

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 June 2022

Public Authority: British Business Bank
Address: Steel City House
West Street
Sheffield S1 2GQ

Decision (including any steps ordered)

1. The complainant has requested the names of companies and the amounts each had borrowed following the Government's implementation of loan schemes to support businesses facing financial disruption due to the COVID-19 pandemic.
2. The Commissioner's decision is that the British Business Bank ('BBB') has appropriately relied on section 43(2) - Commercial interests to withhold the requested information and the public interest favours maintaining the exemption. In regard to the BBB's reliance on section 21 - Information accessible by other means, the Commissioner finds the exemption is not engaged.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Background

4. On 13 March 2020 the Government announced its decision to launch a loan guarantee scheme to be delivered by high street banks and commercial lenders to support businesses across the UK that were facing financial disruption due to the COVID-19 pandemic.
5. On 23 March 2020 the Coronavirus Business Interruption Loan Scheme ("CBILS") was launched to be available to small and medium sized businesses based in the UK with annual turnover of up to £45 million, who met certain criteria including that they could show that they would be viable were it not for the pandemic and they had been impacted by COVID-19. The loans were provided by accredited commercial lenders and backed by an 80% guarantee provided by government to the lender

to cover the outstanding guaranteed balance in the event of default by the borrower (subject to certain conditions). The Government paid interest and any lender levied fees for the first 12 months of the loan. Notwithstanding this, the borrower always remains fully liable for the debt.

6. CBILS was followed within weeks by the Coronavirus Large Business Interruption Loan Scheme ("CLBILS") for medium and larger sized businesses affected by COVID-19. Loans and other types of finance of up to £200 million were provided by accredited commercial lenders to businesses with a group turnover in excess of £45 million who were suffering disruption to cash flow due to lost or deferred revenue. The financial support was backed by a Government guarantee of 80% of the outstanding balance. The guarantee was provided to the commercial lenders (subject to certain conditions). Again, the borrower remains fully liable for the debt.
7. Following the launch of CBILS and CLBILS, the Government identified the need for a further loan scheme to support smaller businesses. In May 2020 the Bounce Back Loan Scheme ("BBLs") was launched. BBLs enabled businesses to access finance more quickly, by offering loans of between £2,000 and the lower of 25% of their turnover or £50,000. Under the Scheme, the Government guaranteed 100% of the loan and paid the interest rate of 2.5% per annum for the first 12 months. No repayments of principal were required in the first 12 months of the loan. No lender fees were permitted. The BBLs made changes to the standard banking procedures for loan applications and approval to make it easier and quicker for small businesses to access urgently needed finance. These changes reduced the checks that lenders were required to carry out prior to offering a loan to a borrower.
8. The banks and lenders who were consulted about the Schemes, as well as the BBB and the Government, recognised the high risk of error and fraud, but the Government issued a ministerial direction for the BBB to proceed because of the needs of businesses and the urgency of the situation.
9. CIBLS, CLBILS and BBLs all closed to new applications from 31 March 2021.

Publication of information

10. BBLs, CBILS and CLBILS were established under the European Commission's Temporary Framework for State aid measures to support the economy in the Covid-19 outbreak, ("Temporary Framework"). Under the Temporary Framework, the Department for Business, Energy and Industrial Strategy ("BEIS") as the granting authority of the three

schemes which fall under the Temporary Framework, is subject to a legal requirement to report information about the State aid granted under the Temporary Framework. This involves publishing certain information (including the loan recipients' names) about the aid awarded on the EU's transparency database.

11. For each of the three loan guarantee Schemes, the European Commission requires that information be published about State aid exceeding the value of €100,000 or, if the business is in the fisheries or agricultural sector, €10,000 (including where the cumulative sum of more than one award to a single recipient exceeds €100,000 or €10,000 for the fisheries or agriculture sectors).¹
12. The reporting time frames for EU reporting are:
 - Loan offers March - 30 June 2020 reported and published by 8 June 2021
 - Loan offers 1 July – 30 September 2020 reported and published by 21 September 2021
 - Loan offers 1 October – 31 December 2020 reported and published by 10 November 2021
13. Consequently, a proportion of the requested information is now publicly accessible. This includes 38% of the loans awarded under the CLBILS and approximately 34% and 2% of the CBILS and the BBLS, respectively. The reporting of loans will be updated on a rolling basis and the BBB anticipates that, in total, details of all of the CLBILS loans will be publicly accessible together with approximately 39% and 3% of the CBILS and BBLS loans, respectively.
14. The requirement to report as described above, applies to aid granted on or before 31 December 2020. From 1 January 2021, only loans provided to businesses in the scope of Article 10 of the Northern Ireland Protocol will continue to be included in these reporting requirements to the EU.
15. Information about subsidies awarded to UK businesses not within scope of Article 10 of the Northern Ireland Protocol on or after 1 January 2021 and which are equal to or in excess of £500,000 (or subsidies of less than £500,000 where the cumulative sum of awards for a single recipient is £500,000 or more), is required to be published on UK's new

¹ <https://webgate.ec.europa.eu/competition/transparency/public/search/home?lang=en>

subsidy control transparency database. Information to be published includes the names of the businesses receiving the loans.

