

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2021

Public Authority: British Business Bank

Address: Steel City House
West Street
Sheffield
S1 2GQ

Decision (including any steps ordered)

1. The complainant has requested the names of borrowers receiving loans following the Government's implementation of loan schemes to support businesses facing financial disruption due to the COVID-19 pandemic.
2. The Commissioner's decision is that the British Business Bank ("BBB") has appropriately relied on section 43(2) - Commercial interests to withhold the requested information and the public interest favours maintaining the exemption. In regard to the BBB's reliance on section 21 - Information accessible by other means and section 22 - Information intended for future publication the Commissioner finds neither exemption to be engaged.
3. The Commissioner does not require the public authority to take any steps.

Background

4. On 13 March 2020 the Government announced its decision to launch a loan guarantee scheme to be delivered by high street banks and commercial lenders to support businesses across the UK that were facing financial disruption due to the COVID-19 pandemic.
5. On 23 March 2020 the Coronavirus Business Interruption Loan Scheme ("CBILS") was launched to be available to small and medium sized businesses based in the UK with annual turnover of up to £45

million, who met certain criteria including that they could show that they would be viable were it not for the pandemic and they had been impacted by COVID-19. The loans were provided by accredited commercial lenders and backed by an 80% guarantee provided by government to the lender to cover the outstanding guaranteed balance in the event of default by the borrower (subject to certain conditions). The Government paid interest and any lender levied fees for the first 12 months of the loan. Notwithstanding this, the borrower always remains fully liable for the debt.

6. CBILS was followed within weeks by the Coronavirus Large Business Interruption Loan Scheme ("CLBILS") for medium and larger sized businesses affected by COVID-19. Loans and other types of finance of up to £200 million were provided by accredited commercial lenders to businesses with a group turnover in excess of £45 million who were suffering disruption to cash flow due to lost or deferred revenue. The financial support was backed by a Government guarantee of 80% of the outstanding balance. The guarantee was provided to the commercial lenders (subject to certain conditions). Again, the borrower remains fully liable for the debt.
7. Following the launch of CBILS and CLBILS, the Government identified the need for a further loan scheme to support smaller businesses. In May 2020 the Bounce Back Loan Scheme ("BBLs") was launched. BBLs enabled businesses to access finance more quickly, by offering loans of between £2,000 and the lower of 25% of their turnover or £50,000. Under the Scheme, the Government guaranteed 100% of the loan and paid the interest rate of 2.5% per annum for the first 12 months. No repayments of principal were required in the first 12 months of the loan. No lender fees were permitted. The BBLs made changes to the standard banking procedures for loan applications and approval to make it easier and quicker for small businesses to access urgently needed finance. These changes reduced the checks that lenders were required to carry out prior to offering a loan to a borrower.
8. The banks and lenders who were consulted about the Schemes, as well as the BBB and the Government, recognised the high risk of error and fraud, but the Government issued a ministerial direction for the BBB to proceed because of the needs of businesses and the urgency of the situation.
9. The Future Fund ("FF") launched in May 2020 to support innovative UK companies with good potential, that typically relied on equity investment and were affected by the COVID-19 pandemic. Prior to the FF, these companies would have been unable to access other Government business support programmes because they were either pre-revenue or pre-profit. The FF provided Government loans

ranging from £125,000 to £5 million directly to UK companies, subject to at least equal match funding from private investors (a mixture of private individuals and corporate entities). UK FF Nominees entered into a Convertible Loan Agreement ("CLA") with the company and other lenders. FF loans can convert into shares in the investee company in a variety of circumstances set out in the CLA, including fundraisings, exit events and upon maturity of the loans. The loans may alternatively be repaid on an exit event or at their maturity date either at the election of investors or, in certain circumstances, automatically.

10. CIBLS, CLBILS and BBLS all closed to new applications from 31 March 2021. The FF closed to new applications on 31 January 2021.

Publication of information

11. BBLS, CBILS and CLBILS were established under the European Commission's Temporary Framework for State aid measures to support the economy in the Covid-19 outbreak, ("Temporary Framework"). Under the Temporary Framework, the Department for Business, Energy and Industrial Strategy ("BEIS") as the granting authority of the three schemes which fall under the Temporary Framework, is subject to a legal requirement to report information about the State aid granted under the Temporary Framework. This involves publishing certain information (including the loan recipients' names) about the aid awarded on the EU's transparency database.
12. For each of the three loan guarantee Schemes, the European Commission requires that information be published about State aid exceeding the value of €100,000 or, if the business is in the fisheries or agricultural sector, €10,000 (including where the cumulative sum of more than one award to a single recipient exceeds €100,000 or €10,000 for the fisheries or agriculture sectors).¹
13. The reporting time frames for EU reporting are:
 - Loan offers March - 30 June 2020 reported and published by 8 June 2021
 - Loan offers 1 July – 30 September 2020 reported and published by 21 September 2021

¹ <https://webgate.ec.europa.eu/competition/transparency/public/search/home?lang=en>

