

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 29 September 2011

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps)

1. The complainant made a four-part request. He complained about the public authority's decision to neither confirm nor deny holding information about a named probation officer and also not to provide him with a hard copy of a manual which was already available to him.
2. The Information Commissioner's decision is that the public authority should confirm whether or not it holds the information requested about the probation officer, but that the manual is reasonably accessible to the complainant and therefore exempt under section 22 of the FOIA.
3. The Information Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - It should either confirm or deny that it holds information relating to the probation officer. If held, it should then either provide the information or issue a refusal notice indicating why it is exempt.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information Commissioner making written certification of this fact to the high court (or the court of session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. The complainant is a prison inmate.

Request and response

6. On 28 February 2011, the complainant wrote to the public authority and requested information in the following terms:
 - (i) Details of any research into the reoffending rates of offenders subject to indeterminate sentences that has been undertaken or received by the Ministry of Justice.
 - (ii) Details of any research into the assessment of the risk presented by offenders subject to indeterminate sentences that has been undertaken or received by the Ministry of Justice.
 - (iii) The contact details of [name removed] of the National Offender Management Service and Probation Officer, [name removed].
 - (iv) A copy of the OASys User Manual.
7. The public authority responded on 22 March 2011. It stated that no research had been undertaken which would fulfil parts (1) and (2) of the request. It provided the contact details for its own officer but gave a “neither confirm nor deny” response for information about the probation officer. It advised the complainant that he already had access to a copy of the OASys User Manual (the “Manual”).
8. The public authority maintained this position following its internal review.

Scope of the case

9. On 10 June 2011 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled; however, he did not specify which elements he wanted investigating other than to comment that he thought it would be: *“cheaper for [the public authority] to print off the requested material and send it...”*.
10. As it was unclear specifically which elements of his request the complainant was complaining about, the Information Commissioner wrote to the him and advised that he would consider the public authority’s decision to neither confirm nor deny holding information about the named probation officer, and also whether or not the manual was available to him. He invited the complainant to clarify that this was what he still sought access to. As no further correspondence was

received, these were the only elements considered by the Information Commissioner.

Reasons for decision

The Manual

11. Section 21(1) of the FOIA states that information is exempt from disclosure if it is reasonably accessible to the applicant. The purpose behind the exemption is that, if there is an alternative route by which a requester can obtain information, there is no need for the Act to provide the means of access. This removes the burden of responding to such requests under the FOIA from public authorities.
12. The public authority has advised the complainant that the Manual is available for him to view in the prison library where he is an inmate. It has confirmed to the Information Commissioner that it has double-checked and the Manual is definitely available.
13. The Information Commissioner has also confirmed that the applicant does personally have access to the Manual and also that he would have access to a photocopier.
14. The Information Commissioner therefore concludes that the information is reasonably accessible to the applicant and there is no requirement for the public authority to provide an individual copy to the complainant.

The probation officer

15. It is of note that probation officers are not employees of this public authority. The complainant was correctly advised to make contact with the probation trusts to try to obtain this information.
16. Section 40(5)(b)(i) provides that a public authority is not obliged to confirm or deny whether requested information is held if to do so would:
 - constitute a disclosure of personal data, and
 - this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act (DPA).
17. The Information Commissioner's analysis of whether the above criteria would be satisfied follows.

Would confirming or denying that the requested information is held constitute a disclosure of personal data?

18. The DPA defines personal information as:

*"...data which relate to a living individual who can be identified
(a) from those data, or
(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual."*

19. In his guidance on the section 40 exemption, the Information Commissioner expanded on what constituted personal data:

"The two main elements of personal data are that information must 'relate to' a living person, and that person must be identifiable. Information will 'relate to' a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way."

20. The Information Commissioner considers that the way in which the request is worded clearly indicates that the complainant is seeking information which is linked with a named individual, ie a named probation officer. He considers that to comply with section 1(1)(a) of the Act (ie to either confirm or deny holding the information) would inevitably put into the public domain information about that officer as it would identify whether or not she is known to the public authority.

21. Therefore, the Information Commissioner considers that to confirm or deny whether the requested information is held would in itself constitute a disclosure of personal data.

Should the public authority confirm or deny holding the information?

22. The Information Commissioner has considered many cases relating to staff names and information about those staff and he has also published guidance on his website which give his views on disclosure of staff-related information. He notes in this case that the complainant is asking for basic contact details of a public-facing member of staff whose services are paid for by the public purse. Even though the probation officer is not an employee of this public authority, it is possible that it holds some information as it is responsible for the prison service. If it holds no information, to confirm this cannot do any harm as this would only reveal that it does not hold contact information

for a different public authority. If it does hold some information, then to confirm that it does would only reveal that it knows that the party named actually is a probation officer.

23. The personal data that would potentially be disclosed here would relate to the individual in a professional capacity. This is significant in that previous decisions issued by the Information Commissioner have been guided by the principle that information about an individual's private life will deserve more protection than information about someone acting in an official or work capacity. Based on his earlier decisions, and in the absence of any compelling arguments to the contrary from the public authority, the Information Commissioner concludes that it should confirm or deny whether it holds any information. If it does hold information it should either provide this to the complainant or issue a refusal notice which explains why it cannot be disclosed.

Right of appeal

24. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

25. 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.
26. Any notice of appeal should be served on the tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Dated the 29th day of September 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**