

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

### **Decision notice**

**Date:** 22 September 2014

**Public Authority:** Post Office Limited  
**Address:** 1<sup>st</sup> Floor, Old Street Wing  
148 Old Street  
London  
EC1V 9HQ

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

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1. The complainant has requested a list of Post Offices which have been identified as 'core mains'. The Post Office Limited (Post Office) withheld the requested information under section 40(2) and 43(2) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the Post Office correctly applied section 40(2) and 43(2) FOIA to the withheld information.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 5 December 2013, the complainant requested the following information:

"Could I have sight of the list of Post offices you have identified as core Mains.

How many branches that have been converted to the Main model have now been downgraded to non core Mains.

What was the total cost for the transformation of Post Offices into Main models that you now class as non core Mains."

5. The Post Office responded on 3 February 2014, it refused to provide the information requested at part 1 of the request under section 43(2) FOIA. It said it did not hold the information requested at parts 2 and 3 of the request.
6. The complainant requested an internal review on 3 February 2014 in relation to the application of section 43(2) FOIA.
7. On 11 May 2014 the Post Office provided the complainant with its internal review response. It upheld its application of section 43(2) FOIA.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 2 July 2014 to complain about the way her request for information had been handled.
9. During the course of the Commissioner's investigation the Post Office also applied section 40(2) FOIA to the withheld information.
10. The Commissioner has considered whether the Post Office was correct to apply section 40(2) and section 43(2) FOIA to the withheld information.

### **Background**

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11. In April 2012 the Post Office completed a broad analysis to identify the future potential of branches into potential Main or potential Local branches, for those sub-postmasters that expressed a wish to transform. This was an internal analysis that was used for engagement with individual branches as part of the Network Transformation project.

12. In November 2013 the Post Office carried out a full revised analysis to identify branches as potential Mains, potential Locals or Community branches. It provided the following definitions for each type of branch:

Mains Post Offices – these are larger Post Offices where the customer numbers mean that there needs to be a dedicated Post Office space within the store; the Post Office dedicated space is refurbished to the latest open plan/screenless design formats. A further Post Office operating till is also associated within the retail area of the store – which enables Post Office services to be operated during the Store's opening hours. Mains branches typically provide a full range of Post Office services. Mains Post Offices operate on a new contract with the Post

Office services based on variable payments for work done without any 'fixed' element of pay.

Local Post Offices – these are smaller Post Offices with lower customer numbers which are within retail stores that have sufficient turnover such that a combined Post Office/retail operation is commercially sustainable. The Post Office till is integrated with the retail tills enabling best use of space and resources and allowing the Post Office services to operate all the hours that the host store is open (including early mornings/late nights and Sundays). Local branches typically provide a limited range of Post Office services, compared to Mains branches. Local Post Offices operate on a new contract with the Post Office services based on variable payments for work done without any 'fixed' element of pay.

Community Post Offices – these are Post Offices that are typically located in the 'last shop in the village' – and are defined as cases where there is no suitable retail outlet that could host a Post Office within half a mile of the current location. These branches can remain on the existing Subpostmaster Contract involving both fixed and variable pay.

13. The identification of which branches potentially fit within each of the above operating models was undertaken following agreements with Government and the NFSP in November 2013. The analysis was undertaken by the Post Office using internal and confidential commercial information about the Post Office business levels conducted by each branch.
14. Following this analysis the Post Office sent personal letters to each individual subpostmaster, which explained the potential next steps for their specific branch and identified the potential future type of branch that might be appropriate for their location.
15. In the November 2013 analysis the Post Office revised the identification of some branches from potential Mains to a potential Local branch. Each branch affected by this change was notified in December 2013 and given the option of still becoming a Mains branch, subject to doing so before a specified date (currently by the end of December 2014).
16. Internally within the Post Office the term 'core Main' was used unofficially to refer to those branches identified as potential Mains branches originally in the April 2012 analysis and in the revised November 2013 categorisation. Whereas the term 'non-core Main' was unofficially used internally to refer to those branches who had their status changed in November 2013 from potential Mains branch to potential Local branch and which were still given the option of potentially becoming a Mains branch before a specified date.

17. The Post Office considers any information which identifies a branch's potential Mains, Local or Community model status as exempt from disclosure under the FOIA. However Post Office Limited maintains a list of branches that are operating under the Mains contract which is available on request. The complainant has previously been provided with a list of branches operating under the Mains contract on 31 December 2012.