16. For EU and UK reporting from 1 January 2021 the proposed schedule begins²:
 - Loan offers 1 January -30 June 2021 reported and published by 31 December 2021.

Request and response

17. On 3 June 2020 the complainant wrote to the BBB and requested information in the following terms:

"This is a request for information in the public interest under the Freedom of Information (FOI) Act about the UK's emergency loan programs responding to Covid-19.

I request the following information about the Bounce Back Loan Scheme (BBLs), the Coronavirus Business Interruption Loan Scheme (CBILs) and Coronavirus Large Business Interruption Loan Scheme (CLBILs):

- The name of each firm borrowing under each of the three schemes (BBLs, CBILs, CLBILs)
- The principal amount of each loan to each borrower by name under each of the three schemes (BBLs, CBILs, CLBILs)."

18. The BBB responded on 1 July 2020 with a refusal notice in reliance of FOIA section 43(2) commercial interests.
19. Following an internal review the BBB wrote to the complainant on 6 October 2020 upholding its reliance on the section 43(2) exemption and in addition relying on section 31, law enforcement and section 40(2) third party personal data.

² <https://searchforuksubsidies.beis.gov.uk/searchresults?>

Scope of the case

20. The complainant contacted the Commissioner on 26 January 2021 to complain about the way their request for information had been handled. The complainant provided detailed submissions at this time and subsequently following the Commissioner's decision notice IC-66308-P4M4³. In summarising their position the complainant made the following points:

- The schemes are part of the government's efforts to mitigate the economic damage caused by the pandemic. Given the guarantees in place it is ultimately the British taxpayer that will suffer if borrowers default.
- The loans taken continue to grow and are a substantial commitment of public money.
- The performance of the loans will have a substantial impact on the UK economy, public finances and taxpayers confidence.
- BBB publicly issued a formal 'reservation notice' to the Secretary of State for BEIS advising on the risks associated with the rapid launch of Bounce Back Loan Scheme (BBLs).
- The NAO investigation of October 2020 advised the potential loss of up to £26 billion from fraud and default in respect of the BBLs alone.
- After the 2007-08 global financial crisis the UK Government recognised and delivered on the need to show taxpayers how bailout money for banks was being used to stabilise the UK financial system. The same principle should again apply in this crisis.

21. The Commissioner considers the scope of his investigation to be the application of the exemptions at FOIA sections 21, 43(2), 31 and 40(2) to the requested information.

³ <https://icosearch.ico.org.uk/s/search.html?collection=ico-meta&profile=decisions&query&query=IC-66308-P4M4>

Reasons for decision

Section 21 Information accessible by other means

22. Section 21 of FOIA states:

“(1)Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”⁴

23. Information is regarded as being in the public domain if it is reasonably accessible to the general public at the time of the request. If only part of the requested information is in the public domain, section 21 can only apply to that part of the request.

24. In this case no information in the scope of the request was in the public domain at the time of the request. This remained the situation at the time of the response and internal review.

25. As set out above some of the requested information became accessible in June 2021. However, the publication of partial information is set out above in paragraphs 10 – 16. As the steps taken post date the request the Commissioner finds that the exemption was not engaged at the time of the request.

Section 43 Commercial interests

26. Section 43(2) of FOIA states:

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”⁵

27. In order for a prejudice based exemption, such as section 43, to be engaged the Commissioner believes that three criteria must be met:

⁴ The full text of section 21 is available at:
<https://www.legislation.gov.uk/ukpga/2000/36/section/21>

⁵ The full text of section 43 is available at:
<http://www.legislation.gov.uk/ukpga/2000/36/section/43>

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged should be real, actual or of substance; and
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met, ie disclosure 'would be likely' to result in prejudice or disclosure or 'would' result in prejudice. In relation to the lower threshold, the Commissioner considers that the chance of prejudice occurring must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
28. The BBB explained its view that disclosure of the loan amounts and the recipients from the schemes CBILS; CLBILS and BBLs would be likely to prejudice the commercial interests of the loan recipients; the lenders; BBB and the Department for Business, Energy and Industrial Strategy ("BEIS").
29. The BBB provided detailed submissions on its reasoning with regard to each group. These are quoted from those submissions as follows:

Loan recipients

"Releasing a list of these businesses [including sole traders, partnerships, local shops and organisations, as well as larger businesses] would attract attention and speculation about their financial position and business acumen and more than likely give rise to the perception that these businesses have a greater chance of ceasing to trade. In turn this would affect customer confidence and potentially result in the businesses losing further business and much needed revenue, in itself endangering their commercial position. For example, customers or suppliers may use the list to determine whether to purchase or supply goods or services, especially if the customer is required to pay a deposit upfront or the supplier provides goods under future payment conditions. For some larger businesses, disclosure may affect their position in the market and/or share prices.

