

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 March 2017

Public Authority: The Bank of England
Address: Threadneedle Street
London
EC2R 8AH

Decision (including any steps ordered)

1. The complainant submitted a request to the Bank of England (the Bank) for a list of corporate credit card transactions by two members of senior Bank staff, along with copies of any receipts relating to the specific transactions. The Bank provided some details of the transactions but sought to withhold further information, including copies of the receipts, on the basis of the exemptions contained at the following sections of FOIA: 31(1)(a) (law enforcement), 38(1)(b) (health and safety) and 40(2) (personal data). In respect of the withheld information, the Commissioner is satisfied that the details of hotels used by the Bank's staff, along with any other information that would identify the hotels in question, is exempt from disclosure on the basis of section 38(1)(b) of FOIA, as are the home addresses of the Bank's staff. The Commissioner also accepts that the assorted credit card details contained within the withheld information are exempt from disclosure on the basis of section 31(1)(a) of FOIA. However, the Commissioner has concluded that the various exemptions cited by the Bank do not provide a basis to withhold the remaining parts of the withheld information.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with copies of all of the receipts it holds in relation to the transactions covered by his request. In providing this information the Bank can redact from the receipts any information which would identify the hotels used (ie the names of the hotels but

also email addresses, phone numbers, logos, group names etc of the hotels); the home addresses of Bank staff and the assorted information about the credit cards used.¹

3. 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

4. The complainant submitted the following request to the Bank on 25 May 2016:

'I write with a fresh request for information following the disclosure made on May 23.

My new request is as follows:

** Please provide a list of all corporate credit card transactions by Mark Carney in 2015. For each transaction please provide the transaction date, merchant name (the name of the merchant rather than a description such as 'hotel'), expense type and bill amount.*

** Please also provide copies of all itemised receipts.*

** Please provide a list of all corporate credit card transactions by Lyndon Nelson in 2015. For each transaction please provide the transaction date, merchant name (the name of the merchant rather than a description such as 'hotel'), expense type and bill amount. Please provide copies of all itemised receipts.'*

5. The Bank contacted the complainant on 24 June 2016 and confirmed that it held information falling within the scope of his request but that it needed additional time to consider the balance of the public test interest.

¹ If the Bank is unsure exactly what information needs to be redacted, the Commissioner can provide it with copies of the receipts in question annotated to indicate what information can be redacted in order to comply with this notice. The Bank should contact the Commissioner if it believes that this is necessary.

6. The Bank provided the complainant with a substantive response to his request on 28 July 2016. The Bank provided a list of all corporate credit card transactions made by Mark Carney and Lyndon Nelson during 2015.² However, it explained that the further information it held which fell within the scope of the request was considered to be exempt from disclosure on the basis of the exemptions contained at the following sections of FOIA: 31(1)(a) (law enforcement), 38(1)(b) (health and safety) and 40(2) (personal data).
7. The complainant contacted the Bank on the same day and asked it to conduct an internal review into its decision to withhold information on the basis of the exemptions cited in the refusal notice.
8. The Bank informed the complainant of the outcome of the review on 26 August 2016. The response provided him with some further information about each of the transactions, namely in relation to hotels, the number of nights that the charge related to and the city in which the hotel was located; in relation to restaurant meals, the number of people the charge related to and the city where the restaurant was; and, in relation to flights, where the plane was going. However, the Bank upheld the use of the three exemptions cited in the refusal notice as a basis to withhold the remainder of the information falling within the scope of the complainant's request along with the copies of the actual receipts.

Scope of the case

9. The complainant contacted the Commissioner on 14 October 2016 in order to complain about the Bank's decision to withhold the remaining information falling within the scope of his request. The information which the Bank is continuing to withhold consists of details of exactly how the money was spent and where it was spent, for example the name and location of the hotel, restaurant etc. Furthermore, the complainant also believes that in addition to providing him with this information, the Bank should also provide him with a copy of the itemised receipts submitted to support these individual claims. (The Commissioner notes that provision of the itemised receipts would effectively provide the complainant with the details of exactly how the money was spent and where it was spent).

² The information provided consisted of the date of the transaction, a description of the type of expense (eg flight, hotel, taxi, restaurant) and the cost of each expense.