- Loan offers 1 October – 31 December 2020 reported and published by 10 November 2021
14. Consequently, a proportion of the requested information is now publicly accessible. This includes 38% of the loans awarded under the CLBILS and approximately 34% and 2% of the CBILS and the BBLs, respectively. The reporting of loans will be updated on a rolling basis and the BBB anticipates that, in total, details of all of the CLBILS loans will be publicly accessible together with approximately 39% and 3% of the CBILS and BBLs loans, respectively
 15. The requirement to report as described above, applies to aid granted on or before 31 December 2020. From 1 January 2021, only loans provided to businesses in the scope of Article 10 of the Northern Ireland Protocol will continue to be included in these reporting requirements to the EU.
 16. Information about subsidies awarded to UK businesses not within scope of Article 10 of the Northern Ireland Protocol on or after 1 January 2021 and which are equal to or in excess of £500,000 (or subsidies of less than £500,000 where the cumulative sum of awards for a single recipient is £500,000 or more), is required to be published on UK's new subsidy control transparency database. Information to be published includes the names of the businesses receiving the loans.
 17. For EU and UK reporting from 1 January 2021 the proposed schedule begins²:
 - Loan offers 1 January -30 June 2021 reported and published by 31 December 2021
 18. FF does not fall under the reporting requirements of the Temporary Framework. Under FF, companies have the option to convert the loan into equity whereby UK FF Nominees Limited will become a shareholder. Under the Companies Act, companies are required to report the names of their shareholders to Companies House, which is then accessible to the public. In addition the BBB has published³ the

² <https://searchforuksubsidies.beis.gov.uk/searchresults?>

³ <https://www.british-business-bank.co.uk/press-release/british-business-bank-publishes-names-of-the-companies-in-which-future-fund-has-a-shareholding/>

names of companies that had, as at 31 August 2021, converted their FF loans to equity. This was published on 14 September 2021 and will be updated at the end of every financial quarter. In addition, summary information on the loans has been published⁴ and will be updated each quarter.

Request and response

19. On 15 July 2020, the complainant wrote to the BBB and requested information in the following terms:
 - "1. the names of all those companies that have received a Bounce Back Loan Scheme loan.
 2. the names of all those companies that have received loans under the Future Fund.
 3. the names of all those companies that have received loans under the Coronavirus Business Interruption Scheme.
 4. the names of all those companies that have received loans under the Coronavirus Large Business Interruption Scheme."
20. The BBB responded on 12 August 2020 with a brief refusal notice in reliance of FOIA section 43(2) Commercial interests.
21. The complainant requested an internal review on 18 August 2020. The BBB wrote to the complainant with a thorough internal review on 8 October 2021 upholding the section 43(2) exemption and in addition relying on section 40(2), Personal information and section 31, Law enforcement.

Scope of the case

⁴ <https://www.british-business-bank.co.uk/press-release/final-future-fund-final-data-shows-scheme-completed-1-14bn-of-convertible-loan-agreements/>

22. The complainant contacted the Commissioner on 23 October 2020 to complain about the way her request for information had been handled. She explained:

"This is a high profile issue with the taxpayer facing potential losses of up to £38.2 billion in the scheme. Additionally, there is an urgency to uncover fraud in the scheme, and we believe that publication of the names of recipients will help uncover fraud, deter future fraudsters in relation to the schemes, and prevent continued loss of significant public money in the middle of a public health crisis.

In sum, our main complaint is that the BBB did not fully consider the significant public interest arguments in favor of releasing this information, and instead relied on broad and non-specific arguments to maintain the exemptions. In the case of Section 31, the BBB did not undertake a meaningful Public Interest Test that engaged with our position, but instead referred in broad terms to factors that they considered to apply, but for which there is limited evidence."

23. At the time of its first submissions to the Commissioner on 27 August 2021 the BBB explained:

"Since those responses, our position has changed as a proportion of the requested information is now accessible to the public because of a legal requirement to publish certain information about state aid in accordance with the European Commission's transparency requirements.

We wrote to the requester on 30 July 2021 to explain the change in position and that a proportion of the requested information was or will be published and to ask if that is sufficient to meet their request requirements, but we have not had a reply."

24. In its further submissions of 24 September 2021 with regard to the information publicly available at that date the BBB relied on section 21- Information accessible by other means in addition to the previously stated exemptions. In regard to the FF the BBB also relied on section 22 – Information intended for future publication. The Commissioner considers the scope of her investigation to be the application of the exemptions at FOIA sections 21, 22, 43(2), 31 and 40(2) to the requested information.

Reasons for decision

Section 21 Information accessible by other means

25. Section 21 of FOIA states:

“(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”⁵

26. Information is regarded as being in the public domain if it is reasonably accessible to the general public at the time of the request. If only part of the requested information is in the public domain, section 21 can only apply to that part of the request.

27. In this case no information in the scope of the request was in the public domain at the time of the request. This remained the situation at the time of the response and internal review.

28. As set out above some of the requested information became accessible in June 2021 and the complainant was notified of this change at the time, 30 July 2021.

29. The publication of partial information is set out above in paragraphs 11 – 18. As the steps taken post date the request the Commissioner finds that the exemption was not engaged at the time of the request.

Section 22 Information intended for future publication

30. Section 22 of FOIA states:

“(1) Information is exempt information if—

(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),

(b) the information was already held with a view to such publication at the time when the request for information was made, and

(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).”

31. For the exemption in section 22 to apply, the public authority must, at the time of the request, hold the information and intend that it or

⁵ The full text of section 21 is available at:

<https://www.legislation.gov.uk/ukpga/2000/36/section/21>

'any other person' will publish it in future. This means that it must have a settled expectation that the information will be published at some future date.