Amid concerns that their financial circumstances are subject to public disclosure and speculation, they may seek alternative sources of finance, which may be more expensive and result in further financial pressures. Circumstances that deter such businesses from obtaining favourable finance from the Loan Schemes (as the Government had

intended) that they would otherwise access would be prejudicial to their commercial interests.

Although it is public knowledge that certain sectors were adversely impacted by the pandemic (e.g. the hospitality sector), information about the financial stability or otherwise of individual Borrowers is not in the public domain. Conclusions may have been drawn that businesses in certain sectors would inevitably be in financial difficulty, but a broad range of businesses have, in fact, taken out Covid-19 loans....

Furthermore, some businesses appear to have taken out a loan as a precautionary measure and repaid them in full immediately following the first repayment date. Release of these Borrower names could unfairly create an impression of financial instability where there was none."

30. The BBB explained its view that the amount that each borrower received under a scheme loan is highly sensitive information which if disclosed would be likely to increase speculation about those business' financial positions.

31. The BBB explained that borrowers had entered into a commercial arrangement with their respective lenders and in accordance with the general principles of confidentiality in the bank/customer relationship they would not expect details of the amount of their loan to be publicly available. It advised:

"Releasing highly sensitive information including the level of debt a business has taken on is likely to damage the Borrowers' relationships with their Lenders. It is information that is also likely to be of interest to Borrowers' competitors and could commercially disadvantage them and damage their position in the market."

32. Regarding the BBLs recipients the BBB set out that the public is aware that a lender could provide a six-year term loan from £2000 to 25% of a business' turnover. The maximum loan being £50,000. Disclosure of the loan amount may therefore be used to calculate or estimate the turnover of the business. In respect of sole traders, partnerships and small companies such information is not necessarily in the public domain and therefore borrowers have a legitimate expectation of confidentiality.

Lenders

33. "Lenders play an integral part in the delivery of the three Loan Schemes. However, the release of the requested information would be likely to affect their commercial interests by impairing the relationship they have with their customers, the Borrowers.

It has long been a fundamental principle of the UK's financial services industry that there is right to confidentiality as between a Lender and their customer. This principle is enshrined in the Banking Code of Practice. Borrowers, whose Covid loan contract is with their Lender, who have no relationship with Government (BEIS or BBB) and receive no money directly under the Loan Scheme from Government, would legitimately regard the public disclosure of their financial information as a violation of the trust placed by them in their Lender, which in turn could lead to a lack of confidence in the financial services industry overall.

It follows that Borrowers under the Loan Schemes have the general expectation that the loan they took with their accredited lender is a routine transaction, documented on the lender's own loan documentation, and afforded the same level of commercial confidence as any other loan from their bank. Consequently, the release of the Borrower's name in the context that it had received a Covid loan would be likely to result in the loss of customer trust and may result in fewer Lenders applying for authorisation for future schemes (should the need arise again), thus reducing the availability of finance for businesses which would, in turn, negatively impact the economy."

34. The BBB went on to explain how financial statements and details of any security, which are publicly available information held by Companies House or the Charity Commission, could be used with a list of borrowers' names to deduce the borrowers' banks and lenders providing loans. The BBB advised that where a borrower has obtained other secured lending from their existing lender, this will be registered at Companies House. This in turn could enable competitors to establish the types of customers (and industry sectors) a particular lender is interested in, potentially resulting in prejudice to that lender's competitiveness in the market.
35. As set out in paragraph 31 above, the BBB considers that disclosure of the amounts advanced by lenders to their customers is likely to damage the relationship between the two parties.
36. In addition, BBB considers that disclosure of the amount loaned to each borrower would reveal information about the commercial lending strategy of a particular lender. Typically this would not be in the public domain. BBB advised that information about lenders' risk appetites and commercial decision making could be determined from disclosure of the requested information in conjunction with other available information. This information could be used by other financial institutions to cause harm to lenders' competitiveness.

HM Government and the BBB

37. "The release of the requested information under FOIA would be likely to prejudice the commercial interests of the Government and BBB in that lenders may choose not to engage with government initiatives or BBB because of concerns that their commercial or customer information is released to the general public. Should the private sector refrain from engaging with government schemes or the BBB, this would prejudice the commercial interests of the Government in its ability to introduce and launch any future finance schemes, and the commercial interests of BBB in its ability to achieve its objectives to increase the availability and diversity of finance for Small and Medium Enterprise ("SME") businesses and, in turn, help the UK economy."
38. In response to the Commissioner's queries on why the lenders would refuse to engage with the BBB when little risk on their part attached to the loans, the BBB explained that with all the Schemes the lender retains an element of risk in relation to the loans being provided. In particular, with regard to CBILS and CLBILS, where the Government guarantee is only 80% of the outstanding balance.
39. The BBB added:

