

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

### **Decision notice**

**Date:** 29 March 2021

**Public Authority:** Cormac Solutions Limited  
**Address:** Higher Trenant Road  
Wadebridge  
Cornwall  
PL27 6TW

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

---

1. The complainant requested information from Cormac Solutions Limited ("Cormac"), a wholly-owned company serving Cornwall Council ("the Council"), about employees' bonuses for 2017/2018. Cormac provided some information, but withheld the total amount of the bonuses under section 43(2) of the FOIA – commercial interests. Subsequently, Cormac additionally asserted that the information comprised third party personal data and was exempt under section 40(2).
2. The Commissioner's decision is that the requested information comprises the personal data of individuals and disclosure would not be lawful, and therefore Cormac correctly withheld the information under section 40(2) of the FOIA.
3. The Commissioner does not require Cormac to take any steps.

#### **Background to the request**

---

4. Cormac is a member of Corserv Limited ("Corserv"), also known as the Corserv Group, a group of organisations delivering a wide range of services to the Council.
5. Cormac has confirmed to the Commissioner that, as a wholly-owned company owned by the Council, it is a public authority in its own right under the definition at section 6 of the FOIA.

## Request and response

---

6. On 23 May 2019, the complainant wrote to Cormac and made the following request for information:

*"Could you advise me how many Cormac employees received bonuses for 2017/18 and what the total bonus pot was please. Could you also advise whether any Cormac staff are in receipt of sales related commission please and if so the same questions as for the bonuses"*

7. Further correspondence followed, including some between the complainant and the Council, to whom the complainant also directed requests for information.
8. On 13 June 2019, Cormac responded. It explained: *"five individuals had a small part of their salary paid as a bonus based on achieving set business objectives for 2017/18."* Regarding the second part of the request, it stated: *"No Cormac staff were in receipt of sales related commission."*
9. The complainant noted that Cormac had not provided an answer as to *"the total bonus pot"*. He wrote to the Council on 13 June 2019 raising the question again and also requesting further information.
10. This letter to the Council was responded to by Cormac on 10 July 2019. With regard to the question of the bonus pot, Cormac refused to provide this information, stating that it was exempt under section 43(2) of the FOIA: prejudicial to commercial interests.
11. Following an internal review, on 8 August 2019, Cormac upheld its position. The Commissioner notes that this was provided by Corserv, and she has addressed the confusion that may have arisen from this, and from the different organisations' handling of requests in general, in the Other Matters section of this notice.

## Scope of the case

---

12. The complainant contacted the Commissioner on 20 September 2019 to complain about the way his requests for information had been handled.
13. At that stage, he considered that the Council should have been able to provide him with the answer as to the *"total bonus pot"*, and he asked the Commissioner to investigate whether the information was held by the Council.

14. The Commissioner issued a decision notice<sup>1</sup> on 9 July 2020, finding that the information was not held by the Council. The complainant therefore asked her to investigate whether the information had been correctly withheld by Cormac.
15. During the course of the subsequent investigation, Cormac advised the Commissioner that, additionally, it considered that the information was exempt from disclosure under section 40(2) of the FOIA – personal information – and under section 43(2) of the FOIA, as cited before.
16. This notice considers whether the information was correctly withheld under section 40(2). If necessary, the Commissioner will go on to consider whether it is exempt under section 43(2).

## **Reasons for decision**

---

### **Section 40 – Personal information**

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

---

<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618000/fs50875794.pdf>

<sup>2</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

### **Is the information personal data?**

21. Section 3(2) of the DPA defines personal data as:

*"any information relating to an identified or identifiable living individual"*.

22. The two main elements of personal data are therefore that the information must relate to a living person, and that the person must be identifiable.

23. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data or an online identifier; or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

24. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

25. In this case, the request is for salary information. Specifically, it relates to bonuses paid on top of normal salary. As Cormac has explained, this is part of what it considers to be performance-related pay.

26. This information clearly relates to the individuals receiving the bonuses. The Commissioner has considered whether those individuals would be identifiable from the withheld information.

27. The Commissioner notes that the request is for the total size of the bonus pot and not for any further breakdown, such as how much was received by each individual or the individuals' names.

