

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 6 May 2020

**Public Authority:** Foreign and Commonwealth Office  
**Address:** King Charles Street  
London  
SW1A 2AH

#### Decision (including any steps ordered)

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1. The complainant asked the Foreign and Commonwealth Office (FCO) for information about a request from the United Nations (UN) to certain member states to appoint an independent and high ranking official to review relevant files they may hold about the plane crash that killed UN Secretary General Dag Hammarskjöld in 1961. The FCO confirmed that it held information falling within the scope of the complainant's request but it considered this to be exempt from disclosure on the basis of sections 23(1) (security bodies) or 24(1) (national security), 27(1)(a), (b) and (c) (international relations), 35(1)(a) (formulation and development of government policy) and 40(2) of FOIA.
2. The Commissioner has concluded that the FCO is entitled to rely on sections 27(1), 35(1)(a) and 40(2) to withhold parts of the withheld information. She has also concluded that that remaining parts of the withheld information are exempt from disclosure on the basis of either section 23(1) or section 24(1) of FOIA.
3. No steps are required.

## Background

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4. In 1961 UN Secretary General Dag Hammarskjöld was killed when the plane on which he was travelling crashed in what was then Northern Rhodesia. He was on his way to talks aimed at ending the civil war in Congo.
5. In 2015 the UN appointed Mohamed Chande Othman, a former chief justice of Tanzania, to investigate the crash after new evidence emerged as to the potential causes.
6. A UN resolution adopted in December 2017 in relation to this investigation 'encouraged' amongst other actions:

*'all Member States that may hold relevant information related to the death of Dag Hammarskjöld and of the members of the party accompanying him to appoint, without any delay, an independent and high-ranking official to conduct a dedicated internal review of their intelligence, security and defence archives to determine whether relevant information exists, and to communicate a summary of the results to the Secretary-General before the end of the main part of its seventy-third session under such confidentiality arrangements as presented in the report of the Eminent Person [ie Mohamed Chande Othman]'*<sup>1</sup>

7. In an interim progress report into his investigation published in November 2018, Mr Othman confirmed that in March 2018 he had asked nine member states to appoint such officials and that to date seven had done so or were taking such action. However, he explained that the UK had replied to him on 9 November 2018 and explained that it did not intend to because all information of direct value to the investigation had been made available by the UK in previous years or had been released and is available publicly. The UK had also informed Mr Othman that having previously and recently searched there was no further information of direct value to the investigation. Mr Othman explained in his report of November 2018 that he would renew his request of the UK to appoint such an official.<sup>2</sup>

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<sup>1</sup> <https://undocs.org/pdf?symbol=en/A/RES/72/252>

<sup>2</sup> [http://www.hammarskjoldinquiry.info/pdf/ham\\_187\\_EP\\_interim\\_report\\_081118.pdf](http://www.hammarskjoldinquiry.info/pdf/ham_187_EP_interim_report_081118.pdf)

8. In his report published in October 2019, Mr Othman confirmed that the UK had decided to appoint such an official in May 2019 and that official had reported his findings to him in June 2019.<sup>3</sup>

## Request and response

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9. The complainant submitted the following request to the FCO on 9 March 2019:

*'Would you please provide me with all recorded information held by FCO relating to the invitation issued by UN Secretary General Antonio Guterres to UN Member States to appoint an "independent and high-ranking official to conduct a dedicated internal review of their intelligence, security and defence archives" in relation to the deaths of UN Secretary General Dag Hammarskjold and those who died with him in 1961'.*

10. The FCO responded to the request on 25 April 2019 and confirmed that it held information falling within the scope of the request but it considered this to be exempt from disclosure on the basis of section 35(1)(a) (formulation and development of government policy) of FOIA. The FCO also explained that it considered the information to be exempt from disclosure on the basis of either section 23(1) (security bodies) or in the alternative section 24(1) (national security) of FOIA.<sup>4</sup>
11. The complainant contacted the FCO on 5 May 2019 and asked it to conduct an internal review of this refusal.
12. The FCO informed him of the outcome of the internal review on 14 June 2019. The internal review upheld the application of the exemptions cited in the refusal notice.

