

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 August 2015

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

Decision (including any steps ordered)

1. The complainant requested information relating to the gender split of applicants applying for Non Molestation Orders (NMOs) and Occupancy Orders from 1st Jan 2011 to 30th June 2014.
2. The Ministry of Justice (MoJ) provided exact figures where the numbers exceeded five but refused to provide figures less than five on the basis that individuals could be identified and section 40(2) was therefore engaged. The Commissioner's decision is that MoJ has correctly applied section 40(2) to withhold figures less than five.
3. He requires no steps to be taken.

Background

4. The gov.uk website states¹:

"You can apply for an 'injunction' if you've been the victim of domestic violence. An injunction is a court order that either:

- *protects you or your child from being harmed or threatened by the person who's abused you - this is called a 'non-molestation order'*
-

¹ <https://www.gov.uk/injunction-domestic-violence/how-to-apply>

- *decides who can live in the family home or enter the surrounding area - this is called an 'occupation order'.*

....

If you need protection immediately, ask for an emergency order when you apply. You don't have to tell the person you want protection from that you're applying so it's known as a 'without notice' or 'ex-parte' application".

Request and response

5. Following earlier correspondence with MoJ about family court statistics, on 7 November 2014 the complainant made two further requests for information - about the gender of applicants of NMOs (non-molestation orders) and Occupancy Orders:

Request 1:

"... I would like to ask an additional FOI request about the data obtained in the attached table. Can you please provide the quarterly split in the data for each court for the period 1st Jan 2011 to 31st March 2014 to show the split into:

ex-parte NMO and with notice NMO obtained by women

ex-parte NMO and with notice NMO obtained by men

ex-parte Occupancy Orders and with notice Occupancy Orders obtained by women

ex-parte Occupancy Orders and with notice Occupancy Orders obtained by men"

Request 2:

" Can you please provide the quarterly split in the data for each court for the period 1st April 2014 to 30th June 2014 to show the split into:

ex-parte NMO and with notice NMO obtained by women

ex-parte NMO and with notice NMO obtained by men

ex-parte Occupancy Orders and with notice Occupancy Orders obtained by women

ex-parte Occupancy Orders and with notice Occupancy Orders obtained by men”.

6. MoJ provided a single response to the two requests on 5 December 2014. It clarified that it considered that the request was for information relating to the gender of the applicants where there were orders given for Non-molestation and Occupancy Orders, either ex-parte or with notice. It confirmed it holds that information but refused to provide it citing section 40(2) of FOIA (personal information) as its basis for doing so.
7. The complainant requested an internal review on 14 January 2015. He told MoJ:

“I do not see how it is not in the public interest to be told the total number of males and females obtaining these non-molestation orders and occupancy orders in all courts in England & Wales”.
8. MoJ sent him the outcome of its internal review on 10 February 2015, revising its position. It provided him with a redacted version of the requested information. It provided the data for orders issued from 2011 to quarter 2 of 2014 split by type of order, court and gender apart from where the numbers were low. Where the numbers were five or fewer it continued to withhold that information on the basis that section 40(2) applies.

Scope of the case

9. Following earlier correspondence, the complainant contacted the Commissioner on 11 February 2015 to complain about the way his request for information had been handled.
10. Acknowledging receipt of some information within the scope of his request, the complainant told the Commissioner:

*“Following an internal review they have provided a partial response to my request for the number of NMO / Occupancy Orders issued by a family court for each quarter of the year for each sub-type (ex-parte male, ex-parte female, with notice male & with notice female). Where there is less than 5 orders for each sub-type they have not disclosed the exact figure but put a * as they are concerned that disclosure of the data might lead to identification of an applicant who has been granted a NMO / Occupancy Order... ”.*

11. The complainant made submissions in relation to his interest in this information being disclosed and explained why, in his view, MoJ was refusing to disclose the remaining withheld information.
12. Under section 50 of FOIA, the Commissioner's role is simply to decide whether, in any specified request, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA.
13. While the Commissioner accepts that the complainant may have specific reasons for wanting access to the requested information he has to take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the public at large, without conditions. He must therefore consider the wider public interest issues and the fairness to the data subject(s) involved when deciding whether or not the information requested is suitable for disclosure.
14. The following analysis covers MoJ's application of section 40(2) to the withheld information. That information comprises the exact figure in cases where the true number of third parties who have made applications for the specified orders falls between one and five.

