

8. WHEN SHOULD NAMES BE DISCLOSED?

Overview

The key point is whether it would be fair to name the individual. This should be looked at on a case-by-case basis and should consider the following:

- Is the information about the person's public role?
- Would they expect their role to be subject to public scrutiny?
- Is there a likelihood of unwarranted damage or distress to the individual?

This guidance covers situations where people are mentioned in documents as decision makers, advisers or attendees at a meeting. Where a request has been made specifically for information about staff, please refer to the Information Commissioner's guidance on [Access to information about public sector employees](#) which can be found in section 15 of this Handbook.

Personal Information

Section 40(2) of the FOI Act and EIR 13 both provide an exemption from disclosing information about identifiable individuals where it would breach the Data Protection Act. The main consideration is whether it would be fair in all the circumstances to identify an individual. You should consider this on a case-by-case basis.

Fairness – factors to consider

1. Does the information requested relate primarily to the person's public function rather than their private life?
2. Should the individual expect their role to be subject to public scrutiny?
You should consider:
 - how senior they are;
 - whether they have a public profile; and
 - whether their role requires a significant level of personal judgement and individual responsibility.

Example: The Information Tribunal found it was not necessary to release the name of a junior civil servant who had signed off a decision because he was 'acting largely on behalf of others' and was not personally responsible'. On another occasion, the Tribunal said the names of more junior civil servants could be released where they were in roles which involved giving evidence to parliamentary committees or where they had some management responsibilities.

It is good practice to have a policy on routinely disclosing names at certain levels, in certain roles or in certain circumstances. However, this does not mean that the names of more junior staff should always be withheld. Often, it

will not be unfair to release their names as the context will not be sensitive or controversial.

3. Should the individual reasonably expect that their name could be released in response to an FOI request?
 - The fact that employees or officials have not been specifically warned about FOI is not a bar to disclosure, as they should be aware of the Act's existence.
 - The Department does not give blanket promises of anonymity. An FOI policy on routine disclosures should not imply that names could never be released in other circumstances.
 - It may be unfair to release people's names if they have been given an explicit assurance of confidentiality in circumstances where they might legitimately fear being identified.
 - However, the Department cannot evade its FOI responsibilities by giving an artificial assurance of confidentiality in circumstances where identifying individuals would not otherwise be fair.

Example: The Information Tribunal agreed that 'no assurances could lawfully have been given' by the House of Commons that MPs' personal information would not be disclosed under FOI.

Example: The Information Commissioner found that the General Medical Council (GMC) should not reveal who handled a particular complaint. These staff had been given an explicit assurance of anonymity due to previous occasions where they had been approached outside work by those who were under investigation.

4. Would disclosure cause unwarranted damage or distress to the individual?
 - This includes risks to a person's safety and security.
 - It may also include unfair damage to their career or reputation.
 - It does **not** include embarrassment, legitimate criticism, or the risk of misunderstanding or representation.

Example: A local authority received a request for a report produced as part of an internal investigation. The Information Commissioner decided that the names of individuals who had been under investigation should not be released, even though they had been exonerated, because simply being associated with the affair could tarnish their reputations and harm their future careers.

The presumption is in favour of protecting privacy, so the release of personal information will only be fair if there is a genuine reason for disclosure. This involves a three-stage test. The Department will generally have to satisfy itself that:

- there is a legitimate interest in disclosure;

- the legitimate interest can only be met, or fully met, by the disclosure of information which identifies individuals (i.e. the disclosure is necessary to that purpose); and
- the disclosure would not involve unwarranted detriment to the individual's privacy or other rights and legitimate interests.

This three-stage test is not exactly the same as the public interest test, but involves similar considerations:

- You should identify the legitimate interests which a member of the public might have in the information. These may not be the same as, or limited to, any interest expressed by the particular requester, although any arguments they put forward should be considered.
- You should consider whether the names add to the value of the information, or whether the interests would be fully met by providing information with the names redacted.
- You should decide whether the benefits of disclosure are proportionate to any potential harm, distress or intrusion to the individuals named.

Other Exemptions

Section 40(2) FOIA and EIR 13 may not be the only relevant exemptions.

FOIA sections 35 and 36 provide exemptions where disclosure could hinder good policy-making or the effective conduct of public affairs.

- It is not sufficient to assert that fear of disclosure will inhibit professional civil servants from carrying out their role effectively in the future.
- Fear of misunderstanding or misrepresentation should not be a barrier to transparency. Where necessary, the information requested could be published with additional context provided.
- There should be no blanket policy on withholding the names of civil servants, but there may be a public interest in protecting their anonymity where this could be harmful to their ability to give impartial advice. For example, they may be unfairly blamed for a political decision or become the focus of intrusive media interest. It may be appropriate to withhold the name of the official associated with a controversial policy, if they are relatively junior or if the name added little value to the information.
- This should not be used to protect politicians from criticism of the decisions they have taken. It may be appropriate to release advice which conflicts with a minister's decision, without identifying the official who gave it. Lobbyists are also entitled to less protection than those giving impartial advice.

Section 38 FOIA provides an exemption relating to health and safety. In EIR, regulation 12(5)(a) may be relevant.

Section 41 FOIA provides an exemption for information provided in confidence. Note that routine internal discussions are unlikely to be confidential; this exemption is more likely to apply in exceptional circumstances such as an internal investigation.

Further Information

The Information Commissioner has produced the following guidance:

[Practical Guidance: When Should Names Be Disclosed?](#)

[Freedom of Information Access To Information About Public Authorities' Employees](#)

REFERRING TO MoJ CLEARING HOUSE

Part of the Ministry of Justice, the Clearing House's primary functions relate to the Freedom of Information Act and Environmental Information Regulations. The Unit:

- provides expert advice on complex, sensitive or high profile requests for information;
- ensures consistency across central government in the handling of these types of requests; and
- works to develop, through litigation, the boundaries of the legislation in accordance with government policy.

Questions about officials' names are likely to arise in two circumstances:

- A. In requests for directories, organisational charts, staff structure lists, etc.
- B. When releasing information that contains officials' names as used in the course of their duties i.e. when clearly related to an opinion or advice.

Cases should be handled individually and according to all the circumstances of the case. However, where business areas propose to depart from this working assumption, they should inform the Information Management Unit who will consult Clearing House beforehand.