

ENGLAND AND WALES / JUDGMENT

Peter Stead v Information Commissioner

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Neutral citation number: [2026] UKFTT 00620 (GRC) First-tier Tribunal General Regulatory Chamber Information Rights Case Reference: FT/EA/2025/0312 Decided without a hearing Decision given on: 28 April 2026 Before JUDGE HAZEL OLIVER MEMBER KATE GAPLEVSKAJA MEMBER DR PHEBE MANN Between PETER STEAD and INFORMATION COMMISSIONER Appellant Respondent Decision: The appeal is Dismissed Background to Appeal

REASONS

1. This appeal is against a decision of the Information Commissioner (the “Commissioner”) dated 21 July 2025 (IC-387042-X1L3, the “Decision Notice”). The appeal relates to the application of the Freedom of Information Act 2000 (“FOIA”). It concerns information about a copyright and database exception requested from the Intellectual Property Office (the “IPO”). The parties opted for paper determination of the appeal. The Tribunal is satisfied that it can 2. properly determine the issues without a hearing within rule 32(1)(b) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended). On 12 March 2025, the Appellant wrote to the IPO and requested the following information 3. (the “Request”): © CROWN COPYRIGHT 2026 “Please send to me all the materials you hold, be they documents, presentations, emails, email attachments, notes of meetings, conversations, minutes, or any other kind of materials of whatsoever nature, whether they are held on official or private devices, that contain the exact phrase: “Copyright and Database Exception”, within the date range: 1st of December 2022 to 1st of February 2023 inclusive.” 4. The IPO is the UK government body responsible for intellectual property rights. The Request relates to a proposal from the IPO to introduce a new copyright and database exception for text and data mining (“TDM”). TDM involves accessing and analysing large datasets to identify patterns and trends, in order to train AI. The proposal was for a new exception to the usual copyright and database rules that would allow TDM for any purpose. In February 2023, the relevant Minister of State said the then government did not intend to proceed with this proposal in view of the responses to consultation. The IPO responded to the Request on 10 April 2025. They provided a number of documents, 5. with redaction of personal data except for the names of senior civil servants. They withheld one item under section 21 (information accessible by other means). They withheld some information under sections 27(1)(a) and (b) on the basis that it would, or would be likely to, harm relations between the United Kingdom and any other state, or relations between the United Kingdom and any international organisation or international court, and releasing this information was not in the public interest. 6. The Appellant requested an internal

review on 11 April 2025. The IPO responded on 14 May and maintained their position. The IPO confirmed that it is accepted practice that names of staff below senior civil servant level should be redacted, and the redaction of the names of non- government persons was at their request. The IPO also provided further explanation about the withholding of two documents which relate to meetings with other countries or international organisations and covered a range of sensitive topics. The Appellant complained to the Commissioner on 15 May 2025. The Commissioner 7. decided: a. b. Sections 27(1)(a) and (b) were engaged, as they had been in a previous decision on the same topic, and the public interest still favoured maintaining the two exemptions. Disclosure of the withheld personal data would be a breach of the data protection principles, and so could be withheld under section 40(2). The Appeal and Responses 8. The Appellant appealed on 17 August 2025. His grounds of appeal are: a. The arguments of the IPO regarding the engagement of sections 27 and 40(2) are weak. b. The Commissioner has completely failed to grasp the sheer magnitude of allowing the IPO to withhold materials under these exemptions. 9. The Commissioner's response maintains that the Decision Notice was correct. a. In relation to the engagement of section 27, a key factor is whether disclosure would affect the trust and confidence other states and international organisations have in the UK, which requires a value judgment. The IPO's assessment is that disclosure would risk undermining candour, trust and confidence in trade negotiations and other international discussions, and that is a judgment that should be given appropriate weight by the Tribunal. There is insufficient evidence pointing the other way to justify rejecting it. In relation to the balance of public interest, the Commissioner maintains that he properly considered the arguments. In relation to section 40(2), the Commissioner relies on the reasoning in the Decision Notice and response in relation to a previous appeal relating to the same topic. b. c.

