

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 January 2023

Public Authority: Foreign, Commonwealth and Development Office

Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant has requested information about a meeting with an official at the Serious Fraud Office (SFO). The above public authority ("the public authority") relied on section 40(5B) of FOIA (third party personal data) refused to confirm or deny that it held information within the scope of the request.
2. The Commissioner's decision is that the public authority is not entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny that the information is held. The public authority also breached section 10 of FOIA in responding to this request
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Confirm, to the complainant, whether it holds information within the scope of the request. If it does hold information, it must either disclose that information or issue a refusal notice that complies with section 17 of FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 16 February 2022, the complainant wrote to the public authority and, referring to an official ("the Individual"), requested information in the following terms:

"details of the meeting between [the Individual], a CPS lawyer seconded to DFID Pretoria, and Serious Fraud Officer director Lisa Osofsky on 19 February 2020. Please could you disclose:

- Details of where the meeting took place
 - Details of who else attended the meeting
 - Any minutes, notes or briefing documents from the meeting
 - Any correspondence (including but not limited to letters, emails, WhatsApp, Signal and SMS messages) regarding the meeting sent or received by [the Individual] six months before 19 February 2020, or anytime after."
6. The public authority responded on 13 April 2022. It relied on section 40(5B) to refuse to confirm or deny that it held any relevant information. It upheld this stance following an internal review.

Reasons for decision

7. Section 40(5B) of FOIA allows a public authority to refuse to confirm or deny holding information if the mere act of confirming or denying that the information was held would, in itself, disclose the personal data of a third party in breach of data protection legislation.
8. In this case, the public authority argued that, were it to confirm that it held information (if, indeed, it did hold information) it would be revealing to the world at large that the Individual was both employed by the CPS and was on secondment to the public authority during the relevant period. This information, the public authority argued, was the personal data of the Individual and was not in the public domain at the time the request was made. It could see no legitimate interest in revealing such information.
9. The complainant provided the Commissioner with a copy of a response he'd received, under FOIA, from the SFO, on 7 January 2022, in which he'd asked for details of external parties who had held meetings with its Director. The response provided by the SFO clearly identifies the

Individual as having been part of one of those meetings and records that they were on secondment, to the public authority, from the CPS.

10. The Commissioner is therefore satisfied that, at the point the complainant made the request, the Individual's employment status was in the public domain – as it had been revealed by the SFO. The public authority could therefore have confirmed that it held information (if, indeed, it did hold information) without revealing any personal data about the Individual that was not already in the public domain.
11. The Individual should have no reasonable expectation that the public authority would refuse to confirm or deny that it held information about them that was already in the public domain.
12. The Commissioner is therefore satisfied that issuing a confirmation or a denial that the information was held would not breach any of the data protection principles and thus the public authority is not entitled to rely on section 40(5B) of FOIA.
13. The public authority breached section 10 of FOIA as it failed to respond to the request within 20 working days.

Other matters

14. The Commissioner considers that the public authority fell into error in the way that it dealt with this request because it focused too narrowly on ancillary matters and not on the clear purpose of the request.
15. The request was clearly seeking information about a meeting between an official representing the public authority and the director of the SFO – who is a senior individual – on a specific date.
16. It would have been best practice for the public authority to have focused its response on the meeting itself, rather than the attendees. Even if the Individual's name and employment status were not in the public domain, it could, for instance, have simply confirmed that a meeting took place with the SFO director on that date, but refused to confirm the name of the employee who attended on its behalf. That would have allowed the complainant to obtain some useful information about the meeting without the public authority revealing the personal data of a junior employee.

Right of appeal

17. 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

18. 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.
19. 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

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