

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 May 2015

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested names and professional addresses of all doctors licensed to prescribe certain specified substances. The Home Office refused to disclose this information under section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that section 40(2) was cited correctly so the Home Office was not obliged to disclose this information.

Request and response

3. On 13 December 2013 the complainant wrote to the Home Office and requested information in the following terms:

"Please will you provide me with the details of all doctors holding a licence to prescribe, administer, supply or authorise administration or supply of cocaine, diamorphine or dipipanone, specifically:

- *First/last name*
- *The name and address of their practice".*

4. The Home Office responded on 24 January 2014. It stated that the request was refused under the exemptions provided by sections 21 (information accessible by other means) and 40(2) (personal information) of the FOIA.

5. The complainant responded on 2 February 2014 and requested an internal review. The Home Office responded with the outcome of the internal review on 3 March 2014. The conclusion of this was that the refusal under sections 21 and 40(2) was upheld, with section 38(1) (endangerment to health and safety) now also cited.
6. As covered below, a lengthy delay ensued before the complainant provided to the ICO a copy of the documents necessary for his complaint to be progressed. This delay initially resulted in his complaint being rejected.
7. The complainant subsequently repeated his request to the Home Office on 24 December 2014. The Home Office responded to this on 23 January 2015 and stated that the refusal for the same grounds as cited previously was upheld.

Scope of the case

8. The complainant contacted the Commissioner initially by letter dated 8 March 2014 to complain about the refusal of his request. The ICO responded to this on 10 April 2014 and asked the complainant to send in copies of his correspondence with the Home Office. The complainant did not respond to this until 19 November 2014, at which point he was advised that his complaint would not be accepted due to this delay.
9. After making his renewed information request as described above, the complainant contacted the ICO on 3 February 2015. At this stage the complainant indicated that he did not agree with the reasons given by the Home Office for the refusal of his information request.
10. The citing of section 21 related to the number of licences of the type described in the request that had been granted. The complainant was advised of where that information was available and at the start of the investigation of this case the complainant was told by the ICO that it was assumed that he had accessed the information withheld under section 21 and so the scope of this case would not include the citing of that exemption.
11. The complainant did not dispute this point so the scope of this case covers the citing of sections 40(2) and 38(1) in relation to the names and addresses of those granted licences.

Reasons for decision

Section 40

12. The Home Office cited the exemption provided by section 40(2) of the FOIA. This section provides an exemption for information that is the personal data of an individual other than the requester, and where the disclosure of that personal data would be in breach of any of the data protection principles.
13. There are two stages to consideration of this exemption. First, the information must constitute the personal data of a third party. Secondly, disclosure of this personal data must be in breach of at least one of the data protection principles.
14. As to whether this information is the personal data of a third party, the definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA):

"personal data' means 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."*
15. The view of the Commissioner is that all of the information the complainant requested is the personal data of the doctors to whom it relates. Whilst it would be debatable that the names and addresses of the practices of these doctors would be personal data in isolation, the view of the Commissioner is that it is personal data in the context of the complainant having also asked for the names of those individuals. All of the information requested both relates to and identifies the doctors in question, so it is the personal data of those individuals.
16. Having found that the requested information constitutes personal data, the next step is to consider whether disclosure of that personal data would be in breach of any of the data protection principles. The Commissioner has focussed on the first data protection principle, which requires that personal data is processed fairly and lawfully, and in particular on whether disclosure would be, in general, fair to the data subjects. In forming a conclusion on this point, the Commissioner has taken into account the reasonable expectations of the data subjects and what consequences disclosure may have upon those individuals. The

Commissioner has also considered whether there is any legitimate public interest in disclosure of the requested information.

17. On the issue of the reasonable expectations of the data subjects, the information in question relates to the data subjects in their professional capacities. The Commissioner generally takes the approach that information relating to an individual in their professional capacity will have associated with it a lower reasonable expectation of privacy than would be associated with information about an individual in their professional capacity.
18. In this case, however, due to the subject matter of the information, there would be an expectation of privacy. The effect of a conclusion in this notice that the exemption is not engaged and this information must be disclosed would be that this information should be disclosed into the public domain. This would mean that the identities of all doctors with a licence to prescribe the highly addictive substances specified in the request, along with their professional addresses, would be placed into the public domain. The Commissioner recognises that the data subjects would be likely to be concerned that this would lead to unwelcome approaches by individuals seeking a prescription for those substances, and so those individuals would reasonably expect that the Home Office would not disclose their personal data into the public domain.
19. As to what consequences disclosure may have on those individuals, as mentioned above the data subjects would be likely to be concerned that disclosing that they have a licence to prescribe these substances would be likely to lead to unwelcome approaches seeking such a prescription. The Commissioner accepts that there is some possibility of that outcome. He also recognises that disclosure in contravention of the reasonable expectation of the data subjects would be likely to be distressing to those individuals.
20. The complainant argued that the information he requested was similar to information already available from the General Medical Council (GMC); specifically, the list of registered medical practitioners¹, and whether a doctor is on the specialist register. The view of the Commissioner is that this information is not equivalent to that which has been requested in this case. It does not show which doctors are licensed to prescribe the substances specified in the request, so is not evidence that the factors against disclosure described above are not valid.

¹ <http://www.gmc-uk.org/doctors/register/LRMP.asp>

21. Whilst section 40(2) is not qualified by the public interest in the same way as some of the other exemptions in Part II of the FOIA, the public interest is relevant here as it is necessary for there to be a public interest element in disclosure of personal data for it to be compliant with the first data protection principle. The question is whether any legitimate public interest that there may be in disclosure outweighs the factors against disclosure covered above.
22. As mentioned above, information on the number of licences issued is publicly available. As a result, that such licences exist and information on how numerous they are is already publicly known. This means that disclosure of the information in question here is not necessary for that to be the case. Given this, the Commissioner can see little public interest in disclosure of the identities and locations of doctors with these licences. He does not, therefore, believe that there is a legitimate public interest of any significant weight to be weighed against the factors in favour of non-disclosure covered above.
23. Having found that the data subjects would hold a reasonable expectation that the information in question would not be disclosed and that disclosure in contravention of that expectation would be likely to be distressing to those individuals, and having found no weighty legitimate public interest in favour of disclosure, the conclusion of the Commissioner is that disclosure would be unfair and in breach of the first data protection principle.
24. Having also found that the requested information is the personal data of the doctors specified in the request, the Commissioner's overall conclusion is that the exemption provided by section 40(2) of the FOIA is engaged. The Home Office was not, therefore, obliged to disclose the requested information.

Right of appeal

25. 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@hmcts.gsi.gov.uk

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

26. 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.
27. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF