



Date
05 December 2024

Post Office
100 Wood Street
London EC2V 9ER

Your Ref:

Classification:
Public

Dear [REDACTED],

Freedom of Information Request – FOI2024/00044

We are writing in response to your email received by Post Office Limited (**"Post Office"**) on 8 January, which has been dealt with under the terms of the Freedom of Information Act 2000 (**"FOIA"**). We sincerely apologise for the delay in responding to your request.

In your email, you have requested the information shown verbatim in bold below:

"This is a request under the FOIA.

In March 2019, the Post Office applied to have Mr Justice Fraser recused from the Horizon trial.

Please provide me with copies of all internal correspondence, board papers and other material relating to the decision to proceed with the recusal.

Please also provide full copies of the instructions prepared for Lord Grabiner and Lord Neuberger.

Some of this material will originally have been privileged, however that privilege appears to have been waived by the Post Office in its 15 November 2021 response to the Inquiry.

That response says it is "waiving privilege for the purpose of this Inquiry", but the effect of waiving privilege is that privilege is lost versus the world, not just the

person to whom documents are provided (save in limited circumstances such as the Nederlandse Reassurantie Groep Holding NV and Gotha City cases, which are not relevant here)

To the extent that any privilege remains (which I doubt), there is a clear public interest in understanding why the Post Office spent large sums of public money, forced the GLO claimants to spend large sums of money, and wasted court time, on an application that the Court of Appeal described as "without substance", "misconceived", "fatally flawed", "untenable" and "absurd".

One possibility, which Lord Justice Coulson appeared sympathetic to, was that the purpose was to derail the sub-trial entirely. That would be an improper purpose. There, therefore, a powerful public interest in understanding whether that was indeed the motivation for the application.

Please note that, given the extraordinary delays experienced on my previous FOIA requests, I will refer this to the Information Commissioner if you take more than 30 days to respond."

We can confirm that Post Office does hold the information you have requested. This information has been provided further down this letter and in an attachment to the email response, which contains extracts of other documents. However, some of the information has been withheld as it is exempt under section 40(2), relating to personal data, section 42(1), relating to legal professional privilege, and section 21 of the FOIA, relating to information which is publicly available.

The information being withheld under section 40(2) of the FOIA constitutes personal data relating to other persons. This section exempts personal information from disclosure if the information relates to someone other than the applicant, and if disclosure of the information would breach any of the data protection principles in Article 5(1) of the UK General Data Protection Regulation (GDPR).

We consider that disclosure of this information is likely to breach the first data protection principle, which provides that personal data must be processed lawfully, fairly, and in a transparent manner. Disclosure would not constitute 'fair' processing of the personal data because the information relates to junior employees who would not reasonably expect their personal details to be disclosed in relation to this request for information.

We have also redacted information relating to section 42(1), which exempts information in respect of which a claim to legal professional privilege could be maintained. Section 42 is a qualified exemption and therefore requires Post Office to consider whether the public interest in maintaining the exemption is greater than the public interest in disclosing it.

Whilst we recognise that there is a high public interest in information about the recusal decision, especially given the ongoing Post Office Horizon IT Inquiry and considering that further information about this decision would help promote transparency.

On the other hand, Post Office is satisfied that the public interest in maintaining the legal professional privilege exemption by withholding the privileged information outweighs the public interest in disclosing it as there is a strong inherent public interest in preserving legal privilege. Post Office has provided information to the Post Office Horizon IT (“**POHIT**”) Inquiry with a limited waiver of privilege and does not consider that privilege has been waived to the world. Post Office therefore considers that, in all the circumstances, withholding the information outweighs the public interest in disclosure.

Lord Grabiner and Lord Neuberger set out the documents they received in their witness statements to the POHIT Inquiry. The instructions given to them were informal and in some cases verbal. The details of those instructions are in their witness statement which is linked below along with correspondence related to the recusal, such as emails, letters, and observations can be found below:

<https://www.postofficehorizoninquiry.org.uk/file/3484/download?token=dsfa7uXU>

<https://www.postofficehorizoninquiry.org.uk/file/3503/download?token=9KWSzJd0>

https://www.postofficehorizoninquiry.org.uk/evidence/all-evidence?search_api_fulltext=recusal&date_added=&field_evidencetype=All&field_witness=All&field_witness_category=All&field_phase=All

As this information is reasonably accessible to you by other means, section 21 of the FOIA exempts Post Office from providing a copy of the requested information.

If you are dissatisfied with the handling of this response, you do have a right to request an internal review. You can do this by writing to the address above within 40 working days of receipt of this response stating your reasons for your internal review request or alternatively, by emailing information.rights@postoffice.co.uk.

If, having requested an internal review by Post Office, you are still not satisfied with our response you also have a right of appeal to the Information Commissioner at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Telephone: 0303 123 1113
www.ico.org.uk/foicomplaints

Yours sincerely,

Information Rights Team
information.rights@postoffice.co.uk
<https://corporate.postoffice.co.uk/en/governance/access-to-information/access-to-information/>

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