

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 24 May 2023

**Public Authority:** Cabinet Office  
**Address:** 70 Whitehall  
London SW1A 2AS

#### **Decision (including any steps ordered)**

---

1. The complainant requested information from the Cabinet Office relating to the career of Prince Andrew. The Commissioner's decision is that the public authority is entitled to rely on section 40(2) of FOIA to withhold all of the requested information.
2. The Commissioner does not require the public authority to take any steps.

#### **Request and response**

---

3. On 5 January 2023 the complainant made the following request for information to the public authority:

"I am writing with regard to a file that is listed in the catalogue of the National Archives. I believe that the file is held by the Cabinet Office. The file is titled - ROYAL FAMILY. Career of Prince Andrew, Duke of York and is listed as PREM 19/2472.

<https://discovery.nationalarchives.gov.uk/details/r/C16205023>

Under the act, I would like to ask for this file to be opened in its entirety to public inspection at the National Archives so that it can be read by the public."

4. The public authority refused to provide the requested information citing section 40(2) (personal information) of FOIA as its basis for doing so.

## **Reasons for decision**

---

### **Section 40 - personal information**

5. This reasoning covers whether the public authority was correct to apply section 40(2) of FOIA to the request.<sup>1</sup>
6. Section 40(2) says that information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
7. In this case, the Commissioner is satisfied that the withheld information is clearly personal data as it obviously relates to an identifiable, living individual.
8. In the case of a 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.
9. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary and whether these interests override the rights and freedoms of the individuals whose personal information it is.
10. The Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that legitimate interest.
11. It is necessary to balance the legitimate interests in disclosure against the fundamental rights and freedoms of the data subjects. In doing so, it is necessary to consider the impact of disclosure.
12. In the Commissioner's view, a key issue when considering the balancing test is whether the individual concerned has a reasonable expectation that their information will not be disclosed. It is also important to

---

<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

consider whether disclosure would be likely to result in unwarranted damage or distress to the individual, and whether it would be fair to the individual involved.

13. The Commissioner has not seen any evidence to suggest that the individual involved would have a reasonable expectation that their personal data would be disclosed in response to an information request.
14. The complainant argued "I believe that it is in the public interest to open this file. Prince Andrew received public money as part of his position within the monarchy. There appears to be discussions within this file about his role and his work. It is therefore in the public interest to open this file as it would enhance public debate about the functioning of the monarchy, and in particular the work of Prince Andrew, within a democratic society."
15. It should be noted that section 40(2) is an absolute exemption and therefore not subject to the public interest test. What is of interest to the public is not the same as 'in the public interest'.
16. Based on the above factors, the Commissioner has determined that the fundamental rights and freedoms of the individual outweighs the legitimate interest identified above. The Commissioner therefore considers that disclosing the requested information would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation. The public authority was therefore correct to apply section 40(2) of FOIA to this request.

## 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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

**Susan Duffy**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**