

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 July 2021

Public Authority: Student Loans Company Limited
Address: 100 Bothwell Street
Glasgow
G2 7JD

Decision (including any steps ordered)

1. The complainant has requested a copy of the student loan records of a deceased named individual held by Student Loans Company Limited (SLC). SLC relied on sections 21 (information accessible by other means), 31 (law enforcement) and 40(2) (third party personal data) of the FOIA to withhold the information.
2. The Commissioner's decision is that SLC was entitled to rely on section 21 of the FOIA to withhold the information relating to the deceased individual's date of birth, address, place/course/year(s) of study, parents' names, names of sibling(s), amounts/dates of some student loan payments and bank details. She has also decided that the remaining withheld information engages the exemption under section 31(1)(c) of the FOIA, and that the public interest favours maintaining the exemption. She is therefore satisfied that SLC is entitled to withhold this information.
3. The Commissioner does not require any further steps to be taken as a result of this decision notice.

Request and response

4. On 15 February 2020, the complainant made the following request for information from SLC:

"I am writing to make an open government request for all the information to which I am entitled under the freedom of information act. In order to assist you with this request, I am outlining my query as specifically as possible. If however this request is too wide or too

unclear, I would be grateful if you could contact me as I understand that under the act, you are required to advise and assist requesters.

I understand that the deceased Manchester bomber, Salman Abedi, had taken out a student loan whilst attending Salford University and maybe at Manchester and Trafford College.

I would like a copy of his records including his application form, communications with any other institution or third party. I understand that parts of this record will be redacted for privacy reasons.

I understand that under the act, I should be entitled to a response within 20 working days. I would be grateful if you could confirm in writing that you have received this request."

5. SLC acknowledged receipt of the information request on 17 February 2020 and provided the complainant with a reference number.
6. The complainant wrote to SLC on 26 February 2020 providing the following further information:

"I realised that I did not give Salman Abedi's details to help process the request. Salman Abedi was born on the 31st December 1994 and died on 22nd May 2017. His last address was [address redacted]."
7. SLC responded on 12 March 2020 and refused to provide the requested information, citing a number of exemptions under the FOIA as its basis for doing so. SLC stated that it was withholding information relating to the deceased individual's date of birth, address, place/course/year(s) of study, parents' names, names of sibling(s) and amounts/dates of some student loan payments under section 21 (information accessible by other means). It withheld information relating to SLC staff and the deceased individual's family under section 40(2) (third party personal data). Finally, it withheld the remaining information under section 31 (law enforcement).
8. On 14 March 2020 the complainant wrote to SLC asking for a review of its decision to withhold some of the requested information under sections 21 and 31 of the FOIA.
9. Following an internal review, SLC wrote to the complainant on 17 June 2020, maintaining its original position.

Scope of the case

10. The complainant contacted the Commissioner on 23 June 2020 to complain about the way his request for information had been handled.
11. During the course of the Commissioner's investigation, SLC revised its position, stating that some of the requested information (the deceased individual's bank details) was also being withheld under section 41 of the FOIA (information provided in confidence).
12. SLC wrote to the complainant on 17 May 2021 advising him of its revised position. The complainant responded on the same day, advising SLC that the information it was withholding under section 41 *"is already in the public domain as they were revealed as part of court proceedings, a majority of which I attended."*
13. SLC further revised its position, stating that this information was now being withheld under section 21 of the FOIA.
14. The Commissioner notes that the complainant has not disputed SLC's application of section 40(2) to withhold third party personal data in his internal review request, nor in his submission to the Commissioner.
15. The Commissioner's investigation in this case is therefore restricted to whether she considers SLC is entitled to rely on sections 21 and 31 of the FOIA to withhold the requested information.

Reasons for decision

Section 1 – general right of access

16. Section 1(1) of the FOIA states that any person making a request is entitled to be told whether the information they have asked for is held and, if so, to have that information communicated to them, subject to the application of any exemptions that are appropriate.

Section 21 – information accessible to the applicant by other means

17. Section 21(1) of the FOIA provides that a public authority is not obliged to provide information under section 1 of the FOIA if that information is reasonably accessible to the applicant by other means.
18. Section 21 provides an absolute exemption. This means that if the requested information is held by the public authority, and it is reasonably accessible to the applicant by other means, the application of the exemption is not subject to the public interest test.