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<sup>3</sup> [https://www.daghammarskjold.se/hrf\\_faq/2019-report-of-eminant-person/](https://www.daghammarskjold.se/hrf_faq/2019-report-of-eminant-person/)

<sup>4</sup> Citing the sections 23(1) and 24(1) of FOIA in the alternative means that although only one exemption is engaged the other one is also cited so as to disguise which exemption is in fact being relied upon. This approach may be necessary in instances where citing one exemption would in itself be harmful. Further information on this issue is contained on page 9 of the following guidance issued by the Commissioner: [https://ico.org.uk/media/fororganisations/documents/1196/how\\_sections\\_23\\_and\\_24\\_interact\\_foi.pdf](https://ico.org.uk/media/fororganisations/documents/1196/how_sections_23_and_24_interact_foi.pdf)

## Scope of the case

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13. The complainant contacted the Commissioner on 15 July 2019 in order to complain about the FCO's handling of his request. He argued that there was a compelling public interest in the disclosure of the requested information. Furthermore he questioned whether withholding this information is actually necessary for the purposes of safeguarding national security and moreover whether it was legitimate for the FCO to cite sections 23(1) and 24(1) in the alternative.
14. During the course of the Commissioner's investigation the FCO explained that in addition to the exemptions cited in the refusal notice it also considered parts of the withheld information to be exempt from disclosure on the basis of sections 27(1)(a), (b) and (c) (international relations) and 40(2) (personal data) of FOIA.

## Reasons for decision

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### Section 35 – formulation and development of government policy

15. The FCO withheld some of the requested information on the basis of section 35(1)(a) of FOIA. This exemption states that:

*'Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-*

*(a) the formulation or development of government policy'*

16. Section 35 is a class based exemption, therefore if information falls within the description of a particular sub-section of 35(1) then this information will be exempt; there is no need for the public authority to demonstrate prejudice to these purposes.
17. The Commissioner takes the view that the 'formulation' of policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occurs, and recommendations/submissions are put to a Minister or decision makers. 'Development' may go beyond this stage to the processes involved in improving or altering existing policy such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.
18. Whether information relates to the formulation or development of government policy is a judgement that needs to be made on a case by case basis, focussing on the content of the information in question and its context.

19. The Commissioner considers that the following factors will be key indicators of the formulation or development of government policy:
- the final decision will be made either by the Cabinet or the relevant Minister;
  - the government intends to achieve a particular outcome or change in the real world; and
  - the consequences of the decision will be wide-ranging.
20. The FCO explained that the policy in question related to the UK's decision whether to appoint an independent and high ranking official to conduct a review of the UK's intelligence, security and defence archives in relation to investigation into the plane crash which killed Dag Hammarskjöld.
21. The Commissioner accepts that decision making in respect of this issue equates to the formulation and development of government policy making. It is clear from the circumstances of this matter, and the content of the withheld information, that the consequences of the decision as to whether to appoint an individual will be wide-ranging – not least in respect of the UK's relations with the UN – and that the decision involved the input of relevant ministers.
22. Section 35(1)(a) is therefore engaged.

*Public interest test*

23. Section 35 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 35(1)(a) outweighs the public interest in disclosing the information.

*Public interest arguments in favour of disclosing the withheld information*

24. The complainant emphasised that the investigation into the death of Dag Hammarskjöld is a matter of international importance being conducted under the auspices of the UN. The complainant noted that, at the time of his request, of the nine member states requested to appoint a high ranking official to review relevant files all had done so with the exception of the UK and South Africa. The complainant suggested that observers generally agree that the UK's degree of cooperation with the continuing investigation had been low compared to other member states and that the UK had failed to support any of the three recent General Assembly resolutions on this issue which all enjoyed support from more than one hundred member states.

25. The complainant argued that the UK's failure (at the time of his request) to appoint an independent and high ranking official was a grave matter and was causing the UK international embarrassment at the very time that it was seeking to establish an independent global identity. He argued that as a result there was significant public interest in knowing why the FCO had adopted this stance and the policy formulation and development that led to that stance which was considered by many as scandalous and self-defeating. He emphasised that whilst the disclosure of the information may embarrass ministers this did not justify the decision to withhold information falling within the scope of the request.
26. Furthermore, the complainant cited the letter Mr Othman had sent to the UK on 15 March 2019 in which he set out questions that he considered still needing answering about the UK's information on this issue. The complainant argued that in light of this letter the UK's claim to have revealed all information relevant to the investigation was untenable.

*Public interest in maintaining the exemption*

27. The FCO argued that there is a strong public interest in ensuring high-quality policy-making and implementation. In order to achieve this ministers and officials needed to be able to consider, debate and understand implications of the policy and how it is presented. The FCO argued that their candour in doing so will be affected by their assessment of whether the content of such discussions will be disclosed in the near future.
28. In the circumstances of this request the FCO emphasised that the withheld information included detailed policy options regarding the UN's request to appoint an independent and high ranking official to review material held by the UK and that disclosure of this information would have undermined its ability to consider these options and evaluate previous decisions. The FCO emphasised that at the time of this request its policy making in relation to this matter was still 'live' and it still needed the opportunity for free and frank discussion about this matter.

*Balance of the public interest arguments*

29. With regard to the arguments advanced by the FCO, the Commissioner considers that these can be categorised as arguments generally known as safe space and chilling effect arguments.
30. With regard to the former, the Commissioner accepts that significant weight should be given to the safe space arguments - ie the concept that the government needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction - where the policy making process is live and the requested information relates to that policy making. In the circumstances of this

case, the Commissioner is satisfied that at the point that this request was submitted the UK's policy in relation to the UN's request to appoint an independent and high ranking official was ongoing. Although the UK had informed the UN in March 2018 that it did not intend to appoint such an official, the UN made it clear that it would resubmit this request, and the UK did subsequently appoint such an individual in May 2019. In the Commissioner's view such facts clearly demonstrate that when the request was submitted in March 2018 the policy making remained live. Consequently, in the circumstances of this case the Commissioner believes that significant weight should be attributed to the safe space arguments.

31. With regard to attributing weight to the chilling effect arguments, the Commissioner recognises that civil servants are expected to be impartial and robust when giving advice, and not easily deterred from expressing their views by the possibility of future disclosure. Nonetheless, chilling effect arguments cannot be dismissed out of hand and are likely to carry some weight in most section 35 cases. If the policy in question is still live, the Commissioner accepts that arguments about a chilling effect on those ongoing policy discussions are likely to carry significant weight. Arguments about the effect on closely related live policies may also carry weight. However, once the policy in question is finalised, the arguments become more and more speculative as time passes. It will be difficult to make convincing arguments about a generalised chilling effect on all future discussions. As noted above, the Commissioner accepts that the policy making in relation to these issues remained ongoing at the time of the request. In light of the sensitive nature of the matters under discussion and the ongoing nature of the policy making, the Commissioner accepts that the chilling effect arguments in this case should be given considerable weight in relation to the information withheld on the basis of section 35(1)(a).
32. With regard to attributing weight to the public interest arguments in favour of disclosure, in light of the complainant's submissions, the Commissioner accepts that there is a clear public interest in understanding more about the decision making process. The issue was one with potential consequences on the UK's relationship with the UN and the fact that the UK, in contrast to the majority of other member states, initially declined to appoint such an official adds further weight in the Commissioner's view to the public interest in favour of disclosing of the information. Disclosure of the withheld information would provide a genuine and informative insight into the matters considered and discussed by the FCO preceding the date of the request, 9 March 2019. Therefore, the public interest in disclosure of the information withheld on the basis of section 35(1)(a) should not be underestimated.
33. Nevertheless, the Commissioner has concluded that by a relatively narrow margin the public interest favours maintaining the exemption. In

reaching this view she fully acknowledges the public interest in disclosing information in order to further the public's understanding of the government's policy making in relation to this issue. However, given that at time of the request policy making remained ongoing, in the Commissioner's view this tips the balance of the public interest in favour of maintaining the exemption.