"Furthermore, the Schemes were unprecedented in the scale and speed with which they were delivered. The House of Commons Public Accounts Committee has stated that the loans were necessary to provide businesses with the financial support they needed. However, there was also a significant impact on the Lenders in managing the volume of applications to meet the timescales to provide money as quickly as possible. This experience compounded by subsequently seeing their customers' information publicly disclosed by BBB may result in those accredited Lenders considering carefully whether they wished to participate in future Government support schemes."
40. The BBB advised that in order to meet its objectives, it requires financial partners that operate in the private sector which in turn operate in a competitive market and generally do not disclose information about their operations, strategies, or commercial interests (including details of their customers), in order to protect their interests and prevent competitors gaining an unfair advantage, and to safeguard customer confidentiality and their relationships with their customers.
41. The BBB explained that it did not consult the loan recipients as the BBB has no direct relationship with the recipients. It did, however, consult with several of the lenders on disclosure of the loan recipients' names. The lenders confirmed that they considered that their customer relationships would be harmed by the disclosure of information which

had not been explicitly notified to the loan recipients at the time of taking the loan.

42. The Commissioner queried whether the loan recipients would have been aware of the assurance provided by public money with regard to the loan schemes. The BBB stressed that the loans are funded by the lenders and are not funded from the public purse. The Guarantee is provided for the benefit of the lenders not the borrowers. The BBB stated that public money is utilised to cover the interest and any lender levied fees during the first 12 months of the loan along with qualifying residual losses which the lenders may face if a loan recipient defaults. The BBB also pointed out that even when a lender has claimed under the Guarantee, the loan recipient still remains liable, recovery action continues and net recovery proceeds are reimbursed to the Guarantor.
43. BBB advised the Commissioner that disclosure of the amounts of loans would be likely to damage the relationship between the BBB and lenders and could lead to them being reluctant to participate in future schemes administered by the BBB. This would result in the BBB being unable to meet its objective to increase the supply and diversity of finance to small and medium businesses and therefore impact on the UK economy.
44. The complainant provided the Commissioner with detailed submissions at the time of their complaint (26 January 2021) which disagree with the arguments set out by the BBB. In addition to the points listed in paragraph 20 further points are summarised below.

"On the latest available information, more than 1.5 million facilities have been approved under the Schemes amounting to loans totalling more than £68 billion. In these circumstances it cannot be correct to say that the alleged theoretical risk of prejudice to a single borrower is capable of outweighing the public interest in answering questions of critical public importance about the integrity and efficacy of a UK Government policy of the scale and significance of the Schemes.

There is no inherent prejudice in being seen to be the recipient of commercial lending. Even in ordinary times commercial debt is a normal way of financing capital expenditure and working capital, and moreover, being seen to take on commercially advantageous debt is far more likely to be perceived as financial prudence than the reverse. And in any event, speculation about the health of businesses will happen whether or not the Request is granted, and indeed, at least insofar as the borrowers are incorporated entities, they are already required to disclose the amount of their debt (which would include loans under the Schemes) in their statutory accounts, which are publicly available."

45. Following the service of decision notice IC-66308-P4M4⁶ on 14 December 2021 the Commissioner gave the complainant the opportunity to provide further arguments in support of their position. These are set out below.

"In essence, therefore, we understand the conclusion to be that receiving commercial borrowing could be perceived to be a sign of financial difficulty, and that due to the number of borrowers concerned, there is a theoretical risk of prejudice to an unspecified category of borrowers that would be sufficient to meet the exemption.

However, taking on debt is a normal and entirely uncontroversial means of financing capital expenditure, working capital and investment. There is no inherent prejudice or stigma in it, and indeed we consider that in being seen to have taken steps to protect their cash position, particularly on such commercially advantageous terms (for example, in the case of the BBLs, there is no obligation to repay for the first year and an exceptionally low interest rate of 2.5%), borrowers are more likely to be considered to be financially prudent rather than the reverse.

Secondly, we consider it more likely that potential customers with a genuine concern as to the financial viability of a business they are engaging with would obtain a credit search, or at least review the statutory accounts of the relevant business, rather than speculate based on the fact that the business (along with over a million others) had obtained a loan under the Schemes.

It is important to note in this regard that, even where they are exempt from audit, registered companies are required to file statutory accounts that are to include a balance sheet confirming the gross amount of the filing company's debt at the accounting date – which would include any loans under the Schemes.

Furthermore, listed, medium and large companies are all required to file more detailed annual accounts and reports, and in practice these have often included details of loans taken under the Schemes.

As such, the Bank's contention that it may be presumed that granting the Request would have an adverse effect on the share price of listed companies (which the Decision Notice also appears to accept in paragraph 60) is not in our view sustainable in circumstances where, in

⁶ <https://icosearch.ico.org.uk/s/search.html?collection=ico-meta&profile=decisions&query&query=IC-66308-P4M4>

many cases, this information may already be publicly available (albeit it clearly cannot be said that this information is definitively accessible by other means in every case). As noted above, what is more likely to be relevant to shareholders and other stakeholders of listed companies is the actual financial performance of those companies, based on their accounts and interim results, rather than any decision to apply for a loan under the Schemes.