19. For section 21 to apply, there should be another, clear mechanism by which the applicant can reasonably access the requested information outside the FOIA. Furthermore, for section 21 to apply, it is necessary to consider whether the entirety of the requested information is reasonably accessible to the applicant.
20. Information is only reasonably accessible to the applicant if the public authority:
 - knows that the applicant has already found the information; or
 - is able to provide the applicant with precise directions to the information so that it can be found without difficulty.
21. In this case, SLC is withholding information relating to the deceased individual's date of birth, address, place/course/year(s) of study, parents' names, names of sibling(s), and amounts/dates of some student loan payments under section 21 of the FOIA.
22. SLC maintains that this information is exempt from disclosure because it is already in the public domain and/or within the complainant's own knowledge, and therefore reasonably accessible to the complainant. SLC stated that it was aware that the complainant already knew the named individual's University, date of birth and home address as the complainant confirmed these details in his emails to SLC dated 15 and 26 February 2020.
23. SLC stated that the information to which the section 21 exemption applies is available from reliable media sources in the public domain. It explained that it can be found free of charge through simple internet searches due to the extensive media coverage of the deceased individual and his family following the terrorist attack on the Manchester Arena in May 2017. SLC provided the Commissioner with examples of the articles available online at the time of the original request. SLC confirmed that these links were not provided to the complainant at the time of the original response but stated that it advised the complainant that this information can be found through simple internet searches due to the fact multiple sources were available.
24. SLC considers the information to which the section 21 exemption applies was widely available and reasonably accessible to the complainant at the time of his request.
25. SLC does not consider that there are any special circumstances applicable to the complainant which means he cannot reasonably access the information to which the section 21 exemption applies from public sources.

26. SLC noted that in the complainant's internal review request, he did not challenge the application of section 21 on the basis that the information was not reasonably accessible. Instead, it was argued by the complainant that SLC was "guessing" the information he was looking for and that SLC had made an assumption about the purpose of his request. SLC stated that it found no evidence to support these assertions and concluded that it had not guessed the information the complainant was looking for nor had it made any judgments or assumptions about the purpose for which he had requested the information held.
27. As detailed in paragraphs 11, 12 and 13 of this decision notice, SLC revised its position in relation to the deceased individual's bank details from relying on sections 31 and 41 of the FOIA to section 21 to withhold this information.
28. In support of its decision to withhold the deceased individual's bank details under section 21 of the FOIA, SLC has referred to paragraph 13 of the Commissioners guidance on section 21¹. This paragraph explains that section 21 can apply in situations where the requested information is reasonably accessible **to the applicant** by other means, rather than to the public at large. Therefore, unlike most of the other exemptions within the FOIA, the public authority can take the individual circumstances of the applicant into account.
29. SLC has argued that although the deceased individual's bank details may not be available to the general public, they are accessible to the complainant as he had access to this information through his attendance of the trial of the deceased individual's brother.
30. The Commissioner is therefore satisfied that section 21 was correctly applied to the information relating to the deceased individual's date of birth, address, place/course/year(s) of study, parents' names, names of sibling(s), amounts/dates of some student loan payments and bank details, in that this information was either already know to the complainant or was 'reasonably accessible' to him.

Section 31 – law enforcement

31. Section 31 of the FOIA provides a prejudice-based exemption which protects a variety of law enforcement interests. Consideration of this exemption is a two-stage process. Firstly, in order for the exemption to

¹ <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

be engaged, disclosure of the requested information would need to prejudice, or be likely to prejudice, one of the law enforcement interests protected by section 31 of the FOIA. Secondly, the exemption is subject to a public interest balancing test. This means that the information should be disclosed if the balance of the public interest favours this, even where the exemption is engaged.

32. The relevant part of section 31(1) of the FOI provides that:

"(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(c) the administration of justice..."

33. In order to engage a prejudice-based FOIA exemption, such as section 31, there must be at least a likelihood that disclosure would cause prejudice to the interest that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice based exemption:

- first, 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 interests protected by the exemption (in this case, the administration of justice).
- 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 must be real, actual or of substance; and
- thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie whether disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

The applicable interests

34. The first step in considering whether this exemption is engaged is to address whether the prejudice alleged by the public authority is relevant

to the law enforcement activities mentioned in section 31(1)(c) – the administration of justice.

35. With respect to the law enforcement activities, the Commissioner recognises in her published guidance², that section 31(1)(c) will cover *"...the justice system as whole. Amongst other interests, the exemption will protect information if its disclosure would undermine particular proceedings."*
36. The Commissioner acknowledges that the arguments presented by SLC refer to prejudice to the administration of justice and that the appropriate applicable interest has therefore been considered.

The nature of the prejudice

37. The Commissioner next considered whether SLC had demonstrated a causal relationship between the disclosure of the information in question and the prejudice that section 31(1)(c) is designed to protect against. In her view, disclosure must at least be capable of harming the interest in some way, ie have a damaging or detrimental effect on it.
38. SLC stated that at the time the original response was issued to this request, the trial of the deceased individual's brother, for his role in the Manchester Arena attack, had not concluded. SLC explained that it was aware from media reports at the time that the trial was hearing evidence of the deceased individual and their brother's finances, which it stated included some of the information it held. SLC has argued that the release of further information held by SLC into the public domain at the time of the request and response presented a real and significant risk of prejudice to the ongoing criminal trial. SLC believed particular weight could be given to this exemption whilst the information held may affect ongoing criminal proceedings.