Reasons for decision

Section 40 personal information

15. MoJ has argued that section 40(2) applies as providing any information where the figures are less than five could lead to the identification of individuals. In that respect, it told the complainant:

"We believe that the release of the some of this information would risk identification of the individuals concerned, and therefore be unlawful under the DPA as it would be in breach of one or more of the Data Protection Principles. For this reason, MoJ has chosen not to provide an exact figure in cases where the true number falls between one and five".

16. Section 40(2) of the FOIA states that information is exempt from the duty of disclosure if it constitutes the personal data of a party other than the complainant and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the DPA).
17. During the course of the Commissioner's investigation, MoJ explained that it considers the requested information to be the personal data of those third parties who had made applications for protection orders

against domestic violence. It confirmed that it had not provided an exact figure in cases where the true number falls between one and five. It explained that its concerns were around the instances where there were very low numbers of applicants per gender, per court, per quarter. MoJ told the Commissioner:

"The concern was that, combined with other information, an individual would become identifiable".

Is the information personal data?

18. 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.

19. Section 1 of the DPA defines personal data 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 intention of the data controller or any other person in respect of the individual."

20. The two main elements of personal data are that the information must 'relate' to a living person and that the 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 or has them as its main focus.

21. In this case, MoJ told the complainant that, in circumstances where a request is made for information and the total figure amounts to five people or fewer, it must consider whether this could lead to the identification of individuals and whether disclosure of the information would be in breach of its statutory obligations under the DPA. It confirmed that it considers that the first data protection principle would be breached if the withheld information was disclosed.

22. The complainant disputes that disclosure in this case could lead to the identification of an individual. He told the Commissioner:

"I know that this is not true because if the sub-type data was fully released it would not disclose a specific person because hearings in the family court are confidential"

23. A test used by both the Commissioner and the First –tier Tribunal in cases such as this is to assess whether a 'motivated intruder' would be able to recognise an individual if he or she was intent on doing so. The 'motivated intruder' is described as a person who will take all reasonable steps to identify the individual or individuals but begins without any prior knowledge. In essence, the test highlights the potential risks of re-identification of an individual from information which, on the face of it, appears truly anonymised.
24. The Commissioner has considered the information and the number of individuals involved and has concluded that if MoJ were to disclose the exact number in each category, particularly if the numbers for any were one, it could be possible to identify the individuals concerned.
25. The Commissioner acknowledges that the chances of any member of the public being able to cross-reference this information to identify specific individuals is not high, but given the low numbers involved there is a risk that specific individuals could be identified, for example by a person with knowledge of domestic violence issues in a particular area. Therefore, on the balance of probabilities, the Commissioner accepts that the information is personal data.

Would disclosure breach one of the data protection principles?

26. Having accepted that the information comprises the personal data of a third party, the Commissioner must next consider whether disclosure would breach one of the data protection principles.
27. MoJ told the complainant that it considered release of the requested information would contravene the first data protection principle. The Commissioner agrees that the first data protection principle is most relevant in this case.

Would disclosure contravene the first data protection principle?

28. The first principle deals particularly with the privacy rights of individuals and the balance between those rights and other legitimate interests in processing personal data. It states:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met".

29. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and would meet one of the DPA Schedule 2 conditions and, if relevant, one of the Schedule 3 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

Would it be fair to disclose the requested information?

30. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:

- the individual's reasonable expectations of what would happen to their information;
- the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
- the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

31. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.

32. In order to reach a view on whether the disclosure of the information at issue in this case would be fair, the Commissioner has placed specific emphasis on the nature of the information itself.

33. The requested information, if disclosed, would reveal information about individuals who had applied for a protective order against domestic violence. The Commissioner considers that releasing this information may cause distress to the individuals involved.

34. The individuals who could be identified would not have any expectation of this information being disclosed. These individuals would not have expected that information about their application for a court order would be disclosed to a third party. The Commissioner considers there is likely to be an implied level of confidentiality, particularly given the reason why an application for this type of order is made, and therefore there would be no expectation of disclosure.

35. The Commissioner recognises that there is a legitimate public interest in the release of information which increases transparency and accountability about the way in which public authorities operate. In that respect he notes that MoJ has disclosed the numbers requested where the value is greater than five.

36. The Commissioner does not consider that disclosure of the information broken down any further so as to potentially identify individuals would provide greater understanding and it would prejudice the rights and freedoms of those individuals. The Commissioner therefore accepts that the rights and freedoms of the data subjects outweigh the public's legitimate interest in disclosure of this information
37. In light of the above, the Commissioner has concluded that disclosure of this information would be unfair and in breach of the first data protection principle. As such section 40(2) is engaged and the further information relating to the exact figures should be withheld.

Right of appeal

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

39. 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.
40. 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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