

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 July 2014

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

Decision (including any steps ordered)

1. The complainant requested information from the Ministry of Justice (MoJ) relating to proceedings involving himself. The MoJ said that it did not hold some of the information. The MoJ refused to disclose the remaining requested information, citing section 32 of the FOIA (court records) and section 40 (personal data) as its basis for doing so.
2. The Commissioner has investigated the MoJ's application of section 40(1) and concluded that it was correctly applied. He also finds that the MoJ has complied with its obligations under section 1 of the FOIA.
3. He requires no steps to be taken as a result of this decision.

Request and response

4. On 11 November 2013 the complainant made the following request for information under the FOIA:

"The Chief Executive of HMCTS [HM Courts and Tribunal Service] is asked to provide the following information, which is requested under the freedom of information legislation:

1. *A copy of the evidence submitted by HMCTS to magistrates in support of its legislation.*
2. *A copy of the application.*
3. *A copy of the magistrate's reasoning.*
4. *A copy of the warrant.*
5. *The names, academic and professional qualifications and*

nationality of the official of HMCTS who applied for the warrant, the magistrates who issued it and the enforcers who entered the property of [property name redacted] unlawfully.

6. Progress of the complaints made against HMCTS and its agents since and including 2010 and the appeals against conviction and sentence, and the issuing of the warrant."

5. The MoJ responded on 16 December 2013. It denied holding some of the requested information (namely in relation to point 3) but confirmed it held information in respect of points 1, 2, 4, 5 and 6. It provided some of that information but it refused to provide the remainder citing the following exemptions as its basis for doing so:
 - section 40(1) personal information in respect of points 1, 2, 4 and 6 of the request; and
 - section 40(2) personal information in respect of some information within the scope of point 5 of the request.
6. With respect to the information withheld by virtue of section 40(1) it advised the complainant about making a subject access request.
7. The complainant requested an internal review on 3 March 2014. The MoJ sent him the outcome of its internal review on 7 April 2014 revising its position. With respect to points 1, 2, 4 and 6 of the request it upheld its citing of section 40(1). However, with respect to points 1, 2 and 4 it additionally cited section 32(1)(b) (court records). It confirmed it does not hold information in respect of point 3 and upheld its citing of section 40(2) with regard to point 5.

Scope of the case

8. The complainant contacted the Commissioner on 14 April 2014 to complain about the way his request for information had been handled.
9. During the course of the Commissioner's investigation, the MoJ revised its position with respect to the information requested at points 5 and 6 of the request. It advised that it does not hold the information requested at point 5. It clarified that it considers section 40(2) also applies to some of the information within the scope of point 6 of the request.
10. The Commissioner considers the scope of his investigation to be the MoJ's application of sections 32, 40(1) and 40(2) of FOIA to the withheld information that falls within the scope of points 1, 2, 4 and 6 of the request. He has also considered whether it or not it holds the information requested at points 3 and 5.

Reasons for decision

Section 40 personal information

11. The MoJ told the complainant:

"The information you are seeking constitutes your own personal information and we are not obliged to provide this to you under section 40(1) of FOIA".

12. Section 40(1) of the FOIA provides that:

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject".

13. In other words, under section 40(1) of FOIA information that is requested that constitutes the applicant's 'personal data' is exempt information. This exemption is absolute and requires no public interest test to be conducted. In addition, in relation to such information public authorities are not obliged to comply with the obligation to confirm or deny whether they hold the requested information, by virtue of section 40(5)(a).

Is the requested information personal data?

14. The definition of personal data is set out in section 1 of the DPA. This provides that, for information to be personal data, it must relate to an individual and that individual must be identifiable from that information.

15. 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.

16. In the Commissioner's view, it is not clear from the wording of the request that the complainant is requesting his own personal data. However, having considered the withheld information, the Commissioner is satisfied that, in the context of the request, the withheld information constitutes information that falls within the definition of 'personal data' as set out in section 1(1) of the Data Protection Act 1998.

17. He has reached this conclusion on the basis that the withheld information relates to court proceedings and that the complainant is the focus of those proceedings.

18. As one might expect, the information also includes the personal data of other individuals, for example those involved in the administration of the proceedings.
19. Where requested information constitutes the personal data of more than one individual, then both individuals are data subjects for the purposes of section 40. However, in situations like this, where a request is made by one of the data subjects the Commissioner's approach is to consider the information under the section 40(1) exemption.

The complainant's personal information

20. Section 40(1) provides that information that is the personal data of the individual making the information request is absolutely exempt from the FOIA. No consideration of the data protection principles is necessary when considering this subsection; if the information is the personal data of the person making the request it is exempt.
21. The Commissioner is satisfied that the requested information comprises information from which the requester can be identified. The Commissioner considers that it is appropriate that any decision as to whether or not a data subject is entitled to be provided with their personal data should be made in accordance with the Data Protection Act 1998 (DPA).
22. In this respect, he is satisfied that the MoJ explained clearly to the complainant what information it required from him in order to proceed with a subject access request.

Other exemptions

23. As the Commissioner has found that the information within the scope of points 1, 2, 4 and 6 of the request has been correctly withheld he has not gone on to consider the MoJ's application of other exemptions to that information.
24. The Commissioner has next considered whether the MoJ holds information within the scope of parts 3 and 5 of the request.

Section 1 general right of access

25. Section 1 of FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

26. The MoJ ultimately told the complainant that it does not hold the information requested at points 3 and 5 of the request. It explained that there is no legal or business reason for it to hold that information.
27. In respect of the information requested at point 3 of the request, it provided the complainant with an overview of the process involved with Council Tax liability orders in order that he might understand why the MoJ does not hold the requested reasoning. Similarly, it explained about warrants in order that he might understand why the MoJ does not hold the information within the scope of point 5 of the request.
28. As is his practice in a case such as this, the Commissioner asked the MoJ to respond to him, including details of the following:
 - the searches it carried out for information falling within the scope of the request and the search terms used;
 - whether any recorded information relevant to the scope of the complainant's request had ever been held but had been deleted/destroyed; and
 - whether the MoJ has a business purpose for which the requested information should be held.
29. In its substantive response the MoJ explained the searches that had been conducted. With respect to information within the scope of point 3, it told the Commissioner:

"[the complainant] was informed that Magistrates (or any other judicial office holders) are data controllers in their own right. As such any notes or reasoning for their judgement is their information and held solely by them".
30. The Commissioner acknowledges that it was not until during his investigation, and having taken into account the exact wording of that part of the request, that the MoJ confirmed that it did not hold information within the scope of point 5. In that respect the MoJ provided the Commissioner with details about the generation and production of warrants. It also wrote to the complainant saying:

"It may help if I explain that the warrant at the centre of your request did not need to be applied for....In this instance the distress warrant was automatically generated and sent to an enforcement company to execute".

31. The Commissioner has considered the nature of the searches that have been conducted. He has also considered the MoJ's reasons for saying that no relevant information is held.
32. Having considered the MoJ's response, and on the basis of the evidence provided to him, the Commissioner is satisfied that on the balance of probabilities the MoJ does not hold the information requested at points 3 and 5 of the request.

Right of appeal

33. 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: GRC@hmcts.gsi.gov.uk

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

34. 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.
35. 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

Jon Manners
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