Likelihood of prejudice

39. With regard to likelihood of prejudice in this case, SLC has confirmed that it is relying on the lower level of 'would be likely to' prejudice.

² <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

Is the exemption engaged?

40. The Commissioner accepts that there was a genuine risk that the disclosure of the withheld information would have been likely to have an impact on the ongoing criminal trial at the time of the request.
41. The Commissioner therefore finds that section 31(1)(c) is engaged, as disclosure would be likely to affect the criminal trial.

Public interest test

42. Section 31(1)(c) is subject to a public interest test. This means that even though the exemption is engaged, the information may only be withheld if, 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 disclosing the information

43. The complainant argued in his internal review request that he is a media worker who worked on a documentary about the Manchester bombing that was broadcast on the first anniversary.
44. The complainant also argued that he was attending the trial of the deceased individual's brother and he was therefore subject to the same restrictions as any other journalist in not reporting any facts that have not first been revealed to the jury so as to not prejudice the trial.
45. The complainant stated that if the information had been released to him, he would still not have published it until the jury's verdict is publicly released.
46. SLC recognised that, given the circumstances surrounding the Manchester Arena attack, this was a high profile criminal case which attracted a considerable amount of interest from the public and the media.
47. SLC accepts that there is a public interest in openness and transparency and a wider public interest in the Manchester Arena attack.

Public interest arguments in favour of maintaining the exemption

48. SLC argued that there is a compelling public interest in ensuring that criminal proceedings are not jeopardised and that those accused of criminal acts have the right to a fair trial.
49. SLC stated that at the time of the request and its initial response, the deceased individual's brother was on trial for charges related to the Manchester bombing. Subsequently, at the time of the internal review

decision, the deceased individual's brother was awaiting his sentencing hearing.

50. SLC explained that media coverage of the trial outlined certain information about the deceased individual, including his movements and financial details. SLC believe that the additional information, which was not already in the public domain, could diminish the chances of a fair trial taking place if it were to be released before the trial had concluded.
51. In response to the complainant's public interest arguments in his internal review request, SLC did not consider that his grounds, which SLC view as him relying solely on his professional integrity, were compelling or relevant to the application of the FOIA.
52. In particular, SLC explained that public authorities should consider FOI requests without reference to the identity or motives of the requester and should view disclosure as a release of information into the public domain. This means that public authorities must consider the consequences of disclosure to the world at large, and not just the impact of providing the material to the individual requester. SLC argued that the fact that the requester is a journalist and has a good understanding of the reporting restrictions on criminal trials is not relevant to SLC's consideration of whether to release information under the FOIA. It stated that the requester's profession was not known to SLC at the time the original request was submitted as this was only confirmed by the requester at internal review. In any event, the requester's profession is wholly irrelevant to the prejudice and public interest tests to be applied and SLC was therefore correct not to take this into account.

Balance of the public interest

53. In carrying out the statutory balancing exercise in this case, the Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding likely prejudice to law enforcement matters. Clearly, it is not in the public interest to disclose information that may compromise this.
54. The Commissioner considers that some weight must always be given to the general principle of achieving accountability and transparency through the disclosure of information held by public authorities. This assists the public in understanding how public authorities make their decisions and carry out their functions, and in turn fosters trust in public authorities.
55. The Commissioner recognises the specific public interest in disclosing information about the deceased individual's background which may help to further the public's understanding of the events that ultimately led to

his actions on 22 May 2017. However she also notes that a significant amount of information is already in the public domain, which goes some way to addressing this public interest.

56. The Commissioner also considers that some weight must be given to the more general public interest in journalists being able to access information in order to better inform the public about, and increase the public's understanding of, events of such significance. However, the Commissioner agrees with SLC that the fact the requester is a journalist cannot be taken into account when considering the application of this exemption.
57. The Commissioner believes that there is a compelling and competing public interest in ensuring that criminal investigations should not be jeopardised. There is therefore a very strong public interest in protecting the law enforcement capabilities of public authorities. The Commissioner has seen the withheld information and understands the nature of the proceedings. She considers that this supports the argument against disclosure, as it is clear that this information, if disclosed, would undermine the proceedings by allowing for speculation, undue scrutiny and a lack of neutrality. The Commissioner is therefore of the view that it would clearly not be in the public interest to release the withheld information into the public domain when criminal investigations are still ongoing.
58. The Commissioner therefore concludes that the balance of the public interest in all the circumstances of the case lies in favour of maintaining the exemption at section 31(1)(c).

Other matters

59. The Commissioner notes that SLC's response to the internal review exceeded 40 working days. Although there is no statutory time limit specified within the FOIA for public authorities to complete a review, the Commissioner takes the view that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working

days. The Commissioner therefore recommends that SLC review the Section 45 code of practice³.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

60. 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

61. 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.
62. 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

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