32. The BBB advised the Commissioner that it wished to rely on section 22 with respect to information concerning the FF. It advised that at the time of the request there was an intention to publish information both by the BBB itself but also when companies converted their loans into equity, as described above at paragraph 18.
33. The Commissioner accepts that at the date of the request, the BBB had an intention on its own behalf, and an expectation of companies converting their loans into equity, that some of the FF companies' names would be published. However, the BBB did not know which of those companies receiving the FF loans would be identified. The Commissioner therefore does not accept that there was a settled position on the information to be published. Consequently he finds that the exemption was not engaged at the time of the request.

Section 43 Commercial interests

34. Section 43(2) of FOIA states:

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."⁶

35. In order for a prejudice based exemption, such as section 43, to be engaged the Commissioner believes that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged should be real, actual or of substance; and

⁶ The full text of section 43 is available at:
<http://www.legislation.gov.uk/ukpga/2000/36/section/43>

- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met, ie disclosure 'would be likely' to result in prejudice or disclosure or 'would' result in prejudice. In relation to the lower threshold, the Commissioner considers that the chance of prejudice occurring must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
36. The BBB explained its view that disclosure of the loan recipients from the schemes CBILS; CLBILS and BBLS would be likely to prejudice the commercial interests of the loan recipients; the lenders; BBB and the Department for Business, Energy and Industrial Strategy ("BEIS").
37. The BBB provided detailed submissions on its reasoning with regard to each group. These are quoted from those submissions as follows:

Loan recipients

"Releasing a list of these businesses [including sole traders, partnerships, local shops and organisations, as well as larger businesses] would attract attention and speculation about their financial position and business acumen and more than likely give rise to the perception that these businesses have a greater chance of ceasing to trade. In turn this would affect customer confidence and potentially result in the businesses losing further business and much needed revenue, in itself endangering their commercial position. For example, customers or suppliers may use the list to determine whether to purchase or supply goods or services, especially if the customer is required to pay a deposit upfront or the supplier provides goods under future payment conditions. For some larger businesses, disclosure may affect their position in the market and/or share prices.

Amid concerns that their financial circumstances are subject to public disclosure and speculation, they may seek alternative sources of finance, which may be more expensive and result in further financial pressures. Circumstances that deter such businesses from obtaining favourable finance from the Loan Schemes (as the Government had intended) that they would otherwise access would be prejudicial to their commercial interests.

Although it is public knowledge that certain sectors were adversely impacted by the pandemic (e.g. the hospitality sector), information about the financial stability or otherwise of individual Borrowers is not in the public domain. Conclusions may have been drawn that

businesses in certain sectors would inevitably be in financial difficulty, but a broad range of businesses have, in fact, taken out Covid-19 loans.... Furthermore, some businesses appear to have taken out a loan as a precautionary measure and repaid them in full immediately following the first repayment date. Release of these Borrower names could unfairly create an impression of financial instability where there was none."

Lenders

38. "Lenders play an integral part in the delivery of the three Loan Schemes. However, the release of the requested information would be likely to affect their commercial interests by impairing the relationship they have with their customers, the Borrowers.

It has long been a fundamental principle of the UK's financial services industry that there is right to confidentiality as between a Lender and their customer. This principle is enshrined in the Banking Code of Practice. Borrowers, whose Covid loan contract is with their Lender, who have no relationship with Government (BEIS or BBB) and receive no money directly under the Loan Scheme from Government, would legitimately regard the public disclosure of their financial information as a violation of the trust placed by them in their Lender, which in turn could lead to a lack of confidence in the financial services industry overall.

It follows that Borrowers under the Loan Schemes have the general expectation that the loan they took with their accredited lender is a routine transaction, documented on the lender's own loan documentation, and afforded the same level of commercial confidence as any other loan from their bank. Consequently, the release of the Borrower's name in the context that it had received a Covid loan would be likely to result in the loss of customer trust and may result in fewer Lenders applying for authorisation for future schemes (should the need arise again), thus reducing the availability of finance for businesses which would, in turn, negatively impact the economy."

39. The BBB went on to explain how financial statements and details of any security, which are publicly available information held by Companies House or the Charity Commission, could be used with a list of borrowers' names to deduce the borrowers' banks and lenders providing loans. The BBB advised that where a borrower has obtained other secured lending from their existing lender, this will be registered at Companies House. This in turn could enable competitors to establish the types of customers (and industry sectors) a particular lender is interested in, potentially resulting in prejudice to that lender's competitiveness in the market.

HM Government and the BBB

40. "The release of the requested information under FOIA would be likely to prejudice the commercial interests of the Government and BBB in that lenders may choose not to engage with government initiatives or BBB because of concerns that their commercial or customer information is released to the general public. Should the private sector refrain from engaging with government schemes or the BBB, this would prejudice the commercial interests of the Government in its ability to introduce and launch any future finance schemes, and the commercial interests of BBB in its ability to achieve its objectives to increase the availability and diversity of finance for Small and Medium Enterprise ("SME") businesses and, in turn, help the UK economy."
41. In response to the Commissioner's queries on why the lenders would refuse to engage with the BBB when little risk on their part attached to the loans, the BBB explained that with all the Schemes the lender retains an element of risk in relation to the loans being provided. In particular, with regard to CBILS and CLBILS, where the Government guarantee is only 80% of the outstanding balance.
42. The BBB added:

