

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 27 June 2024

**Public Authority:** **Advisory Conciliation and Arbitration Service (ACAS)**

**Address:** **Windsor House  
50 Victoria Street  
Westminster  
London  
SW1H 0TL**

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about documents linked to a previous exchange about their Job Evaluation and Grading Support ('JEGS') evaluation. ACAS advised that it was applying section 43(2) of FOIA (commercial interests) to withhold the requested information for the first question, and provided responses to the second and third questions. It advised that the last two questions of the request did not fall under FOIA.
2. The Commissioner's decision is that ACAS was entitled to apply section 43(2) to withhold the requested information in respect of the first question.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 5 February 2024, the complainant wrote to ACAS and requested information in the following terms:

"Can you please provide me with the following information:

- Disclosure of the documents referred to in the email exchange received relating to my JEGS evaluation – the JEGS handbook and scoring algorithms for grades 6 and 7.
  - In relation to the above the information setting out the points per factor.
  - Any further information held relating to the JEGS job evaluation beyond the given score for the CAC CEO role and any Acas specific grading guidance or level descriptors.
  - Confirmation as to whether I have been subjected (as in the JEGS evaluation and appeal) to a decision based solely on automated processing giving the need for software to generate the scores outcomes.
  - Why I was not informed of this and why were my rights under the Data Protection legislation not set out clearly.”
5. ACAS responded on 26 February 2024. It advised that it was applying section 43(2) of FOIA to the first question and provided responses to the second and third questions. It also advised that the last two questions did not fall under FOIA.
6. Following an internal review, ACAS wrote to the complainant on 5 March 2024. It upheld its previous position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 8 March 2024 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether ACAS was correct to withhold the requested information for the first question of the request on the basis of section 43(2) of FOIA.

### **Reasons for decision**

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#### **Section 43(2) – commercial interests**

9. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.

10. 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 those commercial interests. The resultant prejudice must be real, actual or of substance; and
  - the level of likelihood of prejudice being relied upon by the public authority must be met (that is, it must be shown that disclosure would, or would be likely to, result in prejudice occurring).
11. JEGS is a software-supported analytical job evaluation methodology, developed and designed for the Civil Service. The JEGS handbook is a user guide to people following the JEGS methodology to carry out job evaluations on staff.
12. ACAS explained that it had consulted the supplier of the JEGS system and it confirmed that it does not freely supply the JEGS handbook as it would have negative commercial implications. It explained that one of the issues would be that individuals with the handbook would be able to tailor their responses to gain an advantage and be able to provide answers that inflate their grade. The supplier therefore considers that an individual could gain an advantage, or a competitor would be able to provide a service that would enable candidates to gain an advantage in the job evaluation process.
13. The JEGS system supplier also explained that the handbook is only provided to individuals who have been through formal JEGS training and are trained job evaluators. ACAS has stated that it pays a licence fee to use the JEGS handbook and accompanying software.
14. The Commissioner has viewed a copy of the JEGS handbook and notes that it contains a Trade Secrets Notice in the introductory pages.
15. The Commissioner has noted that the complainant also asked for the scoring algorithm for grades 6 and 7 as part of the first question. While the submission from ACAS focuses predominantly on the JEGS handbook, the Commissioner is satisfied that the same concerns about commercial interests would apply to information about the scoring algorithm used in the JEGS methodology.
16. The Commissioner is satisfied, first, that the harm ACAS envisages relates to commercial interests; those of the supplier of the JEGS handbook.

17. Second, the Commissioner accepts that a causal link exists between disclosing the information and commercial prejudice. The information is related to a job evaluation process methodology and disclosure of the requested handbook to the public at large could allow anyone to gain advantage of the job evaluation system by tailoring their responses. The Commissioner also acknowledges the JEGS system supplier's point that other organisations could use the withheld information to offer a service to coach people through the job evaluation process.
18. In its submission to the Commissioner, ACAS has stated that it considers the prejudice would be likely to happen and the Commissioner accepts the lower threshold of likelihood in this case; that the envisioned prejudice would be likely to happen.
19. Since the three criteria above have been satisfied, the Commissioner accepts that disclosing this information would be likely to result in commercial prejudice to the supplier of the JEGS system. The exemption at section 43(2) is engaged.
20. The Commissioner will now consider the public interest factors in favour of disclosing the redacted information or continuing to withhold it.

### **Public interest test**

21. Section 43(2) is subject to the public interest test, as set out in section 2 of FOIA. This means that although the exemption 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 factors in favour of disclosing the requested information**

22. The complainant has argued that ACAS' claim that there are commercial interests does not outweigh the interest in transparency in the job evaluation process.
23. ACAS has acknowledged that there is a public interest in demonstrating that its procedures are transparent.

### **Public interest factors in favour of maintaining the exemption**

24. ACAS has argued that disclosing the requested information would harm the commercial interests of the supplier of the JEGS system.
25. It explained that potential rivals may be able to use the supplier's information to their own advantage and this would have the real

potential to jeopardise the supplier's future business opportunities and damage their ability to compete in the commercial marketplace.

### **Balance of the public interest**

26. Whilst the Commissioner accepts that there is public interest in transparency about how the job evaluation process operates, he also understands the importance of the supplier of the JEGS system to be able to control who has access to the detail of its job evaluation methodology. He notes that access to the JEGS software and handbook is only through completing the appropriate training and paying the required licence fee. He considers that the balance of the public interest is weighted in favour of non-disclosure as he agrees that the release of the JEGS handbook is likely to result in harm to its supplier's business model, and a reduction in its competitiveness and ability to negotiate. None of these factors are in the public interest.

### **Other matters**

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27. The Commissioner notes that the complainant also expressed dissatisfaction with ACAS' response to their questions about automated processing. However, the Commissioner agrees that these questions do not constitute requests for recorded information and that ACAS was correct to address them outside of FOIA.

## **Right of appeal**

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28. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Keeley Christine**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**