Furthermore, even prior to the Bank's implementation of its reporting requirements under the Temporary Framework, HM Treasury and the Bank of England were already disclosing details of companies receiving loans under the separate Covid Corporate Financing Facility. This similarly implies that there is not deemed to be any commercial prejudice in such disclosures."

The Commissioner's considerations

46. The Commissioner has considered both the BBB's and complainant's arguments with regard to the criteria set out above in paragraph 27. With respect to the first criterion, commercial harm occurring as a result of the disclosure of the loan recipient names and amount of their loans, the Commissioner is satisfied that the harm alleged by the BBB relates to the commercial interests of the loan recipients. He therefore accepts that the alleged prejudice is relevant to the section 43 exemption. He agrees with the BBB's submissions on the potential impact on customer confidence in trading with businesses who could be considered to have financial difficulties. As set out in paragraph 29, customers may be wary of ordering goods or services requiring a deposit or upfront payment if those customers are concerned about the financial stability of a business and the loss of their own money. He also accepts that there could be a potential impact on share prices for larger organisations.
47. He acknowledges the complainant's view that there is no inherent prejudice or stigma in taking out a loan. The Commissioner agrees that in normal circumstances there is an expectation that loans are required to fund businesses. However, these were far from normal circumstances and the particular type of loans being considered here, to support businesses in difficulty, are far more likely to carry the stigma referenced, leading to commercial prejudice.
48. The Commissioner does not agree with the complainant's view that the general public would seek to obtain credit searches or view statutory accounts before trading with a business. Such actions would only be likely for significant investment or large scale trading. However, he does note the complainant's points in paragraph 45 regarding information such as the financial performance of large companies, based on their accounts and interim results, impacting the share price of listed companies.

49. The Commissioner accepts that the loan recipients would not necessarily consider their loans to be linked to the BBB but rather to their lender with whom they would have an expectation of confidentiality. However, he is not convinced by the sequence of events described by the BBB in paragraph 33 where the loan recipients could lose confidence in financial services (due to their concerns about the trust between themselves and their lenders) which could ultimately lead to fewer lenders applying to work with the BBB on future schemes. The likelihood of this scenario appears to be somewhat remote. If circumstances arose creating a need for similar loan schemes, for which businesses readily applied, and similar conditions with regard to the lending were in place, the Commissioner considers that a previous disclosure would be unlikely to act as a deterrent for lenders' involvement in the schemes.
50. Similarly, the Commissioner considers that the circumstance provided by the BBB in paragraph 34, of deducing lenders' industry preferences, seems to carry a quite remote risk of creating commercial prejudice.
51. The Commissioner notes the concerns set out by the BBB in paragraphs 37 and 38 regarding commercial prejudice to the Government and BBB. He understands the need for private sector engagement with these schemes and others to achieve BBB's objectives to increase the availability and diversity of finance for SME businesses. He also notes that the government guarantee is 80% of the outstanding balance with regard to CBILS and CLBILS.
52. The Commissioner accepts that if the private sector refrained from engagement with the BBB, the BBB's objectives would be hindered. However, he is not persuaded that the private sector would refrain from engagement in future schemes, particularly if the circumstance of similar guarantees were in place. The Commissioner acknowledges that not all of the BBB's activities and objectives are of a commercial nature, notwithstanding this, he is not convinced that the Government and the BBB would be commercially harmed by disclosure in the specific circumstances of this case.
53. The second criterion, set out in paragraph 27, requires the BBB to demonstrate a causal relationship between the potential disclosure of the loan recipients and prejudice to the commercial interests of at least some of the parties concerned. The Commissioner considers that the BBB has demonstrated that there are circumstances in which commercial prejudice could arise. He also considers that the BBB has demonstrated that the consequences of disclosure cannot be seen as trivial. He is satisfied that the prejudice claimed is real and of substance for at least some of all the parties covered above and in particular for the loan recipients.

54. In regard to the third criterion, the level of likelihood of prejudice, the BBB explained that it wished to rely on the lower threshold of 'would be likely'. The BBB advised:

"We believe the prejudice 'would be likely to' occur on the basis that prejudice may not affect all of the parties above, in particular all of the Borrowers and Future Fund companies, but it is likely to affect a proportion of them given the continued pressures from the pandemic and the significant media attention the Schemes have garnered."

55. The Commissioner agrees that amongst the high volume of loan recipients (approximately numbering CBILS 63,647; CLBILS 553; BBLS 1,222,548⁷) there is a real and significant risk of prejudice to at least some of the parties considered above. It would not be proportionate for the Commissioner to attempt to consider the likelihood of prejudice to each of the loan recipients to determine if some further information could be disclosed.
56. The Commissioner has concluded that the prejudice test has been met and the exemption at section 43(2) is engaged. He will now go on to consider the public interest.

