

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

### **Decision notice**

**Date:** 25 May 2023

**Public Authority:** Local Government and Social Care  
**Address:** Ombudsman  
53-55 Butts Road  
Coventry  
CV1 3BH

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

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1. The complainant has requested a list of email addresses and names for staff at the Local Government and Social Care Ombudsman's ('the LGSCO'). The LGSCO has withheld this information citing section 40(2) (personal information), and by extension 40(3)(a), of FOIA as its basis for doing so.
2. The Commissioner's decision is the LGSCO is entitled to rely upon section 40(2) as a basis for refusing to disclose the requested information.
3. The Commissioner requires no further steps.

#### **Request and response**

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4. On 12 April 2023, the complainant wrote to the LGSCO and requested:

"Also please, I request all of the Complaints Team and the Managers for all forms of Complaints at all levels, under the freedom of information request, all recorded information

A list of all the names of Managers in all Departments and their Email addresses

A list of all the names of Investigator's and their Email addresses please”

5. The LGSCO responded on 23 April 2023. It stated that it didn't have a specific complaints team and therefore, it doesn't hold a list of the names and email addresses of a team that doesn't exist. It confirmed that the names of the executive team were exempt under section 21 (information reasonably accessible to applicant via other means) as this information was on its website. It confirmed that the email addresses and names of staff at all levels, was exempt under section 40(2).
6. On 24 April 2023 the complainant requested an internal review, stating 'You have failed and refused to release recorded information, under the Freedom of Information Act.'
7. Following an internal review, the LGSCO wrote to the complainant on 5 May 2023. It upheld its original position.

## **Reasons for decision**

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### **Section 1 – general right of access to information**

8. FOIA allows individuals access to information that is held by public authorities. However, public authorities cannot provide what it doesn't hold. The LGSCO explained to the complainant that since it doesn't have a specific 'complaints team', it follows that it doesn't hold a list of names or email addresses relating to this team.
9. The LGSCO's website<sup>1</sup> indicates that complaints should be made directly to the staff or business area that an individual is dealing with, rather than a specific complaints team. The complainant hasn't queried the LGSCO's stance on this specifically, or presented any evidence or arguments to show that the LGSCO does have a specific complaints team. Therefore, on the balance of probabilities, the Commissioner is satisfied that this information is not held.

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<sup>1</sup> [LGSCO Service Complaints Procedure \(lgo.org.uk\)](https://lgo.org.uk)

**Section 21 – information reasonably accessible to applicant via other means**

10. The purpose of section 21 is to ensure that there is no right of access to information via FOIA if it is available to the requestor by another route.
11. The Commissioner can see that the names of the Executive Team are on the LGSCO's website<sup>2</sup> which the LGSCO has directed the complainant to. Since he has seen no evidence that the complainant cannot reasonably access this information, the Commissioner considers section 21 is engaged and the names of the Executive Team are therefore exempt from disclosure.

**Section 40(2) – personal information**

12. The Commissioner has dealt with a very similar case<sup>3</sup> before, in which the complainant requested a list of email addresses for all investigators at the LGSCO. In this case the names of the investigators, as well as the names of all managers at the LGSCO, and the email addresses of the Executive Team are also being withheld under section 40(2).
13. Section 40(2) of FOIA states that:

“Any information to which a request for information relates is also exempt information if –

  - (a) it constitutes personal data which does not fall within subsection (1), and
  - (b) the first, second or third condition below is satisfied.”
14. In this instance the relevant condition is contained in section 40(3)(a) which states:

“The first condition is that disclosure of the information to a member of the public otherwise than under this Act –

  - (a) would contravene any of the data protection principles”
15. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA18'). If this is not the case then section 40 cannot be used as a basis for refusing to disclose the information.

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<sup>2</sup> [Commissioner and senior staff profiles - Local Government and Social Care Ombudsman](#)

<sup>3</sup> [ic-90045-v4s9.pdf \(ico.org.uk\)](#)

16. Secondly, and only if the Commissioner is satisfied that the requested information constitutes personal data, he must establish whether disclosure of that information would breach any of the data protection principles.