10. With regard to the itemised receipts, they compromise a combination of the receipt(s) issued by the provider of the services and/or goods and typically a separate credit card transaction record evidencing payment and issued at the time of payment. The receipts (mostly, but not exclusively, in English) contain details of the services and/or goods, the dates and amounts of the transactions together with details of the suppliers (including their address and contact information), assorted information relating to the credit cards (including associated unique identifying information of the supplier, the transaction, card details and card holder) plus in some cases home addresses. The receipts also include standard narrative text and identifying corporate logos. The Bank's position is that the receipts are exempt from disclosure on the basis of a combination of the exemptions contained at sections 31(1)(a), 38(1)(b) and 40(2) of FOIA.

Reasons for decision

Section 38(1)(b) – health and safety

11. Section 38(1)(b) of FOIA states that:

'Information is exempt information if its disclosure under this Act would, or would be likely to—

endanger the safety of any individual'

12. In order for a prejudice based exemption, such as section 38(1)(a) to be engaged the Commissioner considers that three criteria must be met:
- Firstly, 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 applicable interests within the relevant exemption;
 - 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, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be

a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.

The Bank's position

13. The Bank argued that the personal security of its senior staff would be compromised by the public release of information relating to the locations or patterns of movement (eg identifying particular hotels, restaurants or home addresses) and flight carriers. The Bank explained that this included not only direct names and addresses, but also any other information on the receipts which would enable the name and/or location of the providers to be identified. Consequently, the Bank argued that it would not be consistent with maintaining the safety and security of its staff to advertise widely the hotels they stay in when travelling. The Bank emphasised that in concluding that this exemption was engaged it had consulted with its own Head of Security.

The complainant's position

14. The complainant disputed the Bank's position that disclosure of the withheld information would be likely to endanger senior staff. He explained that he had submitted similar requests to other public authorities and they had disclosed unredacted itemised receipts of expenses claimed by senior staff in those organisations. The complainant provided the Commissioner with a selection of these receipts.

The Commissioner's position

15. With regard to the first criterion, the Commissioner is satisfied that the nature of the harm envisaged by the Bank clearly relates to the applicable interests which section 38(1)(b) is designed to protect.
16. However, the Commissioner is not persuaded that the second criterion is met in respect of all of the information which the Bank has withheld on the basis of section 38(1)(b). The Commissioner accepts that disclosure of Mr Carney's and Mr Nelson's home addresses would clearly risk their personal security. Furthermore, she is prepared to accept that disclosure of information about the hotels used by senior staff could potentially reveal patterns of movement in respect of senior staff if the same hotels were used on a regular basis when staff visit those cities.
17. However, the Commissioner is not persuaded that there is a causal link between disclosure of the remaining information which has been withheld on the basis of section 38(1)(b), essentially the details of particular flight carriers, restaurants and receipts for taxi journeys, and potential harm occurring to senior Bank staff. The Commissioner accepts

that knowing that senior Bank staff have used a particular airline or frequented a particular restaurant in the past may suggest they would use the same carrier or establishment again. However, in her view it would be difficult for a member of the public to predict if, or when, senior Bank staff would be travelling abroad and thus establish with any certainty the likelihood of them being on a particular flight. Moreover, the Commissioner would note that the security around airports is particularly tight and thus the likelihood of harm occurring to a particular individual from the disclosure of the details of previous airline journeys seems to the Commissioner to be so remote that no causal link exists. Similarly, in terms of the restaurants used, and indeed previous taxi journeys, the Commissioner believes that it would be very difficult for a member of the public to be able to predict when a senior member of Bank staff may be at particular restaurant in a particular city on the basis of these receipts such that there is no causal link between disclosure of this information and the prejudice envisaged by the Bank.

18. In respect of the third criterion, the Commissioner has no hesitation in accepting that disclosure of the home addresses of senior Bank staff represents a real and significant risk to their personal safety. In relation to the details of the hotels used by Mr Carney and Mr Nelson, the Commissioner considers it to be a finely balanced decision as to whether such information is exempt from disclosure on the basis of section 38(1)(b). She acknowledges that other public authorities have disclosed similar information in response to FOI requests. However, each request has to be considered on its own merits. She recognises that in the particular instances of this case the Bank's Head of Security has advised that such information poses a risk to the staff concerned and the Commissioner has taken this into account. Furthermore, the Commissioner does accept that disclosure risks revealing hotels likely to be used by Mr Carney and Mr Nelson when they visit particular cities again. For example, disclosure of the information would reveal the hotel used by Mr Carney when attending the World Economic Forum in Davos in 2015. However, given the nature of prejudice which could occur, which is one that can be clearly be seen as a real and significant risk, the Commissioner is prepared to accept that this exemption is engaged in respect of the names of the hotels used by Mr Carney and Mr Nelson along with any information that would allow such hotels to be identified (eg email addresses, phone numbers, logos, group names etc of the hotels).
19. To summarise then, the only information which the Commissioner accepts is exempt from disclosure on the basis of section 38(1)(b) is information which would reveal the hotels used by Bank staff and details of their home addresses.