"Furthermore, the Schemes were unprecedented in the scale and speed with which they were delivered. The House of Commons Public Accounts Committee has stated that the loans were necessary to provide businesses with the financial support they needed. However, there was also a significant impact on the Lenders in managing the volume of applications to meet the timescales to provide money as quickly as possible. This experience compounded by subsequently seeing their customers' information publicly disclosed by BBB may result in those accredited Lenders considering carefully whether they wished to participate in future Government support schemes."
43. The BBB advised that in order to meet its objectives, it requires financial partners that operate in the private sector which in turn operate in a competitive market and generally do not disclose information about their operations, strategies, or commercial interests (including details of their customers), in order to protect their interests and prevent competitors gaining an unfair advantage, and to safeguard customer confidentiality and their relationships with their customers.
44. The BBB explained that it did not consult the loan recipients as the BBB has no direct relationship with the recipients. It did, however, consult with several of the lenders on disclosure of the loan recipients' names. The lenders confirmed that they considered that

their customer relationships would be harmed by the disclosure of information which had not been explicitly notified to the loan recipients at the time of taking the loan.

45. The Commissioner queried whether the loan recipients would have been aware of the assurance provided by public money with regard to the loan schemes. The BBB stressed that the loans are funded by the lenders and are not funded from the public purse. The Guarantee is provided for the benefit of the lenders not the borrowers. The BBB stated that public money is utilised to cover the interest and any lender levied fees during the first 12 months of the loan along with qualifying residual losses which the lenders may face if a loan recipient defaults. The BBB also pointed out that even when a lender has claimed under the Guarantee, the loan recipient still remains liable, recovery action continues and net recovery proceeds are reimbursed to the Guarantor.
46. The BBB went on to explain its reasons for the application of section 43(2) with respect to the FF loan recipients. It considers that the following parties would be likely to have their commercial interests prejudiced; the FF companies; FF 'other lenders' offering matched funding under the terms of the CLA (a mixture of private individuals and corporate entities); BBB and UK FF Nominees Limited.

FF Companies (whose loans have not converted to equity)

47. The BBB explained:

"Future Fund was designed to provide finance to support innovative UK companies with good potential that would usually have been able to rely on equity investment. The Covid-19 pandemic disrupted the usual investment opportunities, therefore, the Future Fund provided a sound opportunity for companies to apply for government loans. The conditions of the loan agreement are that a company may have to convert the loan into equity when their financial position changes - for instance, if the company undertakes a fundraising round it triggers the equity conversion.

Given the intention to publish the names of the companies that convert the loan into equity, if all Future Fund companies are published, this will highlight the companies that have not reached the value/income threshold for conversion. This may result in speculation about their financial standing and business acumen. Disclosure of the information could, therefore, result in competitors gaining an unfair advantage and/or impact on the decisions by prospective customers or investors. Furthermore, receiving a Future Fund loan may have the connotation of a "bail out" or "rescue" financing and if a company's suppliers or customers found out, they

could lose confidence in the company and either stop doing business or change the terms on which they are willing to do business.”

The 'Other Lenders'/Investors

48. The BBB explained that the FF scheme is an investor-led scheme, such that a lead investor applies on behalf of themselves and may provide information about other parties making up the investment round (in connection to a particular company). The 'other parties' providing finance have invested in a commercial opportunity. The BBB considers that the other parties therefore have commercial interests and gave the example of the other parties needing to maintain the confidentiality of their investment relationships. The BBB added that disclosure of the names of the FF recipients is likely to damage the relationship between the investors, lead investors and the BBB.

49. The BBB explained:

“Given the nature of the financial instrument the Other Lenders are, in some cases, also shareholders. As such, disclosure of the names of Borrowers whose loans have not converted could enable information about the investors in those companies to be ascertained, which could impact on their commercial decision making and, in turn, affect the relationship between BBB and the investors in terms of trust. Future potential commercial transactions (which facilitate the commercial activities of businesses) which investors may enter into with BBB may be harmed.”

BBB and UK FF Nominees Limited

50. The BBB stressed that its role as the Government's development bank necessitates and relies on good working relationships with the finance sector including investors, companies, regulatory bodies and lenders.

51. Although customer information or commercial arrangements would not usually be disclosed in the private sector the CLA in the FF confirmed the Bank's obligations under FOIA to disclose information where appropriate. Notwithstanding this the BBB considers that section 43(2) is engaged because:

“...disclosure would have an adverse impact on the relationship between the Bank and the investors. There is a risk that disclosure of commercial information into the public domain will concern private sector partners and potentially result in hesitancy in working with the Bank (or other public sector bodies, unless legally required to do so) or involvement with other BBB schemes or programmes.”

52. The BBB explained that consultation with BEIS and HM Treasury led to the decision to proactively publish the names of companies whose FF loans have converted into equity. The BBB advised the Commissioner that the affected companies have been contacted to confirm the intention to publish their names. The BBB explained that it considers this disclosure:

"...is appropriate because of the obligations of UK companies to file the changes to their shareholder information as per the Companies Act 2006, at which point UK FF Nominees Limited's shareholding will be publicly available information (now published)."

53. The complainant provided the Commissioner with detailed submissions which disagree with the arguments set out by the BBB and are summarised below.