## Reasons for decision

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### Section 43 – commercial interests

18. Section 43(2) of the FOIA provides an exemption from disclosure of information which would or would be likely to prejudice the commercial interests of any person (including the public authority holding it). This is a qualified exemption and is, therefore, subject to the public interest test.
19. The term 'commercial interests' is not defined in the FOIA, however, the Commissioner has considered his awareness guidance on the application of section 43. This comments that:  
  
*"...a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services."*<sup>1</sup>
20. Upon viewing the withheld information the Commissioner considers that it provides an indication of the capital value of a Post Office identified as a 'core mains'. The Post Office provides a service to its customers and therefore the withheld information does relate to a commercial interest.
21. Having concluded that the withheld information falls within the scope of the exemption the Commissioner has gone onto consider the prejudice which disclosure would cause and the relevant party or parties which would be affected.

*Whose commercial interests and the likelihood of prejudice*

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<sup>1</sup> See here:

[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/AWARENESS\\_GUIDANCE\\_5\\_V3\\_07\\_03\\_08.aspx](http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/AWARENESS_GUIDANCE_5_V3_07_03_08.aspx)

22. Section 43(2) consists of 2 limbs which clarify the probability of the prejudice arising from disclosure occurring. The Commissioner considers that "likely to prejudice" means that the possibility of prejudice should be real and significant, and certainly more than hypothetical or remote. "Would prejudice" places a much stronger evidential burden on the public authority and must be at least more probable than not.
23. The Post Office has stated that disclosure of the information would be likely to prejudice its own commercial interests and that of the subpostmasters.

*The nature of the prejudice*

24. The Post Office argued that to release a list of potential Mains branches would mean placing into the public domain confidential working assumptions by Post Office Limited about future locations, services and opening hours of its network. Furthermore it said it would mean making public, confidential information passed to individual subpostmasters in order for them to plan the future of their business – before the subpostmaster has had the opportunity to consider the information, or indeed challenge it. It said that issuing a list of potential Mains on this basis would be likely to prejudice the commercial interests of both Post Office Limited and subpostmasters (both those on the list and those not) for the following reasons:

To Post Office Limited:

- Competitors would become aware of potential future network plans – and could take competitive actions accordingly (for example in investment activity or in the siting of their own branches, or in signing up pre-emptive restrictive contracts with retailers who might otherwise be potential Post Office branch locations and who thereafter would not be available to host Post Offices). Publication of a list would provide competitors with a clear indication of Post Office Limited's future commercial and investment strategy. The Post Office confirmed that it faces direct competitive pressures from rival networks (such as PayPoint, Payzone or myHermes) that offer similar services such as bill payment or parcel collections.
- Based on previous experience, it believes Post Office Limited would also be likely to be subject to questions, lobbying and influencing by third parties who would have access to the list and would be likely to speculate without further evidence about potential outcomes that may not happen, but which they consider to be a possibility only as the result of the list

provision. This is likely to result in Post Office Limited having additional costs in handling such activity, which would absorb extensive Post Office resources and which may impede the effective implementation of the Network Transformation Programme as a whole. It provided the Commissioner with an example of the effect on its own commercial interests of handling such speculation in recent times following the letters issued to subpostmasters.

To Subpostmasters:

- As the information exists as a trigger for individual subpostmasters to consider their future commercial options, disclosure of the list is likely to prejudice those options for the subpostmaster. It said that s/he may be subject to external pressure from customers, nearby businesses and/or suppliers not to consider particular options such as a change of location or selling the business. Other parties, with whom s/he does business with, may use the information to make decisions that adversely affect the subpostmaster (for example with respect to rent or lease reviews). His/her employed staff working in the business may utilise the information about potential choices within their pay or contractual relationship with the subpostmaster. If the subpostmaster is considering selling his/her business – the process and timing of that sale might be affected as potential buyers use the information. Competitors might seek to use the information for their own advantage – for example in the timing of investments.
- These matters can be material for subpostmasters – they typically will have made substantial investments in the branch and the above factors could impact those investments.
- Post Office Limited is in the process of reviewing individual business cases from subpostmasters showing how they plan to develop their retail business and to accommodate a new model for a sustainable future. These are subject to a financial assessment by Post Office Limited before a decision can be made on the actual model for a branch. Disclosure of the requested information could affect the personal and business decisions that are yet to be formalised.
- These impacts do not just extend to the subpostmasters who are identified by Post Office Limited as having the potential to

be a Mains branch (whether 'core' or 'non-core'). Those branches not included in the list will, by default, be identifiable instead as potential Local or Communities models. Their ability to consider the potential options open to them may consequently be affected by the disclosure of the information - in similar ways to those identified above for Mains. Furthermore customers may stop visiting such branches on an incorrect assumption that a full range of Post Office services is no longer available.