The public interest in disclosure

57. The BBB acknowledged that there is always a public interest in the transparency of the operation of public authorities in decision making and the spending of public money. It stated:

"There is a public interest in the Loan Schemes because of their scale (number and value) and their impact and effectiveness in supporting businesses to survive and help the economy. There is a public interest in knowing the impact on the public purse for the direct costs, for instance the first 12 months of the loan interest rates, the arrangements fees, and the number and value of the loan defaults. There is a public interest in protecting public money and preventing and combating financial crime including fraud. The speed of the introduction of the Schemes, the number of loans and substantial amounts of money have given rise to concerns about the risk of fraudulent applications by Borrowers and possible rates of default. It is possible that the release of the names of the Borrowers could potentially help law enforcement agencies and other

⁷ <https://www.nao.org.uk/wp-content/uploads/2020/10/Investigation-into-the-Bounce-Back-Loan-Scheme.pdf> as at 6 September 2020

third parties to identify and investigate possible cases of fraud as the information is interrogated by the public”.

58. The complainant explained their view that:

“... there is a compelling public interest in disclosure of the requested information in order to allow questions of critical public importance to be answered in the interest of ensuring (at the very least) that:

(a) the Schemes procure proper value for the expenditure of the public's money;

(b) there is adequate transparency to permit a fully informed debate about what is a radical policy; and

(c) there is adequate accountability in the context of a sensitive sector and the inevitability of further substantial funding cuts to reduce public debt.”

59. The complainant advised the Commissioner of their observations following his decision notice IC-66308-P4M4:

“First, the extent of the alleged commercial prejudice relied on by the Bank also cannot be quantified, and indeed the Decision Notice acknowledges that only "limited" evidence of any such prejudice (which we have not seen) has been provided.

Second, while some information has been put into the public domain under the Temporary Framework, the most problematic of the Schemes is the BBLs, and on the Bank's own evidence, details will be available for a maximum of only 3% of those loans (with a similarly nominal figure in the case of the CBILs). Therefore, in practice, the information that is currently in the public domain is highly limited, at best.

Third, while evaluations and recovery attempts are ongoing, as was anticipated at the time of the Request, these efforts have been high[sic] ineffective and are not improving. For example, on 24 January 2022, the Treasury Minister for counter-fraud, Lord Agnew, resigned during an open session in the House of Lords, stating that oversight of Covid loans by the business department and the Bank had been “nothing less than woeful”, and that both bodies had “been assisted by the Treasury, who appear to have no knowledge or little interest in the consequences of fraud to our economy or our society”. He added that two counter-fraud staff at the business department had declined to “engage constructively” with his counter-fraud team in the Cabinet Office and that “Schoolboy errors were made: for example, allowing over 1,000 companies to receive bounce back loans that were not even trading when Covid struck.” He concluded that given he was the minister for counter-fraud,

"it would be somewhat dishonest to stay on in that role if [he is] incapable of doing it properly."⁸

More recently, on 11 February 2022, the Public Accounts Committee published its report on HMRC performance for the period 2020-21. That report highlighted the "avalanche of error and fraud [HMRC] now faces on the COVID-19 schemes" and commented that HMRCs "unambitious plans" for recovering the estimated £6billion it has paid out incorrectly during 2020-21 alone was liable to result in the "government writing off at least £4 billion" in taxpayers' money. The report concluded that this "risks rewarding the unscrupulous and sending a message that HMRC is soft on fraud", and led Dame Meg Hillier MP, head of the Committee, to comment that the government could "ill-afford to be so cavalier over so much taxpayers' money."⁹

For these reasons, we do not consider that significant weight should be attached to the fact that "independent evaluations" of the Schemes are ongoing.

Fourth, pursuant to their obligations in section 19 of the FOIA 2000, an extraordinary volume of information is routinely published by public authorities in circumstances where the immediate benefit of doing so is neither quantifiable and nor readily apparent. However, it serves the fundamental purpose of transparency in public decision-making and ensures that interested parties and stakeholders have access to the information they may require to hold public authorities to account. For the same reasons, we do not consider that our client should be required to demonstrate a quantifiable benefit to obtaining the requested documents, although it should be noted that the capacity of organisations like our client to make use of that data should not be underestimated. The efforts of investigative journalists to process the c.40 million documents leaked as part of the Panama, Paradise and Pandora Papers serves as a good example of this.