Loan recipients

54. She explained that companies' financial records are already in the public domain, via Companies House, such that many companies already declare loans they have taken out, when these are secured against their assets, and details of these loans are a public record assigned to their Companies House profiles. She added that;

"Sole traders are an exception to this as they do not have to register at Companies House. In terms of fraud prevention, this arguably suggests there should be greater transparency over loan data to such traders to avoid loopholes for fraudsters."

55. The complainant raised the importance of providing evidence rather than speculation of prejudice to third parties, including evidence from those third parties. She correctly referenced the FOI Section 45 of the Code of Practice⁷ which states that where disclosure may potentially prejudice a third party's commercial interests, the public authority should consult with the third party about disclosure at the time of the request.
56. She considers that rather than businesses facing commercial prejudice as result of a lack of customer confidence or stigma attached to receiving a loan, evidence would suggest that there is no stigma attached to receiving loans and instead there has been a

⁷<https://ico.org.uk/for-organisations/section-45-code-of-practice-request-handling/>

notable public sympathy for businesses more broadly who are widely regarded to be financially struggling.

57. Regarding prejudice to larger businesses the complainant advised:

"Since the 4th June 2020, the Bank of England (BoE) has been publishing the names of companies that have been receiving Covid Corporate Financing Facility (CCFF), which sees the BoE buy corporate debt to aid liquidity. There is no suggestion that this has caused them harm or prejudice to their commercial interests."

Lenders

58. With respect to harm to the lenders' relationships with loan recipients the complainant considers that there cannot be an expectation of customer confidentiality with regards to the CBILS and CLBILS "since the information will be published under state aid rules." She further explained:

"The lender is lending the money risk free, as government is guaranteeing it and the lender is being paid directly by government via the first year interest payments. Meanwhile, the recipient is protected against defaulting on the loan by government, who are guaranteeing it.

This rather exceptional public/private relationship thereby naturally invites a greater degree of public scrutiny especially since it is known that it may cost the taxpayer up to £38.1 billion (plus over £1billion in interest payments.)"

BBB

59. Regarding any commercial prejudice caused to the BBB resulting from business concerns that private and personal information is unfairly disclosed to the public the complainant explained:

"...the loans are exceptionally favorable to the recipient, and it is extremely unlikely that any relationship would be soured with the BBB due to the release of quite basic information on who has received the loans."

The Commissioner's considerations

60. The Commissioner has considered both the BBB's and complainant's arguments with regard to the criteria set out above in paragraph 35. Firstly regarding the CBILS, CLBILS and BBLIS schemes. With respect to the first criterion, commercial harm occurring as a result of the disclosure of the loan recipient names, the Commissioner is satisfied that the harm alleged by the BBB relates to the commercial interests

of the loan recipients. He therefore accepts that the alleged prejudice is relevant to the section 43 exemption. He particularly agrees with the BBB's submissions on the potential impact on customer confidence in trading with businesses who could be considered to have financial difficulties. As set out in paragraph 37, customers may be wary of ordering goods or services requiring a deposit or upfront payment if those customers are concerned about the financial stability of a business and the loss of their own money. He also accepts that there could be a potential impact on share prices for larger organisations.

61. The Commissioner agrees with the complainant's comment regarding the support and understanding shown by many members of the general public with respect to struggling businesses. In support of this the complainant referenced the "Eat Out to Help Out" initiative. However, the Commissioner also notes that the public support of initiatives such as "Eat Out to Help Out" benefitted the public as well as the businesses which were struggling.
62. The Commissioner accepts that the loan recipients would not necessarily consider their loans to be linked to the BBB but rather to their lender with whom they would have an expectation of confidentiality. However, he is not convinced by the sequence of events described by the BBB in paragraph 38 where the loan recipients could lose confidence in financial services (due to their concerns about the trust between themselves and their lenders) which could ultimately lead to fewer lenders applying to work with the BBB on future schemes. The likelihood of this scenario appears to be somewhat remote. If circumstances arose creating a need for similar loan schemes, for which businesses readily applied, and similar conditions with regard to the lending were in place, the Commissioner considers that a previous disclosure would be unlikely to act as a deterrent for lenders' involvement in the schemes.
63. Similarly, the Commissioner considers that the circumstance provided by the BBB in paragraph 39, of deducing lenders' industry preferences, seems to carry a quite remote risk of creating commercial prejudice.
64. The complainant has pointed to the BBB relying on speculative arguments regarding the commercial prejudice resulting from disclosure. She cites the Commissioner's guidance on section 43⁸

⁸ <https://ico.org.uk/for-organisations/section-43-commercial-interests/>

advising that a public authority should have evidence that the third parties prejudiced by the disclosure are having their concerns represented.

