

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 November 2023

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information about an item of furniture that the Cabinet Office has purchased. The Cabinet Office withheld the information under section 40(2) (Personal Information).
2. The Commissioner's decision is that the information is not personal data, and therefore cannot be withheld under section 40(2). His full position is set out in a confidential annex which will be provided to the Cabinet Office only.
3. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation.
 - Disclose the information.
4. The Cabinet Office 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 10 January 2022, the complainant wrote to the Cabinet Office and requested information in the following terms:

“The Sunday Times this weekend referred to a custom built wardrobe placed in chief-of-staff [name redacted by ICO]’s office. Please could you outline how much this wardrobe cost and what make/brand it was.”
6. The Cabinet Office responded on 5 May 2022. It stated that the information was withheld under section 40(2).
7. Following an internal review, the Cabinet Office wrote to the complainant on 10 August 2022. It maintained the application of section 40(2).

Reasons for decision

Section 40 personal information

8. 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.
9. In this case the relevant condition is contained in section 40(3A)(a)¹. 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 UK General Data Protection Regulation (‘UK GDPR’).
10. 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 FOIA cannot apply.
11. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

Is the information personal data?

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

“any information relating to an identified or identifiable living individual”.

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

14. 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, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

15. 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.

The Cabinet Office's position

16. The withheld information in this case is the price and manufacturer of a wardrobe that was purchased by the Cabinet Office for use on its estate.

17. The Cabinet Office has argued that this information represents personal data for the purposes of section 3(2) of the DPA.

18. The Commissioner has outlined the relevant detail of the Cabinet Office's argument in the attached confidential annex. This is because the Cabinet Office has indicated that this relevant detail has been provided in confidence to assist the Commissioner's determination, and the Commissioner notes that some parts of it may also disclose personal data.

The Commissioner's view

19. The Commissioner has considered the Cabinet Office's position.

20. The Commissioner has outlined his view of the Cabinet Office's argument in the attached confidential annex, for the same reason as that explained paragraph 18.

21. In the circumstances of this case, and having considered the withheld information, the Commissioner is satisfied that the information does not relate to an individual. This information therefore does not fall within the definition of 'personal data' in section 3(2) of the DPA, and the Cabinet Office cannot therefore withhold it under section 40(2) of FOIA.

Right of appeal

22. 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

23. 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.
24. 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

Daniel Perry
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Information Commissioner's Office
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Water Lane
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