## **Section 27 – international relations**

34. The FCO withheld parts of the withheld information on the basis of sections 27(1)(a), (b) and (c) of FOIA. These exemptions state that:

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

*(a) relations between the United Kingdom and any other State,*

*(b) relations between the United Kingdom and any international organisation or international court,*

*(c) the interests of the United Kingdom abroad'*

### *The FCO's position*

35. The FCO argued that releasing internal documents discussing the correspondence it had received from the UN would be likely to damage the UK's relations with the UN and respective countries involved in the UN Secretary General Dag Hammarskjöld inquiry. In support of this position it emphasised that the documents in the scope of this request include detailed discussions about the considerations and decision-making about how to respond to the sensitive requests. The FCO also provided the Commissioner with further submissions to support its reliance on section 27(1) which made reference to the content of the withheld information which for obvious reasons have not been included in this decision notice.

*The Commissioner's position*

36. In order for a prejudice based exemption, such as section 27(1), to be engaged the Commissioner considers that three criteria must be met:
37. 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;
38. 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
39. 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.
40. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the FCO clearly relates to the interests which the exemptions contained at sections 27(1)(a), (b) and (c) are designed to protect. With regard to the second criterion, the Commissioner is satisfied that there is a causal link between disclosure of the information and prejudice occurring given that it includes details of various issues relating to the UN's request to appoint an independent reviewer including the internal analysis of the policy options and the consequences of each. Given the content of the information and the sensitive nature of the subject matter, and taking into account the UK's initial refusal to appoint such an official, the Commissioner is persuaded that it is plausible to argue that disclosure of the information could harm relations primarily between the UK and UN, but also between the UK and with some particular member states. Moreover, the Commissioner is satisfied that the third criterion is met given the content of the withheld information itself, allied to ongoing sensitivities surrounding this issue; in light of these factors there is clearly more than a hypothetical possibility of prejudice occurring if the information was disclosed.
41. Sections 27(1)(a), (b) and (c) are therefore engaged.

*Public interest test*

42. Section 27 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemptions contained at sections 27(1)(a), (b) and (c) outweighs the public interest in disclosing the information.

*Public interest arguments in favour of disclosing the information*

43. The complainant's arguments to support his view that the public interest favours disclosing the information are set out above.

*Public interest arguments in favour of maintaining the exemptions*

44. The FCO argued that it is firmly in the public interest that the UK can maintain effective relations with the UN and also maintain effective bilateral relation with the other member states referred to in the withheld information.

*Balance of the public interest arguments*

45. For the reasons discussed above, the Commissioner accepts that there is clear public interest in the disclosure of information which would add to the public's understanding of how and why the UK had initially decided not to appoint an official despite the UN's request to do so. As with the information withheld on the basis of section 35(1)(a), the disclosure of the information withheld on the basis of section 27(1) would clearly further the public's understanding of this subject. However, the Commissioner considers there to be a very significant public interest in ensuring that the UK can enjoy effective international relations. In the circumstances of this case she accepts that there is a particularly strong public interest in ensuring that the UK maintains effective relations with the UN, especially given that at the time of the request the UK's considerations in relation to these issues remained ongoing. Furthermore, the Commissioner considers the fact that disclosure of information risks harming the UK's relations with some other member states adds additional weight to maintaining the exemptions contained at section 27(1).
46. In light of the above, the Commissioner has concluded that the public interest favours maintaining the exemptions contained at sections 27(1)(a), (b) and (c) of FOIA.