65. In this case the Commissioner has accepted the BBB's limited evidence from lenders regarding prejudice to themselves and the loan recipients. He considers that in the circumstances of the case and the huge number of loan recipients with whom the BBB does not have a direct relationship or any contact, it is reasonable for the BBB not to have consulted with them and to provide its own considerations.
66. The Commissioner notes the complainant's assertion that the names of recipients of CBILS and CLBILS will be disclosed. The Commissioner understands that a proportion of the recipients were intended to be disclosed, as set out in paragraph 14. The BBB explained its understanding of the EC requirements as a proportionate approach such that only larger loans are reported.
67. The complainant accurately highlights the exceptional circumstances in the relationship between the public and private sectors. The Commissioner does not consider the lenders to be lending without any risk, as set out in the background information at the beginning of this Notice; nevertheless the risk is drastically reduced by the Government's guarantees.
68. The Commissioner notes the concerns set out by the BBB in paragraphs 40 and 41 regarding commercial prejudice to the Government and BBB. He understands the need for private sector engagement with these schemes and others to achieve BBB's objectives to increase the availability and diversity of finance for SME businesses. He also notes that the government guarantee is 80% of the outstanding balance with regard to CBILS and CLBILS.
69. The Commissioner accepts that if the private sector refrained from engagement with the BBB, the BBB's objectives would be hindered. However, he is not persuaded that the private sector would refrain from engagement in future schemes, particularly if the circumstance of similar guarantees were in place. The Commissioner acknowledges that not all of the BBB's activities and objectives are of a commercial nature, notwithstanding this, he is not convinced that the Government and the BBB would be commercially harmed by disclosure in the specific circumstances of this case.
70. Turning to the FF scheme, the Commissioner notes that those benefitting from the loans were made aware of the BBB's obligations under FOIA. He also notes that in the circumstances described in paragraph 47, those companies converting the FF loan into equity

will have their names published. He understands that those business names not published could be assumed to have been less successful and as a result may be commercially prejudiced.

71. With regard to the "other lenders" the Commissioner accepts that identification of the businesses, as described in paragraph 49, could allow for disclosure of the "other lenders" who had invested in the named businesses. He can also accept that if the named businesses are commercially prejudiced then those investing in those businesses, as a commercial opportunity, would in turn be commercially prejudiced.
72. The Commissioner notes the BBB's comments regarding the potential for creating hesitancy or reluctance of private sector investors to work with the BBB as a result of disclosure. He considers that this is sufficient to demonstrate that there is an argument that the BBB's commercial interests would be likely to be harmed.
73. Having considered the different groups cited by the BBB in regard to the FF scheme, the Commissioner is satisfied that the harm alleged by the BBB relates to the commercial interests of some if not all of the groups cited. He therefore accepts that the alleged prejudice is relevant to the section 43 exemption. The first criterion set out in paragraph 35 has therefore also been met with regard to the FF scheme.
74. The second criterion, set out in paragraph 35, requires the BBB to demonstrate a causal relationship between the potential disclosure of the loan recipients and prejudice to the commercial interests of at least some of the parties concerned. The Commissioner considers that the BBB has demonstrated that there are circumstances in which commercial prejudice could arise. He also considers that the BBB has demonstrated that the consequences of disclosure cannot be seen as trivial. He is satisfied that the prejudice claimed is real and of substance for at least some of all the parties covered above and in particular for the loan recipients.
75. In regard to the third criterion, the level of likelihood of prejudice, the BBB explained that it wished to rely on the lower threshold of 'would be likely'. The BBB advised:

"We believe the prejudice 'would be likely to' occur on the basis that prejudice may not affect all of the parties above, in particular all of the Borrowers and Future Fund companies, but it is likely to affect a proportion of them given the continued pressures from the pandemic and the significant media attention the Schemes have garnered."
76. The Commissioner agrees that amongst the high volume of loan recipients (approximately numbering CBILS 63,647; CLBILS 553;

BBLS 1,222,548⁹ and FF 590¹⁰) there is a real and significant risk of prejudice to at least some of the parties considered above. It would not be proportionate for the Commissioner to attempt to consider the likelihood of prejudice to each of the loan recipients to determine if some further information could be disclosed.

77. The Commissioner has concluded that the prejudice test has been met and the exemption at section 43(2) is engaged. He will now go on to consider the public interest.

Public interest in favour of disclosing the information

78. The BBB acknowledged that there is always a public interest in the transparency of the operation of public authorities in decision making and the spending of public money. It stated:

“There is a public interest in the Loan Schemes because of their scale (number and value) and their impact and effectiveness in supporting businesses to survive and help the economy.

There is a public interest in knowing the impact on the public purse for the direct costs, for instance the first 12 months of the loan interest rates, the arrangements fees, and the number and value of the loan defaults. There is a public interest in protecting public money and preventing and combating financial crime including fraud. The speed of the introduction of the Schemes, the number of loans and substantial amounts of money have given rise to concerns about the risk of fraudulent applications by Borrowers and possible rates of default. It is possible that the release of the names of the Borrowers could potentially help law enforcement agencies and other third parties to identify and investigate possible cases of fraud as the information is interrogated by the public”.

79. The complainant explained her view that:

“It is important to take into consideration the context of these loans as well as the considerable cost to the taxpayer and the need for greater scrutiny that this brings, and why this context means there is an overwhelming public interest in full disclosure.”

⁹<https://www.nao.org.uk/wp-content/uploads/2020/10/Investigation-into-the-Bounce-Back-Loan-Scheme.pdf> figures as at 6 September 2020

¹⁰ Figure from 23 March 2020 to 16 August 2020

80. She referenced information contained in the National Audit Office (“NAO”) investigation¹¹ which is available online, including the interest costs of £1 billion for the BLS alone from the public purse and:

“The Bank’s preliminary assessment of the administrative costs of the three COVID-19 business loan support schemes is £75 million by the end of 2024-25. The assessment suggests a cost of £20 million for the year ending 2020-21.”