Public interest test

20. Section 38 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption contained at section 38(1)(b) outweighs the public interest in disclosing the information.
21. The Bank acknowledged that there are important issues around transparency and accountability and a considerable public and press interest in the expenses of public officials. The Bank noted that it already proactively publishes on its website, on a quarterly basis, details of the expenses of the Bank's Governors and members of the Prudential Regulation Authority Board, the Monetary Policy Committee and the Financial Policy Committee. It explained that credit card payments, such as those which are the focus of this request, constitute only a small part of this expenditure; most is booked and paid for direct by the Bank. The Bank also emphasised that it had disclosed further information at the internal review stage in order to provide additional context to the particular expense claims requested by the complainant. Furthermore, the Bank argued that there was an extremely strong public interest in protecting, and in not jeopardising, the safety of individuals. It concluded that the overriding concern for the personal security of its officials meant that the public interest favoured maintaining the exemption contained at section 38(1)(b).
22. The complainant emphasised that his request relates to the spending of more than £8,000 of public money by the Governor of the Bank and another senior official. He argued there is a significant and compelling public interest in transparency surrounding public money spent by officials in their course of their official work. He argued that the public must have the ability to scrutinise the expenses of civil servants and public confidence in those civil servants and the organisations they represent is greatly increased by transparency. The complainant argued that the Bank must be capable of demonstrating, for instance, why hotel accommodation cost more than £1,000 or why a meal cost more than £100. The complainant acknowledged that the public understands that hotel stays and meals may have to be claimed but also demands transparency to ensure the spending of public money is appropriate and that public authorities have their own systems in place which are sufficiently robust for challenging the expenditure. The complainant emphasised that disclosure of the itemised receipts, for instance, would show what level of accommodation, services, food and drink were paid for with public money. The complainant noted that the requirement for such transparency was made clear by the disclosures surrounding the expenses claims made by MPs.

23. In terms of the withholding of the home addresses of Bank staff, the Commissioner has no hesitation in concluding that the public interest very clearly favours withholding this information.
24. In terms of the details of the hotels used by Bank staff, in her view the public interest is more finely balanced. She agrees with the complainant that there is a clear, and indeed weighty, public interest in the disclosure of details of expense claims for the reasons he has identified. This public interest should not be underestimated. However, the Commissioner has accepted that disclosure of such information risks compromising the personal safety of Bank staff. Consequently, in her view there would have to be an overwhelmingly compelling public interest to merit disclosure which, in the circumstances of this case, she is not persuaded is present. Disclosure of the withheld information would confirm the hotels used by senior staff, but the disclosures to date already confirm the city in which these hotels were, the length of stay and the total cost of the stay (and thus by default the average cost of a night's stay). In the Commissioner's view this goes a considerable way in allowing the public to understand the nature of the expense incurred by the Bank and by implication the level of expenditure the Bank is prepared to accept in such scenarios. In the Commissioner's view, disclosure of the name of the hotel (or other information which would allow this to be deduced) would add only marginally to the public's understanding of this spending. The Commissioner has therefore concluded that the public interest favours maintaining the exemption contained at section 38(1)(b) in respect of the names of the hotels used, along with other information which would allow these names to be deduced.

Section 31(1)(a) – law enforcement

25. The Bank also sought to withhold some of the remaining information on the basis of section 31(1)(a) of FOIA. This states that:

'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice —

the prevention or detection of crime'

26. As with section 38, this is a prejudice based exemption and in order for it to be engaged the three criteria listed at paragraph 12 must be met.

The Bank's position

27. The Bank argued that this exemption was engaged for two reasons. Firstly, in view of the personal safety concerns discussed above in respect of the engagement of section 38(1)(b). In the Bank's view disclosure of any additional information would be likely to assist in the commissioning or concealment of one or more criminal acts whether in the UK or overseas, which relate to the personal safety of its staff.