**Section 23(1) – information supplied by or relating to bodies dealing with security matters**  
**Section 24 – national security**

47. Section 23(1) of FOIA provides an exemption which states that:

*'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'*

48. To successfully engage the exemption at section 23(1), a public authority needs only to demonstrate that the relevant information was directly or indirectly supplied to it by, or relates to, any of the bodies listed at section 23(3).<sup>5</sup>

49. Section 24(1) states that:

*'Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security'.*

50. FOIA does not define the term 'national security'. However in *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007) the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as follows:

- 'national security' means the security of the United Kingdom and its people;
- the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
- the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;

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<sup>5</sup> A list of the bodies included in section 23(3) of FOIA is available here: <http://www.legislation.gov.uk/ukpga/2000/36/section/23>

- action against a foreign state may be capable indirectly of affecting the security of the UK; and,
  - reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.
51. Furthermore, in this context the Commissioner interprets 'required for the purpose of' to mean 'reasonably necessary'. Although there has to be a real possibility that the disclosure of requested information would undermine national security, the impact does not need to be direct or immediate.
  52. As is clear from the wording of section 24(1), the exemptions provided by sections 23(1) and 24(1) are mutually exclusive. This means they cannot be applied to the same request.
  53. However, the Commissioner recognises that the fact that section 24(1) can only be applied to information that is not protected by section 23(1) can present a problem if a public authority does not want to reveal whether or not a section 23 security body is involved in an issue. To overcome this problem, the Commissioner will allow public authorities to cite both exemptions 'in the alternative' when necessary. This means that although only one of the two exemptions can actually be engaged, the public authority may refer to both exemptions in its refusal notice.
  54. As the Commissioner's guidance on this issue explains (see footnote 4), a decision notice which upholds the public authority's position will not allude to which exemption has actually been engaged. It will simply say that the Commissioner is satisfied that one of the two exemptions cited is engaged and that, if the exemption is section 24(1), the public interest favours withholding the information.
  55. Based on submissions provided to her by the FCO during the course of her investigation, the Commissioner is satisfied that some of the information falling within the scope of the request either falls within the scope of the exemption provided by section 23(1) of FOIA or falls within the scope of the exemption provided by section 24(1) of FOIA, and that if the exemption engaged is section 24(1) then the public interest favours maintaining the exemption.
  56. The Commissioner cannot elaborate on her rationale behind this finding without compromising the content of the withheld information itself or by revealing which of these two exemptions is actually engaged.

## Section 40 - personal information

57. The FCO also argued that the names of junior staff contained in the withheld information are exempt on the basis of section 40(2) of FOIA. This 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.
58. In this case the relevant condition is contained in section 40(3A)(a)<sup>6</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').
59. 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.
60. 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.

### Is the information personal data?

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

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

62. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
63. 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.
64. 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.

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<sup>6</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

65. In the circumstances of this case, the Commissioner is satisfied that the names of the officials both relate to and identify the individuals concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
66. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
67. The most relevant DP principle in this case is principle (a).

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

68. 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'.*

69. 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.
70. 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)(f) of the GDPR**

71. 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>7</sup>.*

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<sup>7</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*

72. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under FOIA, it is 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.
73. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

*Legitimate interests*

74. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.
75. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
76. In the circumstances of this case, for the reasons discussed above, the Commissioner accepts that there is a legitimate interest in the disclosure of information about this subject. However, she is not persuaded that there is a particularly strong or compelling interest in the disclosure of the names of officials named in the withheld information in order to inform the public about the content of this analysis.

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*(dis-applying the legitimate interests gateway in relation to public authorities) were omitted".*

*Is disclosure necessary?*

77. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves the consideration of alternative measures, and so a measure would not be necessary if the legitimate aim could be achieved by something less. Disclosure under FOIA must therefore be the least restrictive means of achieving the legitimate aim in question.
78. In the Commissioner's view it is not sustainable to argue that disclosure of the names of the officials is necessary; disclosure of such information would not add to the public's understanding of this subject matter.
79. Given this finding the Commissioner has concluded that disclosure of the names would not be lawful and therefore article 6(1)(f) of the GDPR is not met. Disclosure of the names would therefore breach the first data protection principle and thus such information is exempt from disclosure on the basis of section 40(2) of FOIA.

## Right of appeal

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80. 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)

81. 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.

82. 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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
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