

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 August 2023

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested inspection reports of the working conditions of migrant farm workers. The Home Office disclosed the reports, with information which identified the farms and all individuals, redacted under sections 40 (Personal information) and 43 (Commercial interests). The complainant maintained that the farm names and addresses should be disclosed.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 43 of FOIA to withhold the farm names and addresses.
3. The Commissioner requires no steps as a result of this decision.

Request and response

4. On 1 February 2023, the complainant wrote to the Home Office and requested information in the following terms:

"Under the Freedom of Information Act, please could you provide in full the 19 reports the Home Office drafted after the 25 farm visits it conducted between February 2021 and February 2022, in which Home Office staff interviewed 800 seasonal workers.

References to the reports can be found on pages 6 and 7 of the 'An inspection of the immigration system as it relates to the agricultural

sector' report compiled by the Independent Chief Inspector of Borders and Immigration. A link to the report can be found here¹.

If seasonal workers are named, please redact their names to protect their identities. It is strongly in the public interest to keep any names of the farms unredacted, as significant welfare issues were found in eight of the 19 reports."

5. The Home Office responded on 22 February 2023. It refused to comply with the request on the grounds that doing so would exceed the costs limit at section 12 of FOIA.
6. The complainant requested an internal review on 23 February 2023, clarifying that he had asked for reports that had already been supplied to the Chief Inspector of Borders and Immigration ('ICIBI'), and that he did not believe that section 12 would be engaged.
7. On 5 April 2023, the Home Office provided the outcome of the internal review. It revised its position, withdrawing reliance on section 12 and introducing sections 31(1)(g) (Law enforcement), 40 (Personal information) and 43 (Commercial interests) of FOIA to withhold the information.

Scope of the case

8. The complainant contacted the Commissioner on 17 April 2023 to complain about the way his request for information had been handled.
9. During the Commissioner's investigation the Home Office revised its position again. It withdrew its claim that section 31 applied and it disclosed the inspection reports in full, save for redactions under sections 40 and 43 of FOIA, to withhold individuals' names and the names and addresses of the farms in question.
10. The complainant accepted the redaction of individuals' names, but maintained that it was in the public interest that the names and addresses of the farms should be disclosed.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1125411/An_inspection_of_the_immigration_system_as_it_relates_to_the_agricultural_sector_May_to_August_2022.pdf

11. The analysis below has considered whether the Home Office was entitled to rely on sections 40 or 43 of FOIA to withhold the farm names and addresses.

Reasons for decision

Section 43 – Commercial interests

12. Section 43(2) of FOIA states that information is exempt if its disclosure under FOIA would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).
13. A public authority must be able to show how and why its disclosure has the potential to prejudice someone's commercial interests. The prejudice can be to the commercial interests of any person (an individual, a company, the public authority itself or any other legal entity). Where prejudice is claimed on behalf of a third party, the Commissioner accepts that it may not be necessary to explicitly consult the relevant party, however any arguments advanced by a public authority should be based on its prior knowledge of the third party's concerns.
14. In order for section 43(2), to be engaged, three criteria must be met:
 - the harm which the public authority envisages must relate to someone's commercial interests.
 - the public authority must be able to demonstrate a causal relationship between disclosure and prejudice to someone's commercial interests. Furthermore, the resultant prejudice must be real, actual or of substance.
 - the level of likelihood of prejudice being relied upon by the public authority must be met (ie it must be shown that disclosure would, or would be likely to, result in prejudice occurring).
15. The Home Office argued that disclosure would be likely to prejudice the commercial interests of the farms featured in the reports. The withheld information was commercially sensitive because the reports contained candid remarks from workers about their work and conditions.
16. By way of background to the matter, the Home Office said:

"...the Home Office is a critical enabler to the agricultural industry. In order to recruit overseas workers, the Home Office must provide an efficient and effective immigration system. It works with sponsor organisations, who help to recruit seasonal workers for use in farms across the UK. As part of the drive to ensure an efficient and effective immigration system, Home Office officials conduct compliance visits to

these farms. The Home Office has built up a good working relationship with these farms which is essential to allow us to challenge any issues of concern, encouraging sponsors to be accountable for the actions of their clients, with the aim of continuously improving our systems and processes for our partners and customers involved in the seasonal workers route."

17. Farm visits are conducted – with the consent of the farms themselves – by Home Office officials in order to ensure that the sponsors and farms are fully compliant with their responsibilities, and seasonal workers are not exploited. At no stage of the process are the farms told that, by co-operating in the visits, the information given could be disclosed under FOIA. From the Home Office's experience of conducting the inspections, it knows that the farm owners and managers have a reasonable expectation of confidentiality, and that they will not be publicly identified through a disclosure under FOIA, because they co-operated in good faith, as part of Home Office compliance visits.
18. The Home Office was particularly concerned that at the point they were collected, any allegations contained in the comments had not been tested or proven.

"The concern in this case, is that disclosing the names and addresses of farms would – in conjunction with the information already provided to the complainant - link the individual farms with unsubstantiated and untested allegations made by some workers during the compliance visits. This would effectively 'name and shame' the farms. Even though they have been unsubstantiated and untested, it is quite probable that the allegations would likely discourage workers from these farms. Not only is this likely to put at risk the essential labour that the farms need to function, but also, disclosure would be likely to harm the Home Office's relationship with these farms thereby making it more challenging for officials to visit the farms and complete the compliance checks; checks which are undertaken for the benefit of the sponsors, the farms, the workers, the Home Office (and by extension the wider public)."