Secondly, the Bank argued that as the receipts included assorted credit card details it had concluded that disclosure of any additional information would be likely to assist in the commissioning or concealment of fraudulent or other related criminal acts, whether in the UK or overseas.

The Commissioner's position

28. The Commissioner notes that the Bank's rationale for arguing that section 31(1)(a) is engaged in respect of the information concerning the personal safety of senior staff mirrors its rationale in respect of withholding the same information on the basis of section 38(1)(b) of FOIA.
29. As the Commissioner has already concluded that the information concerning the details of hotels used is exempt from disclosure on the basis of section 38(1)(b), she has not gone on to consider whether such information is also exempt from disclosure on the basis of section 31(1)(a) of FOIA.
30. In respect of the remaining information which could reveal details about the patterns of movement in respect of senior staff (ie details of flight carriers, restaurants and taxi journeys), for the reasons explained above the Commissioner has already concluded that such information is not exempt from disclosure on the basis of section 38(1)(b) of FOIA. For the same reasons, the Commissioner is not persuaded that there is a causal link between the disclosure of this information and any prejudice occurring to the prevention or detection of crime. Therefore, section 31(1)(a) is not engaged in respect of such information.
31. However, the Commissioner is satisfied that the disclosure of the assorted credit card details would be likely to prejudice the prevention or detection of crime on the basis that disclosure of such information could plausibly be used by individuals intent on committing credit card fraud. Moreover, the Commissioner accepts that there is a real and significant risk of such prejudice occurring. Such information is therefore exempt from disclosure of section 31(1)(a) of FOIA.
32. Furthermore, the Commissioner is satisfied there is no apparent public interest in the disclosure of this information and that the public interest overwhelmingly favours withholding this information in order to prevent fraudulent use of the Bank's credit cards.

Section 40 – personal data

33. The Bank also withheld some of the requested information on the basis of section 40(2) of FOIA which states that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the Data Protection Act 1998 (DPA).

34. Personal data is defined in section (1)(a) of the DPA as:

'.....data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller; and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual.'

35. The Bank explained that the information withheld on the basis of section 40(2) of FOIA consisted of the home addresses of senior staff and meal selections by Mr Carney and Mr Nelson. As the Commissioner has already accepted that their home addresses are exempt from disclosure, she has not considered whether these would also be exempt on the basis of section 40(2) as well. In terms of the individual meal choices by the Bank's staff, the Commissioner accepts that such information constitutes personal data within the meaning of section 1 of the DPA as it relates to identifiable individuals.

36. The Bank argued that disclosure of such information would breach the first data protection principle which states that:

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met, and*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'*

37. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights (ECHR);
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - any particular circumstances of the case, eg established custom or practice within the public authority; and

- whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
 - The consequences of disclosing the information, ie what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;
 - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
38. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling legitimate interest in disclosure to the public.
39. In considering 'legitimate interests', in order to establish if there is a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sake, as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach.
40. The Bank argued that disclosure of the meal selections would be unfair and thus breach the first data protection principle as the individuals in question would not have expected this information to be disclosed and had not consented to its disclosure, albeit that the Bank acknowledged that expectations around meal selections may be more marginal than expectations in respect of home addresses.
41. The Commissioner accepts that Bank staff may not have necessarily expected information to be disclosed under FOIA that would reveal particular meal selections that they had made. However, as the Bank itself acknowledged such expectations were arguably more marginal. Furthermore, in the Commissioner's view any such infringement into the privacy of the individuals by the disclosure of such information would be very minimal. The Commissioner also notes that disclosures of expense claims made the senior staff of other public authorities have resulted in the disclosure of similar information. Taking these factors into account, the Commissioner is not persuaded that the disclosure of this information would be unfair.

42. As well as considering the fairness of disclosure the Commissioner has also considered whether schedule 2 condition 6 of the DPA is met. It states that:

'The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.'

43. The Commissioner has found that there is a compelling legitimate interest in disclosure of the disclosure of information in respect of expense claims made by senior staff and that this can be regarded as necessary. Limited prejudice has been identified but the Commissioner finds that this is not unwarranted. Condition 6 is met.
44. In conclusion, the Commissioner has found that disclosure of the meal selections would not breach the first data protection principle – disclosure would be fair and meet schedule 2 condition 6 of the DPA. This information is therefore not exempt from disclosure on the basis of section 40(2) of FOIA.

Right of appeal

45. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

46. 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.
47. 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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