81. The complainant concluded that a substantial sum of public money has already been spent on the scheme and she considers it to be important that the public knows “where that money has gone”. She added:

“Moreover, the BBB were so concerned by the inherent risk of fraud in the BLS, they wrote a formal Reservation Notice¹² to the Secretary of State for Business, Energy & Industrial Strategy raising concerns. In the letter, the CEO of the BBB, Keith Morgan, warned of the “significant fraud and credit risks” and highlighted a PWC survey that had been commissioned by the BBB which warned of a “very high” fraud risk inherent to the BLS.

We consider that it is clearly in the public interest to scrutinize where money has been spent where:

- the CEO of the institution tasked with carrying out the loan scheme questions its value for money,
- such a large sum of public money has been spent on and is at risk on the scheme,
- the NAO has highlighted that a significant amount of that money is likely to disappear due to fraud,
- the combination of a public health emergency and looming economic crisis is likely to raise considerable public debate over the proper

¹¹ <https://www.nao.org.uk/wp-content/uploads/2020/10/Investigation-into-the-Bounce-Back-Loan-Scheme.pdf>

¹² <https://www.british-business-bank.co.uk/wp-content/uploads/2020/09/200502-BBB-BLS-reservation-notice-FINAL-tagged.pdf>

allocation of public money and transparency of decision-making processes by public bodies such as the BBB, and

- lessons learned from this scrutiny will have the benefit of ensuring any loan scheme in the future is more efficient and of greater value for money.”

82. The complainant explained her view that publishing the loan recipients would greatly aid law enforcement efforts to recoup the missing billions that she alleges have been lost to fraud, and would be likely to increase the number of public reports to the COVID fraud hotline which in turn will aid public efforts to recoup the money.

Public interest in maintaining the exemption

83. The BBB explained its view that there is a public interest in preventing any “prejudice-based detriment”. It went on to say:

“Such prejudice is not in the public interest, particularly when Borrowers legitimately took advantage of the loans to mitigate the dire commercial effects of the pandemic.....it is impossible to determine how many persons could be prejudiced. To put this into context, there are some 1.6 million Borrowers and approximately 130 Lenders involved. In practice, the detriment to just one person would warrant the exemption.”

84. The BBB referenced the banking system’s principle of customer confidentiality enshrined in the Banking Code of Practice and the expectation of confidentiality held by all those with bank accounts. It considers that it would not be in the public interest to undermine this principle.

85. The BBB accepts the public interest in understanding the effectiveness of the loan schemes but considers that aggregated data is available in the public domain. It explained:

“ HM Treasury, BEIS and BBB have routinely published information about the Loan Schemes: the total number and value of the loans, the industry sector, regional and constituency breakdown of the loans awarded, the number of prevented fraud cases, and the overall estimated losses (fraud, error and credit). The Loan Schemes are also being subjected to independent evaluation, involving a process evaluation, impact evaluation and economic evaluation, with reports to be published in line with usual Government guidelines. Consequently, the release of all the requested information is not necessary to meet the public interest as to how the Loan Schemes operate, how many loans were awarded and their total value.”

86. The BBB argued that disclosure may lead to speculation and unfair targeting of businesses which:

"...could adversely impact the Borrowers and potentially make trading more difficult, which may dissuade businesses from applying for future financial support or suffer customer loss, and thus contribute to businesses ceasing to trade, loans not being repaid, thus increasing the burden on the taxpayer. None of this is in the public interest."

87. The BBB drew the Commissioner's attention to section 149(2) of the Equality Act 2010 which imposes the Public Sector Equality Duty¹³ to have regard to the need to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act. Disclosure of the requested information would allow searches by business name and therefore the possibility to focus on specific communities, for example, ethnicity where a sole trader's business uses the individual's name. The BBB expressed concern that disclosure of the requested information may provide the means to misrepresent how the loan schemes have been used within communities. The BBB considers this to be more than a speculative risk based on its experience in receiving requests for information specifically targeting particular communities.

88. The BBB acknowledged the public interest in tackling fraud and financial crime and the possibility of identifying cases of fraud on the part of the loan recipients as a result of disclosure of the requested information. However, it notes that disclosure to the world at large could potentially disrupt or impact on the agencies involved in officially investigating fraudulent activity by encouraging members of the public to carry out their own identification of fraud. The BBB advised:

"Such informal almost vigilante activity is unlikely to be effective in identifying fraud but is likely to disrupt innocent businesses."

Balance of the public interest

89. The Commissioner has considered the arguments put forward by the complainant and the BBB along with the lenders comments provided

¹³ <https://www.equalityhumanrights.com/en/corporate-reporting/public-sector-equality-duty>

by BBB. The Commissioner is mindful of the need for transparency in government spending of public money and the very significant amounts of public money involved in the loan schemes.

