accept that disclosure of the redacted information was necessary in order to satisfy the legitimate interest, as disclosure under the FOIA would not have been the least intrusive means of achieving the legitimate aim in question.

38. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interests she has identified, she has not gone on to conduct a balancing test. As disclosure is not necessary, there is no lawful basis for processing the redacted information and it is unlawful, therefore it does not meet the requirements of principle (a), which states that:-

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."

39. As such the Commissioner has decided that the EONI is entitled to withhold the redacted information under section 40(2), by way of section 40(3A)(a).

Right of appeal

40. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. 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.
42. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

In the complainant's request for internal review of 6 September 2019, he also asked some follow-up questions which are set out below:-

1. The monies that OFMDFM provided to SAVIA were public monies therefore the public have a right to know How much monies was unaccounted for ?
2. Why has no action been taken to recover the unaccounted monies?
3. Why was no checks made with survivors to determine were they actually present at the spending of the monies?
4. Was the monies provided being allowed to be spent on [name redacted] personal friends and families?
5. Was the monies not supposed to be spent on survivors?
6. Did you check to see was the rent being paid at savia various address?
7. Were you aware that there was witnesses whom seen the monies being regularly spent on [name redacted] personal friends and families?
8. Were you present at any spending of the monies?
9. Were you invited to any spending of the monies?
10. Have you seen one single media open day where you the spending of the monies was being spent?
11. Were you aware that [name redacted] has been in and out of prison for stealing?
12. Were you aware that [details redacted] reported the charity to the charity commission?
13. Were you aware that SAVIA had conned multiple other private funders prior to receiving public monies from yourselves?