- The competitive position of individual subpostmasters is also likely to be prejudiced as local rivals use the list to take pre-emptive action (for example in investment in rival facilities, in pre-emptive marketing or in product provision ) designed to undermine the commercial benefits to the subpostmaster of exercising the options s/he has in terms of moving to the new model.
- Any list of potential Mains is provisional only and subject to constant change. If a list of potential Mains was disclosed, branches where there was subsequent change may be impacted – eroding the potential of subpostmasters to commercially consider the full range of options open to them. Public visibility that a branch had been categorised in one way and then changed may raise questions about the business that is conducted in the branch (for example if it was reducing), or speculation on its future prospects which might affect the value of the overall business for the subpostmaster.
- Branches may have been identified as a potential Main – but a decision to move forward with an option that leads to becoming a Main may be forestalled if the subpostmaster is unable to meet the Financial Assessment test undertaken by Post Office Limited. The subpostmaster who is on a list as a potential Main may then be in the invidious position of being challenged as to why they were not able to become a Main. In turn this could affect future sale price and negotiations should the subpostmaster subsequently wish to sell on their business to an incoming party.
- Subpostmasters received the individual information about their potential future status in good faith and would not reasonably expect Post Office Limited to disclose it in advance



of their making a choice. Individual subpostmasters may not have told their staff or their business partners about the potential identified for their branch or the choices available to them. Every individual business is unique. Producing a list would effectively be making the personal letter it sent to each subpostmaster public.

25. Finally the Post Office explained that given that it believes prejudice would be likely to be caused to both itself and third parties, it has obtained the view of the National Federation of Subpostmasters (NFSP) on this issue. It explained that the NFSP is the national representative body for subpostmasters. It said that membership is voluntary for subpostmasters and currently runs at around 6000 subpostmasters, a good proportion of which manage more than one branch. It provided the Commissioner with an email from Mervyn Jones, Commercial and Network Director of the NFSP sent to Neil Ennis of Post Office Limited, dated 8 August 2014, in which Mr Jones makes clear that NFSP does not believe it to be in its members' interests for a list of potential Mains to be disclosed, given that it contains commercially sensitive information.
26. The Commissioner does not consider the Post Office has provided sufficient arguments to demonstrate why disclosure of the names of the Post Offices which it considers to be potential Mains Post Offices would be likely to give competitors information relating to the Post Office Limited's potential future network plans. This is because as the Post Office has explained, this list is not a definite indication of the future status of the Post Office's named. Furthermore it has not explained how this information would be likely to be used to gain a commercial advantage by its competitors when planning their own future business strategies. The Commissioner does not therefore accept that the prejudice claimed in relation to the Post Office's own commercial interests is real, actual and of substance and the Post Office has not established a causal link between disclosure and the prejudice occurring.
27. The Post Office has also explained that disclosure would be likely to result in the Post Office having to deal with a significant amount of work relating to concerns raised which may never come to fruition. It said that if and when a branch is finally formally proposed as a Mains Post Office, following all the choices and processes previously described, the information about the conversion is made fully public either as a result of consultation procedures, which are determined by a published Code of Practice on Public Consultation or by notification arrangements to the public in advance of the change. Therefore if a particular branch is formally proposed to change into a Main (as opposed to being confidentially categorised as having the potential to be a Main) – this specific information will be made public. The Commissioner does not



however consider that this argument is relevant to the exemption claimed in this case. Again he does not therefore consider that the Post Office has explained why disclosure would be likely to prejudice its own commercial interests.

28. The Commissioner does however accept that disclosure of information which would reveal the competitive position of a particular subpostmaster would be likely to prejudice the commercial interests of those subpostmasters as it would be likely to directly affect the overall value of the business. This is because a subpostmaster's potential status would have been determined on the basis of commercially sensitive information shared with the Post Office Limited for this purpose. He therefore accepts that the prejudice claimed in relation to the subpostmaster's commercial interests is real, actual and of substance and there is a causal link between disclosure and the prejudice occurring.
29. As the Commissioner does consider that section 43(2) FOIA was correctly engaged, and this is a qualified exemption, he has gone on to consider the balance of the public interest in this case.

