

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 March 2024

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

#### Decision (including any steps ordered)

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1. The complainant requested complaints-related information submitted about a named asylum seekers' accommodation provider over a specified time period. The Home Office provided a summary of the numbers of complaints broken down into various categories together with the redacted complaint notification emails, but withheld the content of each complaint (or 'service request') citing section 40(2) of FOIA – the exemption for personal information. The complainant is concerned only with the service request information, which has been withheld in its entirety, but he is happy for any 'personal data' to be withheld.
2. The Commissioner's decision is that not all of the withheld information is personal information and that it can be partially redacted to remove identifying material; something which the Home Office accepted during the investigation.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation:
  - Review the 73 complaints/service requests in scope and disclose all the information contained within them that is not classed as 'personal data'.
  - The Commissioner has provided the Home Office with two examples of the complaints in scope redacted to release information which is

not personal data and would ask the Home Office to review and redact the remaining complaints accordingly<sup>1</sup>.

4. The Home 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.

## Background

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5. The Home Office has explained that asylum seekers can make a complaint against the public authorities placing them in accommodation, or against the provider of the asylum accommodation.
6. If the complaint is not satisfactorily resolved by the public authority or provider then it is escalated through Migrant Help to the Home Office via an online system. The Home Office has advised that this system is owned by Migrant Help (which is not part of the Home Office) but that it can access the system to review and update complaints that have been escalated to the Home Office.

## Request and response

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7. On 16 June 2023, the complainant wrote to the Home Office and requested information in the following terms:

“The Home Office’s response to my previous FOI request (reference 76125) indicates that, in the period between 1 January 2023 and 5 May 2023, 74 complaints against AASC [Asylum Accommodation and Support Services] provider Clearsprings Ready Homes in relation to staff behaviour/treatment in IA [Immigration and Asylum] were escalated from Migrant Help to the Home Office.

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<sup>1</sup> The Commissioner expects the Home Office to take appropriate precautions to protect any personal data when disclosing information in a spreadsheet or similar format: [Information Commissioner’s Office - Advisory note to public authorities | ICO](#)

For each of these 74 cases, please provide a copy of the report/form/email or other document that was used to escalate the complaint to the Home Office.”

8. The Home Office responded on 7 July 2023. It explained that one of the 74 complaints had been re-categorised as Housing Officer Behaviour/Conduct, leaving 73 staff behaviour/treatment complaints in scope. A summary table was provided to the complainant showing the various complaint categories together with the original and final numbers of complaints falling into those categories. The Home Office also provided a redacted copy of the complaint notification emails; it said it had redacted the personal details relating to the 73 cases in scope of the request in accordance with section 40(2) of FOIA – the exemption for personal information.
9. The complainant requested an internal review on 11 July 2023 in which he raised the following objection:

“I note you have provided copies of notification emails regarding the escalation of AASC complaints to the Home Office, but have neglected to provide the content of the service requests linked to in these emails. A service request clearly falls within the remit of my request for the “report/form/email or other document” used to escalate a complaint to the Home Office and I contend that these should have been disclosed as part of your response.”
10. The Home Office did not provide an internal review at this stage.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 15 September 2023 to complain about the way his request for information had been handled. He complained that he had not received an internal review outcome.
12. On 25 September 2023 the Commissioner wrote to both parties, advising that he had accepted the complaint without the internal review process having been exhausted, particularly given that the recommended maximum period of 40 working days had elapsed since the complainant had requested an internal review.
13. However, on 24 October 2023, the Home Office provided its internal review, upholding its original position. The Home Office agreed that the service user requests fall in scope of the original request, but said that section 40(2) of FOIA applies to these documents too. It reiterated that it had disclosed a summary of the service user requests showing the

numbers and category descriptions of the complaints as part of its substantive response. It also stated that:

“We do not consider that it would be possible to disclose redacted versions of the complaints, because removing all personal data from which an individual could be identified would leave little or no meaningful information.”

14. On 6 November 2023, the complainant told the Commissioner that he remained dissatisfied following the internal review outcome. He argued that there are over 40,000 asylum seekers in receipt of Home Office accommodation in regions where Clearsprings is the official accommodation supplier, stating:

“While I accept there may be some information that may need to be redacted in order to comply with Section 40(2), such as names and/or specific locations, I contend that the large number of possible complainants means other details within the requested complaints could be disclosed without any risk that individuals could be identified.”

15. The Commissioner has noted that the complainant did not raise any concerns about the redactions within the disclosed notification emails at internal review, and that his concerns centre on the accompanying service requests, which have been withheld in their entirety by the Home Office. The Commissioner has, therefore, not considered the notification emails any further.
16. The complainant has argued that the Home Office could withhold personal information and provide redacted versions of the complaints/service requests. The Commissioner has approached his consideration of the withheld information with this in mind.
17. The Commissioner has therefore considered whether the Home Office was entitled to rely on section 40(2) of FOIA to withhold the service requests in their entirety for the 73 complaints (ie service requests) in scope of the request. He has viewed a sample of the withheld information (46 complaints in total).

## **Reasons for decision**

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### **Section 40 personal information**

18. Section 40(2) of 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.

19. 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 UK General Data Protection Regulation ('UK GDPR').
20. 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.
21. 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.

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

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

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

23. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
24. 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.
25. 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.
26. The service requests include the complainant's full name, Home Office reference, date of birth, current address, nationality, language, contact number and email address. The Home Office has stated that this information clearly identifies the complainants and relates to them and clearly constitutes 'personal data' as defined in the DPA.

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

27. However, the service requests also contain the grounds of the various complaints, acknowledgement of receipt of the complaint, the history of the steps taken as a result usually in notes, and sometimes a copy of the outcome correspondence.
28. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to asylum seekers raising complaints. He is satisfied that some of this information both relates to and identifies the complainants concerned, namely the details set out in paragraph 26 above. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA. The complainant is happy for this information to be redacted so it will no longer be considered.

## Conclusion

29. However, with regard to the details set out in paragraph 27, the Commissioner does not find that they constitute personal data. It follows that the Home Office was not entitled to rely on section 40(2) of FOIA for all the withheld information.
30. The Commissioner has therefore ordered a step at paragraph 3 for the Home Office to review all 73 complaints in scope and to disclose the information which cannot be classed as personal data.

## Other matters

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31. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA.
32. Part 5 of the section 45 Code of Practice<sup>3</sup> ('the Code') states that it is best practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Code states that a reasonable time for completing an

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

internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.

33. The Commissioner is concerned that it took over three months for an internal review to be completed.
34. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance function. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our FOI and Transparency Regulatory Manual<sup>4</sup>.

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<sup>4</sup> [https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1\\_0.pdf](https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1_0.pdf)

## Right of appeal

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35. 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)

36. 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.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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