10. The Appellant submitted a reply. He relies on arguments made in a previous appeal (FT/EA/2025/0106). In relation to section 27, he says he had made his doubts clear - in particular that it was a very late invocation and was originally never mentioned. He also provided further detail on why he considers this is such a significant issue (as discussed further below).
11. The previous appeal in FT/EA/2025/0106 related to another request from the Appellant about essentially the same subject matter, for the period 29 October 2021 to 30 November 2022. This request was partially refused. The Commissioner partly upheld the IPO's position, including reliance on the exemptions under section 27, and ordered disclosure of some material withheld under section 35 (IC-332481-X0S2). The current appeal was stayed pending the result of the previous appeal. The decision in the previous appeal was promulgated on 31 October 2025 and the appeal was dismissed. Applicable law
12. The relevant provisions of FOIA are as follows. (1) (a) General right of access to information held by public authorities. Any person making a request for information to a public authority is entitled— to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that

information communicated to him. Effect of the exemptions in Part II. (b) (2) Part II, section 1(1)(b) does not apply if or to the extent that— (a) In respect of any information which is exempt information by virtue of any provision of the information is exempt information by virtue of a provision conferring absolute exemption, or in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. (b) (1) likely to, prejudice— (a) (b) International relations Information is exempt information if its disclosure under this Act would, or would be relations between the United Kingdom and any other State, relations between the United Kingdom and any international organisation or international court... Personal information. Any information to which a request for information relates is exempt information if it (1) constitutes personal data of which the applicant is the data subject. (2) Any information to which a request for information relates is also exempt information if –

- (a) it constitutes personal data which do not fall within subsection (1), and
 - (b) the first, second or third condition below is satisfied. (3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—
 - (a) would contravene any of the data protection principles.... (1) (a) (b) Determination of appeals If on an appeal under section 57 the Tribunal considers— that the notice against which the appeal is brought is not in accordance with the law, or to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently, the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.
 - (2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.
13. Section 27. The Upper Tribunal in *All Party Parliamentary Group on Extraordinary Rendition v IC and Ministry of Defence* [2011] UKUT 153 held that appropriate weight needs to be attached to evidence from the executive branch of government about the prejudice likely to be caused to particular relations by disclosure of particular information (see paragraph 56). This reflects the fact that the executive is likely to be better informed and have more experience in assessing the consequences of disclosure. Similarly, as set out by the Upper Tribunal in *FCO v Information Commissioner and Plowden* [2013] UKUT 275, the international relations exemption requires the Tribunal to rely more on the evidence than on its own experience when considering the executive's assessment of the balance of the public interest. This is because the executive has expertise in relation to foreign policy matters, and Tribunal members are unlikely to have had personal experience of the diplomatic consequences of disclosure.

14. The approach to be taken to prejudice-based exemptions (such as section 27) was set out in the First Tier Tribunal decision of *Hogan v Information Commissioner* [2011] 1 Info LR 588, as approved by the Court of Appeal in *Department for Work and Pensions v Information Commissioner* [2017] 1 WLR 1:
 - a. Firstly the applicable interests within the relevant exemption must be identified.
 - b. Secondly the nature of the prejudice being claimed must be considered. It is for the decision maker to show that there is some causal relationship between the potential disclosure and the prejudice, and that the prejudice is “real, actual or of substance”.
 - c. Thirdly, the likelihood of occurrence of prejudice must be considered. Whether disclosure “would” cause prejudice is a question of whether this is more likely than not. To meet the lower threshold of “would be likely to” cause prejudice, the degree of risk must be such that there is a “real and significant risk” of prejudice, or there “may very well” be prejudice, even if this falls short of being more probable than not.
15. Section 40. Section 3(2) of the Data Protection Act 2018 (“DPA”) defines “personal data” as “any information relating to an identified or identifiable living individual”. The “processing” of such information includes “disclosure by transmission, dissemination or otherwise making available” (s.3(4)(d) DPA) and so includes disclosure under FOIA.
16. The data protection principles are those set out in Article 5(1) of the UK General Data Protection Regulation (“UK GDPR”), and section 34(1) DPA. The first data protection principle under Article 5(1)(a) UK GDPR is that personal data shall be: “processed lawfully, fairly and in a transparent manner in relation to the data subject”. To be lawful, the processing must meet one of the conditions for lawful processing listed in Article 6(1) UK GDPR. These include where “the data subject has given consent to the processing of his or her personal data for one or more specific purposes” (Article 6(1)(a)). It also includes where “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.” (Article 6(1)(f)).
17. The balancing of interests test under Article 6(1)(f) involves consideration of three questions (as set out by Lady Hale DP in *South Lanarkshire Council v Scottish Information Commissioner* [2013] UKSC 55):
 - (i) Is the data controller or third party or parties to whom the data are disclosed pursuing a legitimate interest or interests? (ii) Is the processing involved necessary for the purposes of those interests? (iii) Is the processing unwarranted in this case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject? The wording of question (iii) is taken from the Data Protection Act 1998, which is now replaced by the DPA and UK GDPR. This should now reflect the words used in the UK GDPR – whether such interests are overridden by the interests or fundamental rights and freedoms of the data subject which