Finally, we consider it relevant that a small proportion of the requested information is now being made publicly available under the transparency requirements set out in the Temporary Framework. While these

⁸ <https://www.theguardian.com/politics/2022/jan/24/minister-resigns-in-protest-at-handling-of-fraudulent-covid-loans>

⁹ <https://committees.parliament.uk/publications/8862/documents/89198/default/>

disclosures are driven by state-aid principles, they demonstrate that, at least in the case of loans over €100,000, the European Commission either does not consider that there are any commercial interests to protect or alternatively that transparency is more important. We do not consider there to be any reason why the same conclusion might not be reached under the public interest test, and moreover, it is not apparent that a test based on commercial prejudice should recognise any distinction between loans above or below the €100,000 threshold.

For each of these reasons, we consider that disclosure of the requested information is necessary, notwithstanding any actual or potential prejudice to commercial interests, in order to protect the well-established public interests of accountability for the spending and commitment of public money, openness and transparency in the decision-making of public authorities, and the protection of the public.”

Public interest in maintaining the exemption

60. The BBB explained its view that there is a public interest in preventing any “prejudice-based detriment”. It went on to say:

“Such prejudice is not in the public interest, particularly when Borrowers legitimately took advantage of the loans to mitigate the dire commercial effects of the pandemic.....it is impossible to determine how many persons could be prejudiced. To put this into context, there are some 1.6 million Borrowers and approximately 130 Lenders involved. In practice, the detriment to just one person would warrant the exemption.”

61. The BBB referenced the banking system’s principle of customer confidentiality enshrined in the Banking Code of Practice and the expectation of confidentiality held by all those with bank accounts. It considers that it would not be in the public interest to undermine this principle.

62. The BBB accepts the public interest in understanding the effectiveness of the loan schemes but considers that aggregated data is available in the public domain. It explained:

“ HM Treasury, BEIS and BBB have routinely published information about the Loan Schemes: the total number and value of the loans, the industry sector, regional and constituency breakdown of the loans awarded, the number of prevented fraud cases, and the overall estimated losses (fraud, error and credit). The Loan Schemes are also being subjected to independent evaluation, involving a process evaluation, impact evaluation and economic evaluation, with reports to be published in line with usual Government guidelines. Consequently, the release of all the requested information is not necessary to meet the

public interest as to how the Loan Schemes operate, how many loans were awarded and their total value.”

63. The BBB argued that disclosure may lead to speculation and unfair targeting of businesses which: “...could adversely impact the Borrowers and potentially make trading more difficult, which may dissuade businesses from applying for future financial support or suffer customer loss, and thus contribute to businesses ceasing to trade, loans not being repaid, thus increasing the burden on the taxpayer. None of this is in the public interest.”
64. The BBB drew the Commissioner’s attention to section 149(2) of the Equality Act 2010 which imposes the Public Sector Equality Duty¹⁰ to have regard to the need to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act. Disclosure of the requested information would allow searches by business name and therefore the possibility to focus on specific communities, for example, ethnicity where a sole trader’s business uses the individual’s name. The BBB expressed concern that disclosure of the requested information may provide the means to misrepresent how the loan schemes have been used within communities. The BBB considers this to be more than a speculative risk based on its experience in receiving requests for information specifically targeting particular communities.
65. The BBB acknowledged the public interest in tackling fraud and financial crime and the possibility of identifying cases of fraud on the part of the loan recipients as a result of disclosure of the requested information. However, it notes that disclosure to the world at large could potentially disrupt or impact on the agencies involved in officially investigating fraudulent activity by encouraging members of the public to carry out their own identification of fraud. The BBB advised:

“Such informal almost vigilante activity is unlikely to be effective in identifying fraud but is likely to disrupt innocent businesses.”

Balance of the public interest

66. The Commissioner has considered the arguments put forward by the complainant and the BBB along with the lenders comments provided by BBB. The Commissioner is mindful of the need for transparency in

¹⁰ <https://www.equalityhumanrights.com/en/corporate-reporting/public-sector-equality-duty>

government spending of public money and the very significant amounts of public money involved in the loan schemes.

67. The Commissioner notes the complainant's comments at paragraph 58 and he recognises the importance of the points (a)-(c) made there. However he does not consider that the disclosure of the specific requested information "ensures" or assists public debate of those points.
68. The Commissioner has considered the complainant's points set out in paragraph 59. He agrees that the commercial prejudice alleged by the BBB cannot be quantified. This is often the circumstance, specific values may not be determined but that does not reduce the impact of commercial prejudice to those businesses affected. He accepts that limited information has been and will be put in the public domain and acknowledges that the potentially most problematic of the schemes is the BBLs.
69. The Commissioner has read the National Audit Office's report¹¹ on the BBLs, which he accessed from the Public Accounts Committee considering the Government's response to the COVID-19 pandemic¹², and the Public Accounts Committee conclusions and recommendations on the BBLs.¹³ He is therefore aware of the scrutiny under which the loans and in particular the BBLs have been considered from the time of the internal review onwards.
70. The Commissioner understands the risk of substantial amounts of public money being lost and public concerns regarding the decisions taken regarding the loan schemes, with transparency about how and why they were needed being important. As Gareth Davies, Head of the NAO stated:

¹¹<https://www.nao.org.uk/press-release/investigation-into-the-bounce-back-loan-scheme/>

¹² <https://committees.parliament.uk/committee/127/public-accounts-committee/content/136854/public-accounts-committee-the-uk-government-response-to-the-covid19-pandemic/>

¹³ <https://publications.parliament.uk/pa/cm5801/cmselect/cmpublic/687/68705.htm>

"With concerns that many small businesses might run out of money as a result of the COVID-19 pandemic, government acted decisively to get cash into their hands as quickly as possible.