28. However, in considering identifiability, she will take into account the possibility of identification taking place by linking the withheld data with other available data. As her Anonymisation Code<sup>3</sup> provides, the Commissioner's view is that (when considering the application of section 40(2)) *"public authorities have to assess whether releasing apparently anonymised data to a member of the public would breach the data protection principles. This is intended to ensure that public authorities take into account the additional information that a particular member of the public might have that could allow data to be combined to produce*

---

<sup>3</sup> *Anonymisation: managing data protection risk code of practice*  
<https://ico.org.uk/media/1061/anonymisation-code.pdf>

*information that relates to and identifies a particular individual – and that is therefore personal data” (Anonymisation Code, p. 19).*

29. Therefore, in determining whether data identifies a living individual, the Commissioner will consider any identifying factors in the data itself, and also the possibility that the data could be combined with other information in the public domain or already in the possession of others.
30. The Commissioner will also consider the possibility of identification by a 'motivated intruder', defined in the Anonymisation Code as "a person who starts without any prior knowledge but who wishes to identify the individual from whose personal data the anonymised data has been derived". A motivated intruder, the Code explains, is someone who may undertake standard investigative techniques, such as use of the internet or making their own enquiries, to use the "anonymised" data to identify people.
31. In this case, the Commissioner has considered both the position of Cormac within the local community, and other information already in the public domain, to determine whether the withheld information could be combined with other information to identify the recipients of the bonuses.
32. She notes that the companies in the Corserv Group draw their employees mainly from the local community, and understands that they are a large local employer. While in some situations a large employer may make it less likely that individuals would be identifiable from salary information, Cormac has explained that the close ties in the local area and the fact that so many locals are employed by the Corserv Group make it more likely that people know each other and could infer facts about each other from the withheld information.
33. Cormac has not identified the employees directly to the complainant, either by name or by reference to their job title. However, it has confirmed that there were five individuals, and that they were not statutory directors. Cormac also publishes some information about its staff on its website.
34. The Commissioner notes that, in the course of the complainant's correspondence with the Council on related matters, the Council provided some redacted information about bonuses paid to two individuals. The Council, which (as the Commissioner's previous investigation determined) did not hold the information requested in this case in full, provided this to the complainant by way of advice and assistance.

35. The Commissioner notes that it is possible to infer some salary information, about individuals, from the information provided by the Council, since there is a reference to the percentage of the two salaries that had been paid as a bonus.
36. In the circumstances of this case, the Commissioner considers that there is a risk that if the total bonus pot were disclosed, when considered together with other available information, it may lead to specific salary information being worked out. She further considers that this is likely, in turn, to lead to the identification of some or all of the five individuals, owing to the position of Cormac within the Corserv Group and the local community.
37. Having considered the withheld information and the circumstances of the case, together with other information already in the public domain, the Commissioner is satisfied that the information relates to and indirectly identifies individuals. The information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
38. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
39. The most relevant DP principle in this case is set out at Article 5(1)(a) of the GDPR and is known as principle (a).

### **Would disclosure contravene principle (a)?**

40. Article 5(1)(a) of the GDPR states that:

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

41. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
42. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

### **Lawful processing: Article 6(1) of the GDPR**

43. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that "*processing shall be lawful only if and to the extent that at least one of the*" lawful bases for processing listed in the Article applies.

44. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

*"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"<sup>4</sup>.*

45. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is therefore necessary to consider the following three-part test:-

- i) Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;
- ii) Necessity test: Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii) Balancing test: Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

46. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

*i) Legitimate interests*

47. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the

---

<sup>4</sup> Article 6(1) goes on to state that:-

*"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".*

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

*"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".*

requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

48. In this case, it has been established that Cormac is a public authority in its own right, with obligations under the FOIA. As such, there is an expectation that it is transparent and accountable. As Cormac itself has stated to the Commissioner: *"Any legitimate interest in this disclosure would relate to whether public funds have been used to pay bonuses and the governance procedures that we have in place to support such payments"*.
49. The complainant considers that there is a legitimate interest in the financial conduct of the Council, and indeed between the Council and the Corserv Group, and extending to Cormac. He commented that it is in the interests of the community to have a full picture, including salary information, to assist in understanding how the Council is being run, especially since the public are asked to elect councillors. He also commented that levels of council tax are affected by the services provided by Cormac, and that it should be accountable as to its employees' salaries.
50. As such, he considers there is a legitimate interest in the salaries of Cormac employees, and that this extends to the precise information he has requested.
51. The Commissioner is satisfied that there is, generally, a legitimate interest in transparency, and in making public some salary information about public sector employees. She therefore considers that a legitimate interest is being pursued in this case.