require protection of personal data. Issues and evidence

18. The issues are: a. b. In relation to the information withheld under sections 27(1)(a) and (b) –
 - i. Are these exemptions engaged? ii. If so, does the public interest in maintaining the exemption outweigh the public interest in disclosing the information? In relation to the information withheld under section 40(2), would disclosure contravene any of the data protection principles?
19. By way of evidence and submissions we had the following, all of which we have taken into account in making our decision: a. b. An agreed bundle of open documents. A closed bundle of documents containing the withheld information (the two documents withheld under section 27, and unredacted versions of documents where personal data had been removed under section 40). Discussion and Conclusions 20. In accordance with section 58 of FOIA, our role is to consider whether the Commissioner's Decision Notice was in accordance with the law. As set out in section 58(2), we may review any finding of fact on which the Decision Notice was based. This means that we can review all of the evidence provided to us and make our own decision. We deal in turn with the issues. Sections 27(1)(a) and (b)
21. Unusually, we have a previous decision of this Tribunal on essentially the same point, in FT/EA/2025/0106. The request in that appeal was for materials that are explicitly about the previously proposed plan to introduce the new copyright and database exception, with the date range 20 October 2021 to 30 November 2022. Documents were withheld under sections 27(1)(a) and (b), and this was upheld by the Tribunal.
22. The same documents have been withheld again in this appeal. This is because new electronic copies of these documents were held on the IPO's system within the specified date range. The First-Tier Tribunal has already decided that the exact same information could be withheld under section 27. The current Request relates to the two months following the end date of the previous request. Although we are not bound to follow previous First-Tier Tribunal decisions, it is desirable to ensure consistency of approach. The Appellant and the Commissioner rely on the same arguments as in appeal FT/EA/2025/0106. The Appellant has not made any submissions on how circumstances are different for this Request or why this Tribunal should reach a different conclusion. We note that the Request relates to the specific two-month period leading up to the decision not to proceed with the proposed new copyright and database exception, and so we have gone on to consider the issues in full.
23. We find that the exemptions under sections 27(1)(a) and (b) are engaged: a. The applicable interests within these exemptions are ensuring effective relations and negotiations with other countries and international organisations, in order to further the interests of the United Kingdom.