### **Public interest test**

#### *Public interest arguments in favour of disclosure*

30. Post Office Limited acknowledges that there is public interest in promoting the transparency and understanding of matters relating to the Post Office branches.

#### *Public interest arguments in favour of maintaining the exemption*

31. There is a strong public interest to ensure that subpostmasters are not commercially damaged or harmed by the release of the information.

#### *Balance of the public interest arguments*

32. The Commissioner considers that there is a strong public interest in disclosure of information relating to Post Office branches as the Post Office provides a service which is utilised by a significant number of the population nationwide.
33. However the Commissioner is mindful that the Network Transformation Programme is ongoing and disclosure of information identifying Post Offices as potential 'Mains' branches, before their status has been finalised would be likely to prejudice the subpostmasters commercial interests which would not be in the public interest. Many of the subpostmasters are private businesses and it would not be in the public interest to damage the commercial interests of those businesses by

disclosing information about their perceived competitive position. This would be likely lead to conjecture relating to their overall value before their status has been considered fully, possibly appealed or finalised which would not be in the public interest.

34. On balance the Commissioner considers that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption in this case. Section 43(2) FOIA was therefore correctly engaged in relation to the withheld information.
35. As the Commissioner considers that section 43(2) FOIA was correctly engaged in this case.

### **Section 40(2)**

36. Under section 40(2) by virtue of section 40(3)(a)(i), personal data of a third party can be withheld if it would breach any of the data protection principles to disclose it.
37. Personal data is defined in section 1(1) of the Data Protection Act (DPA) as:

“data which relate to a living individual who can be identified –

  - (i) from those data, or
  - (ii) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.”
38. The two main elements of personal data are that the information must ‘relate’ to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
39. Whilst the Commissioner is satisfied that section 43(2) FOIA was properly engaged in this case, he would also acknowledge that the Post Office did also apply section 40(2) FOIA during the course of the Commissioner’s investigation which, as stated above, relates to third party personal data. The Commissioner would note that so far as the subpostmasters are operating as sole traders, the withheld information would be their personal data.

40. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of FOIA are met. The relevant condition in this case is at section 40(3)(a)(i) of FOIA, where disclosure would breach any of the data protection principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first data protection principle, which states that "Personal data shall be processed fairly and lawfully". Furthermore at least one of the conditions in Schedule 2 should be met. In addition for sensitive personal data at least one of the conditions in Schedule 3 should be met.

### **Likely expectation of the data subject**

41. The Commissioner considers that Post Offices identified as potential 'Mains' branches was determined on the basis of commercially sensitive information shared with the Post Office Limited for this purpose only. It was not shared so that this information could be disclosed into the public domain prior to the status of a particular branch being finalised. The Commissioner does not therefore consider that the subpostmasters would have expected that the withheld information would be disclosed into the public domain.

### **Damage and distress**

42. As the Commissioner has accepted that disclosure would be likely to prejudice the subpostmaster's commercial interests, he does also consider that disclosure would cause damage and distress to the data subjects for this reason.

### **The legitimate public interest**

43. The Commissioner considers that there is a legitimate public interest in understanding matters relating to Post Office branches as the Post Office provides a service which is utilised by a significant number of the population nationwide.
44. The Commissioner does however consider that the legitimate public interest is met in some way when a branch is finally formally proposed as a Mains Post Office, following all the choices and processes previously described, the information about the conversion is made fully public either as a result of consultation procedures, which are determined by a published Code of Practice on Public Consultation or by notification arrangements to the public in advance of the change. Therefore if a particular branch is formally proposed to change into a Main (as opposed to being confidentially categorised as having the potential to be a Main) – this specific information will be made public. This enables the public to become involved in the process before the branch status is finalised.

45. Whilst the Network Transformation Programme is ongoing, and particularly whilst the branch status has not been formally proposed, the Commissioner considers that the legitimate expectations of the data subjects and the damage and distress that disclosure may cause must be given sufficient weight. The Commissioner does not consider that the legitimate public interest would outweigh the interests of the data subjects in this case.
46. The Commissioner therefore considers section 40(2) FOIA was correctly applied to the withheld information in this case.

## Right of appeal

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47. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

48. 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.
49. 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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**Wilmslow**  
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