Unfortunately, the cost to the taxpayer has the potential to be very high, if estimated losses turn out to be correct. Government will need to ensure that robust debt collection and fraud investigation arrangements are in place to minimise the impact of these potential losses to the public purse. It should also take this opportunity to consider now the controls it would put in place to protect against the abuse of any future such schemes."¹⁴

71. The Commissioner notes the complainant's third point, Lord Agnew's comments and HMRC performance. He accepts that the potential impact on the public as a whole is significant and does not wish to minimise this position. Nevertheless he is not persuaded that the disclosure of the requested information will measurably improve the circumstances identified. To what extent would disclosure to the world at large result in the detection of fraud which is not detected by the formal investigations in place? The complainant has not quantified the benefit to the public purse nor is this a requirement as the FOIA is both motive and applicant blind. However, the Commissioner must in the same way consider the public interest as a whole not the public interest of particular individuals who may have specific use for the information.
72. The complainant makes a fourth point that information is routinely published by public authorities "where the immediate benefit of doing so is neither quantifiable and nor readily apparent". Clearly the Commissioner is an advocate of publication schemes and proactive disclosure to inform the public. However, he is unsure how the BBB can be "held to account" by the disclosure of business names and sums borrowed. The problems faced by the Government in the future are not to be underestimated but they are problems as a result of the actions facilitating and implementing the loans, the systems in place which need reviewing.
73. The Commissioner agrees with the comments of the BBB set out in paragraph 62. He considers that the public interest in the loan schemes and the cost to the public purse is best served by understanding the effectiveness of the schemes, the decisions taken, difficulties faced and

¹⁴ <https://www.nao.org.uk/press-release/investigation-into-the-bounce-back-loan-scheme/>

problems resulting rather than lists of individual businesses with the amounts they borrowed.

74. The complainant does not see any difference between the larger loans and the BLS in terms of disclosure and the transparency. The Commissioner is minded to agree with the BBB that the transparency resulting from the disclosures under the Temporary Framework and the BBB's disclosures on the UK's subsidy control database provide a proportionate level of disclosure at the level of the most significant single amounts given to businesses.
75. At the time of the request the loan schemes were relatively new and at that point, and currently, the level of loss to the public purse remains a potential loss. The COVID-19 Hotline¹⁵ was announced on 13 October 2020 as a measure to encourage the public to report any concerns. The public interest in disclosure of the names of loan recipients as a further means to encourage such public participation must be weighed against the potential for prejudice caused by unfounded accusations or retributions resulting in businesses suffering hardship or failing completely, particularly in the case of micro businesses¹⁶ and sole traders. Amongst those receiving loans many will be worthy recipients appropriately obtaining help at a time of crisis. These recipients may ultimately be unable to fund the loan repayments as a result of various factors but at the outset had the intention to pay back the loan. On the other hand it appears that some recipients have deliberately made fraudulent applications. Consequently amongst this group there is a varied mix of recipients who would nevertheless be treated in the same way with some likely to be prejudiced by disclosure.
76. The Commissioner has given weight to the volume of information already in the public domain concerning the loan schemes including anonymised data and certain named loan recipients. There has been, and there rightly continues to be, much public debate and scrutiny of the government backed schemes. The Commissioner accepts that there will be fraud which is an unwelcome burden of cost to the public purse. Nevertheless he is not persuaded that any benefit from disclosure of the loan recipients' business names, whether in terms of recouping money

¹⁵ <https://www.gov.uk/government/news/new-hotline-launched-to-report-covid-fraudsters>

¹⁶Defined by Companies House as businesses with a turnover below £632,000

paid to fraudulent applications or acting as a deterrent to committing fraud in any future scheme, outweighs the public interest in loan recipients being able to conduct their businesses without adding commercial prejudice to the already challenging circumstances they have already encountered.

77. The Commissioner considers the public interest test in this case to be challenging. There is a significant argument in favour of disclosure due to the unprecedented circumstances and the large sums of public money concerned. However, the information already in the public domain and the independent evaluations taking place must be taken into account alongside the substantial risk of commercial prejudice to many parties. On balance the Commissioner has concluded after much deliberation that the public interest test favours maintaining the section 43(2) exemption.
78. Having reached his decision on section 43 the Commissioner has not proceeded to consider the other exemptions cited by the BBB.

Right of appeal

79. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

80. 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.

81. 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

Susan Hughes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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Cheshire
SK9 5AF