- b. We are satisfied that there is some causal relationship between the potential disclosure and the prejudice, and that the prejudice is “real, actual or of substance”. The IPO explained to the Commissioner that Intellectual Property is an important part of trade negotiations, which always remain confidential, with the final outcome being published as a free trade agreement. The detail of the work is often highly sensitive for the UK or the other party, and release would undermine trust and candour.
- c. We are also satisfied that disclosure “would be likely to” cause the prejudice. In accordance with the guidance from the caselaw, we have given weight to the IPO’s evidence on this point. The IPO’s representations during the Commissioner’s investigation give a clear explanation of why and how this prejudice could be caused to the interests of the UK. In particular, we accept that the details of trade negotiations are particularly sensitive and expected to be confidential, and release of this information under FOIA would be likely to damage trust and prevent the parties from being candid with each other. We find that this meets the test of being “likely” to prejudice international relations, meaning a real and significant risk of prejudice.
- d. The Appellant has said that the IPO’s arguments are weak. We disagree. We find that their arguments are substantial, taking into account the nature and content of the withheld information that we have been able to consider in the closed bundle.
24. We find that the public interest in maintaining the exemption does outweigh the public interest in disclosing the information.
25. Interests in favour of disclosure. The Appellant has strong views about the potential damage of the proposed copyright and database exception. He summarised these views in his reply as follows – “What the UK Government proposed would have been the most extreme in the world at that time. Following general horror, it was rightly abandoned. There can be no logical doubt that it would have completely destroyed the Creative Industries with all of the economic, not to mention cultural, disintegration that that would have entailed. It also would have greatly damaged human rights, because if the Government can take our intellectual property from us with no compensation, then they can take our physical property from all of us. This would mean they can do anything they like to us. In essence, it would mean we have no human rights... The Government’s move would have been unconstitutional domestically and illegal internationally.”
26. We accept that this was a particularly controversial issue at the time of the proposals, and there is a clear public interest in understanding how these proposals were formulated and discussed. However, as noted by the Commissioner, the public interest was less strong by the time of the Request because the proposals had already been abandoned. There was still a public interest in understanding what had happened and why, but this would have been stronger while the proposals were still live, and public scrutiny could have influenced the outcome. We also note that the IPO has released a set of information in response to the Request, and only withheld completely two items which engage international relations.
27. Interests in favour of withholding the information. We accept that there is a strong public interest in withholding the information and so preventing damage to the UK’s interests in

international trade negotiations. A lack of trust from other countries or international organisations would prevent parties negotiating with the UK from being candid, and this would clearly cause damage to the effectiveness of such negotiations. Disclosure of such information under FOIA would also risk the release of UK information by other parties while negotiations were ongoing.

28. We note the Appellant's point that the Commissioner has not grasped the "magnitude" of allowing the IPO to withhold this information. We accept that he feels strongly about the issue of a copyright exemption for TDM. However, taking into account the strong interests in favour of withholding, the information that has been released and the timing of the Request, the public interest balance favours maintaining the exemption.
29. We also note the Appellant's point in his reply that he had made his doubts clear in relation to section 27, in particular that it was a very late invocation in the other case and was originally never mentioned. However, public authorities are entitled to rely on new exemptions at any stage in the proceedings, and in any case section 27 was always relied on for this Request. We have accepted the IPO's position on the likelihood of prejudice to international relations, as explained above.
30. We therefore find that the IPO was entitled to rely on the exemptions in sections 27(1)(a) and
(b) to withhold two documents which related to meetings with other countries or international organisations. Section 40(2)
31. The decision in FT/EA/2025/0106 deals very briefly with disclosure of names of less senior staff, deciding they could be withheld. We have considered the issue again in this appeal along with the withholding of non-governmental names. The issue is whether disclosure would contravene any of the data protection principles. a. b. c. Is the data controller or third party or parties to whom the data are disclosed pursuing a legitimate interest or interests? The Appellant is pursuing a legitimate interest - full transparency and understanding about IPO operations, especially on this controversial topic. Is the processing involved necessary for the purposes of those interests? This is unclear in relation to the names of civil servants, as the names of senior civil servants have been provided. There are also some names of people from external organisations that have been withheld, and we accept that disclosure would be necessary in the interests of full transparency. Are such interests overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data? We find that they are. In relation to the names of junior civil servants, there is a convention that they will not routinely be disclosed. The interests in disclosure in this case are limited at best, and so there is no good reason to breach the privacy rights of these individuals. In relation to the names and job positions of individuals from third party organisations, the IPO has explained that these were redacted at their request. We note that the names of the organisations have been provided. The addition of names of individuals would add only a limited amount to transparency. These individuals have a reasonable expectation of privacy over their names and job titles (from which they

could be identified), and disclosure would breach privacy rights in circumstances where there was no consent to disclosure. d. The Appellant has said that the IPO's arguments on section 40 are weak. We disagree. The legitimate interest in disclosure of junior civil servant and third-party names is limited, and is clearly outweighed by the privacy rights of those individuals.

32. We therefore find that disclosure of these names would contravene the data protection principles, and the IPO was entitled to rely on the exemption in section 40(2) to withhold this information.
33. We dismiss the appeal for the reasons explained above. Signed: Judge Hazel Oliver Date: 23 April 2026 8

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