90. The Commissioner notes the complainant's view that there are strong reasons, in the public interest, for the disclosure of the requested information. Although an FOIA request is motive and applicant blind, the complainant has made the rationale for her request clear; she believes that publication of the names of companies receiving loans will help uncover fraud, deter future fraudsters and prevent the loss of public money from businesses failing to repay their loans. The Commissioner agrees that the points set out by the complainant in paragraph 81 are important and demonstrate that the actions taken by government warrant scrutiny. However, he is not convinced that the disclosure of the loan recipients achieves that scrutiny.
91. The complainant has referred to the experience in the United States of those receiving loans over \$150,000 having their names published. She advised:
- "As a result of disclosure significant sums were returned to the US Treasury by those who had wrongly claimed COVID loans for small businesses despite being ineligible. Disclosure also enabled public debates as to why very wealthy individuals had taken the loans and whether this created conflicts of interest."
92. In regard to the US experience cited by the complainant the Commissioner notes that the value of the disclosed loans relates to the CLBILS and CBILS schemes rather than the BBLs scheme where loans are between £2000 and the lower of 25% of their turnover or £50,000. As detailed at paragraph 14 a substantial number of the higher value loans were to be published with the vast majority of BBLs loans being those not disclosed.
93. The Commissioner has read the National Audit Office's report¹⁴ on the BBLs, which he accessed from the Public Accounts Committee considering the Government's response to the COVID-19 pandemic¹⁵, and the Public Accounts Committee conclusions and

¹⁴ <https://www.nao.org.uk/press-release/investigation-into-the-bounce-back-loan-scheme/>

¹⁵ <https://committees.parliament.uk/committee/127/public-accounts-committee/content/136854/public-accounts-committee-the-uk-government-response-to-the-covid19-pandemic/>

recommendations on the BBLs.¹⁶ He is therefore aware of the scrutiny under which the loans and in particular the BBLs have been considered from the time of the internal review onwards.

94. The Commissioner clearly understands the risk of substantial amounts of public money being lost and public concerns regarding the decisions taken regarding the loan schemes, with transparency about how and why they were needed being important. As Gareth Davies, Head of the NAO stated:

“With concerns that many small businesses might run out of money as a result of the COVID-19 pandemic, government acted decisively to get cash into their hands as quickly as possible.

Unfortunately, the cost to the taxpayer has the potential to be very high, if estimated losses turn out to be correct. Government will need to ensure that robust debt collection and fraud investigation arrangements are in place to minimise the impact of these potential losses to the public purse. It should also take this opportunity to consider now the controls it would put in place to protect against the abuse of any future such schemes.”¹⁷

95. Against this backdrop it could be determined that the public interest balance should weigh in favour of disclosure because of the potential impact on the public as a whole. However, the Commissioner is also mindful of determining whether disclosure of the requested information would result in significantly lessening that impact. If the business names across all the loan schemes are disclosed he is not convinced to what extent this would benefit the public. To what extent would disclosure to the world at large result in the detection of fraud which is not detected by the formal investigations in place? The Commissioner is unable to quantify the benefit to the public purse and he must therefore reach a conclusion on the balance of the public interest based on the information available to him.
96. At the time of the request the loan schemes were relatively new and at that point, and currently, the loss to the public purse is a *potential*

¹⁶ <https://publications.parliament.uk/pa/cm5801/cmselect/cmpubacc/687/68705.htm>

¹⁷ <https://www.nao.org.uk/press-release/investigation-into-the-bounce-back-loan-scheme/>

loss. The COVID-19 Hotline¹⁸ was announced on 13 October 2020 as a measure to encourage the public to report any concerns. The public interest in disclosure of the names of loan recipients as a further means to encourage such public participation must be weighed against the potential for prejudice caused by unfounded accusations or retributions resulting in businesses suffering hardship or failing completely, particularly in the case of micro businesses¹⁹ and sole traders. Amongst those receiving loans many will be worthy recipients appropriately obtaining help at a time of crisis. These recipients may ultimately be unable to fund the loan repayments as a result of various factors but at the outset had the intention to pay back the loan. On the other hand it appears that some recipients have deliberately made fraudulent applications. Consequently amongst this group there is a varied mix of recipients who would nevertheless be treated in the same way with some likely to be prejudiced by disclosure.

97. The Commissioner has given weight to the volume of information already in the public domain concerning the loan schemes including anonymised data and certain named loan recipients. There has been, and there rightly continues to be, much public debate and scrutiny of the the government backed schemes. The Commissioner accepts that there will be some fraud which is an unwelcome burden of cost to the public purse. Nevertheless he is not persuaded that any benefit from disclosure of the loan recipients' business names, whether in terms of recouping money paid to fraudulent applications or acting as a deterrent to committing fraud in any future scheme, outweighs the public interest in loan recipients being able to conduct their businesses without adding commercial prejudice to the already challenging circumstances they have already encountered. Furthermore, regarding the FF, as noted above at paragraphs 71 and 72, the Commissioner accepted the likelihood of commercial prejudice to the "other lenders" and the BBB itself. Any such impediment in this particular context would adversely affect the public interest.
98. The Commissioner considers the public interest test in this case to be finely balanced. There is a significant argument in favour of disclosure due to the unprecedented circumstances and the large

¹⁸ <https://www.gov.uk/government/news/new-hotline-launched-to-report-covid-fraudsters>

¹⁹ Defined by Companies House as businesses with a turnover below £632,000

sums of public money concerned. However, the information already in the public domain and the independent evaluations taking place must be taken into account alongside the substantial risk of commercial prejudice to many parties. On balance the Commissioner has concluded after much deliberation that the public interest test favours maintaining the section 43(2) exemption.

99. Having reached her decision on section 43 the Commissioner has not proceeded to consider the other exemptions cited by the BBB.

Right of appeal

100. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

101. 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.

102. 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

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