**Is the requested information personal data?**

17. Yes. For the same reasons listed in paragraphs 16-21 of IC-90045-V4S9, the Commissioner is satisfied that all of the withheld information is personal data. The Commissioner must therefore move onto consider whether disclosure would be lawful.

**Lawful processing: Article 6(1)(f) of the UK GDPR**

18. 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.”

19. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information made under the 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.
20. If there is no legitimate interest, or disclosure is not necessary, there is no need to go on to perform the balancing test
21. The Commissioner must first consider the legitimate interest in disclosing the personal data to the public and what purpose this serves. He recognises that a wide range of interests may represent legitimate interests in the disclosure of information under FOIA; they can be the requester’s own interests as well as wider societal benefits. These interests can include the broad principles of accountability and transparency that underpin FOIA or may represent the private concerns of the requestor.

22. It's important to remember that disclosure under the FOIA is effectively disclosure to the world at large. The Commissioner is of the opinion that, if the requester is pursuing a purely private concern which is unrelated to any broader public interest, then disclosure is unlikely to be proportionate. Legitimate interests may be compelling or trivial, but trivial interests may be more easily overridden by the fundamental rights and freedoms of the data subject during the test under stage (iii).
23. The complainant has not explained to the Commissioner why specifically they are requesting this information. It might be because they wish to make a complaint about the service that they have received from the LGSCO or they might wish to raise a safeguarding concern about adult-social care or children's services which is the LGSCO's remit.
24. There are prescribed routes<sup>4</sup> for making a complaint to the LGSCO, either via post, complaints form or email. Likewise, if an individual wishes to make a complaint<sup>5</sup> about the service that they have received from the LGSCO they can do so via their account, a service complaint form or via another route if their reasonable adjustment allows it. Presumably, in order to make a complaint about the service that they have received an individual will have already been dealing with an LGSCO investigator or manager, to whom they can direct their service complaint and it will be escalated as required.
25. Without any specific steer from the complainant, it doesn't appear that the requested information would fulfil any private legitimate interest that cannot already be fulfilled. The Commissioner is also not convinced that disclosure serves any wider purpose as continued suppression of the requested information doesn't inhibit the public's ability to bring a concern to the LGSCO or raise a complaint about it.
26. However, he accepts the legitimate interests can be represented by the themes of transparency and accountability that underpin FOIA. Although this accountability and transparency may extend to the employees of public authorities the Commissioner considers that there is a limited legitimate interest in disclosure of the requested information.
27. Therefore, the Commissioner will move onto consider whether disclosure of the requested information is necessary to meet the legitimate interest in question, to make the LGSCO more accountable or transparent.

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<sup>4</sup> [How to register a complaint - Local Government and Social Care Ombudsman](#)

<sup>5</sup> [Complaints about our service - Local Government and Social Care Ombudsman](#)

28. Disclosure of the requested information does not shed any light on how the LGSCO works or justify any of the decisions that it has made in relation to any case. If an individual who has raised a complaint with the LGSCO wishes to challenge the decision, and hold the LGSCO accountable, they can do so, after one review, via challenge at the High Court. If an individual is dissatisfied with the service they have received and wish to raise a complaint about it to the LGSCO, they can do so. Neither of these routes require the information that is being requested.

**The Commissioner's view**

29. The Commissioner does not consider that there is a legitimate individual interest being pursued through this request. Furthermore, the Commissioner does not consider that disclosure of the requested information would add to the public understanding of the LGSCO or its processes and would not make it any more transparent or accountable.
30. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful. Given the above conclusion that disclosure would be unlawful, the Commissioner does not need to go on to consider the balancing test or whether disclosure would be fair or transparent.
31. The Commissioner has decided that the LGSCO was entitled to withhold the requested information under section 40(2), by way of section 40(3)(a).

## Right of appeal

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32. 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)

33. 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.
34. 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

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