*Is disclosure necessary?*

52. 'Necessary' means more than desirable, but less than indispensable or of absolute necessity. Accordingly, the test is one of reasonable necessity, and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
53. In this case, Cormac has argued that it had met the legitimate interest in disclosure since, in the course of correspondence with the



complainant, it had already disclosed: a bonus was paid to five individuals for the relevant year; who, within Cormac, established the performance criteria triggering the payment of bonuses; who, within Cormac, established the amount of bonus payable; who, within Cormac, decided whether performance criteria had been met; and the fact that the individuals in receipt of the bonuses were not the same individuals who were involved in this process.

54. The Commissioner notes, however, that at the date of the request, Cormac did not routinely publish salary information about its employees other than a summary in the relevant part of its annual accounts. The complainant has asserted that it was not possible to scrutinise the type of salary information which is proactively published by other public authorities.
55. Having established, earlier in this notice, that there is a legitimate interest in the disclosure of salary information, the Commissioner is satisfied in this case that disclosure would be necessary to meet the legitimate interest, and she has gone on to conduct the balancing test.

*Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms*

56. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
57. In considering this balancing test, the Commissioner may take into account the following factors:
  - the potential harm or distress that disclosure may cause;
  - whether the information is already in the public domain;
  - whether the information is already known to some individuals;
  - whether the individual expressed concern to the disclosure; and
  - the reasonable expectations of the individual.
58. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information

relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.

59. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
60. Cormac's position is that the bonuses were performance-related, and therefore relate to the employees in a personal sense. Performance management information would normally be held on an employee's personnel file, and would not routinely be published. Specifically, Cormac stated: *"the terms of employment, including the receipt of any performance related pay, are confidential between Cormac and that employee"*.
61. Cormac has also explained that the fact that it did not, at the date of the request, publish any information about salaries, meant that the individuals had no expectation that this information would be published.
62. Cormac considers that it would be distressing for the employees to have information about their personal financial circumstances, and their performance at work as individuals, disclosed into the public domain.

### **The Commissioner's decision**

63. The Commissioner notes that the particular information being requested in this case relates to the payment of performance-related bonuses to five individuals, who are not company directors.
64. The Commissioner has considered her guidance<sup>5</sup> on publication schemes for wholly-owned companies, and considers that the information being requested extends beyond what employees at the relevant level may expect to be placed in the public domain.
65. In addition, although the request asked for the total size of the bonus pot, rather than for the amounts of the individual bonuses, the Commissioner, as already set out, considers that disclosure of the information would be likely to lead to individual salaries and the identity of the individuals being revealed. She agrees with Cormac that this may be distressing for the individuals concerned, in circumstances where there was no expectation of this happening.

---

<sup>5</sup> <https://ico.org.uk/media/for-organisations/documents/1239/definition-document-wholly-owned-companies.pdf>

66. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest in the specific information to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing, and so the disclosure of the information would not be lawful.
67. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that she does not need to go on separately to consider whether disclosure would be fair or transparent.
68. The Commissioner's decision is that Cormac was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).
69. It has not been necessary for the Commissioner to consider whether the information is exempt under section 43(2) – commercial interests.

### **Other matters**

---

70. The Commissioner is providing advice to Cormac about its duties in respect of section 19 of the FOIA: publication schemes.
71. During the course of the Commissioner's investigation, she became aware that the Council, Corserv and Cormac had at times passed requests between themselves for response. This led to the Commissioner, as mentioned previously in this notice, being required to issue decision notice reference FS50875794, which concluded that the Council did not hold the information being requested in this case. Confusion arose for the complainant due to the way in which the organisations were handling requests for information and requests for internal review.
72. The Commissioner has provided advice about this to Cormac, and expects it to have robust procedures in place for handling requests for information and carrying out, and issuing, internal reviews, in future.

## Right of appeal

---

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

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

74. 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.
75. 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 .....**

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**