19. With regard to the three criteria set out in paragraph 14, the Commissioner is satisfied that the harm the Home Office envisages relates to the commercial interests of the farms.
20. Secondly, the Commissioner considers the Home Office has shown that a causal link exists between the disclosure of any unsubstantiated allegations, and prejudice to the farms' commercial interest, in that it may discourage workers from accepting work at particular farms. He is satisfied that the Home Office has worked sufficiently closely with the farms when collating the information, to have knowledge of their

concerns about the impact that disclosure of the reports would have on them.

21. The Commissioner also considers that wider reputational damage would be likely to result from such disclosures, affecting the farms' standing in the agricultural industry.
22. Thirdly, the Commissioner accepts the Home Office's position that the envisioned prejudice 'would be likely' to happen ie it is more than a remote, hypothetical possibility.
23. As the three criteria set out in paragraph 14 are met, the Commissioner is satisfied that section 43(2) is engaged.

Public interest test

24. Section 43 is subject to the public interest test, as set out in section 2 of FOIA. This means that although section 43 is engaged, the requested information must be disclosed unless the public interest in maintaining the exemption is stronger than the public interest in disclosure.

Public interest in favour of disclosure

25. Noting that the UK had introduced seasonal work visas to respond to a shortage of labour in the UK's agricultural sector, the complainant said the ICIBI had found failings with the scheme, which had resulted in welfare issues among the workers. He said its report had stated that:

"The Home Office has not demonstrated that it has the mechanisms or capabilities in place to assure itself that scheme operators are meeting compliance requirements. When serious concerns have been raised by workers themselves, it did not act promptly or seriously."

26. Against this background, the complainant argued:

"...it is strongly in the public interest for the farms in question to be named, so the farms that are operating well can be held up as examples to others, and the farms that are accused of serious labour abuses can be properly scrutinised, and migrant workers can be made aware of farms that have been accused of labour rights issues in the past, so they can make an informed decisions [sic] on whether they want to travel often many thousands of miles to work at the farms."

27. The Home Office recognised that there is a general public interest in transparency and openness in Government which would be served by the disclosure.

Public interest in favour of maintaining the exemption

28. The Home Office argued that the public interest in transparency, openness and accountability was served by its disclosure of the content of the reports and the system of ongoing compliance checks that monitor the welfare of migrant workers in the agricultural industry.
29. It said that food security is a major challenge for the UK food sector. Farmers, growers and producers face many pressures, including access to labour markets. Any disclosure which would be likely to result in the disruption of the supply of labour to particular farms, without good reason, is not in the wider public interest.

Balance of the public interest

30. The ICIBI's report notes that the agricultural sector is commonly considered to be an industry where labour exploitation is a risk.
31. The Commissioner recognises that migrant workers play an important part in the UK's agricultural economy. They are entitled to be protected from exploitation and to expect that their working conditions comply with UK laws and regulations. As such, the successful operation of the Home Office's monitoring scheme is key to their welfare and they are encouraged to be candid in the feedback they provide.
32. The Commissioner notes that some of the workers' interviews contain negative comments about their working and living conditions, or they recount negative experiences. These accounts may, or may not, have merit, but there is no way of knowing which, without further investigation. That being the case, he considers that it is not in the public interest for farms to be 'named and shamed' and their businesses affected, in respect of what are, at this point, unsubstantiated claims. This would be likely to cause the farms in question reputational damage, and to make third parties less inclined to do business with them.
33. Nor is this an effective way of tackling any issues and concerns that have been highlighted. The Commissioner considers that where reports contain allegations of non compliance with UK laws and regulations, the proper course of action is for those allegations to be examined by the appropriate authorities, and for any action that may be necessary to be taken. In this case, the ICIBI has scrutinised the reports and made particular recommendations; disclosure now may interfere with the Home Office responding to those recommendations.
34. Going forward, the threat of disclosure would also be likely to deter workers from being candid and farms from proactively cooperating with the Home Office visits, making the compliance inspection system less effective. This could affect the confidence that migrant workers have in the UK's migrant visa system, deterring them from coming to work at

UK farms. Agriculture is a key driver of the rural economy, and any disruption to the UK's access to labour would adversely affect the commercial interests of the agricultural sector, and would also adversely impact the UK's ability to produce food. The ICIBI's report noted:

"A farm manager told inspectors that 'restrictions on EEA [European Economic Area] workers had a big impact, so the Seasonal Worker visa is even more critical'. Without it, they said, 'there would be no fruit and vegetables in UK'."

35. A weakened agricultural sector, leading to increasing reliance on overseas food imports, is an outcome which would clearly not be in the public interest.
36. The Commissioner's decision is that, as the welfare of migrant workers is subject to formal scrutiny by the Home Office, and by the ICIBI, the public interest favours protecting the commercial interests of farms from being damaged by the disclosure of unsubstantiated claims. The Home Office was therefore entitled to apply section 43 of FOIA to refuse to disclose the identities and addresses of the farms.
37. In view of this decision, it has not been necessary to consider the Home Office's application of section 40(2) of FOIA.

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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.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

Samantha Bracegirdle
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