

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 September 2022

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision

1. The complainant has requested, from the Ministry of Justice ('MOJ'), information about himself. The MOJ would neither confirm nor deny ('NCND') holding any information citing sections 32(3) (Court records) and 40(5) (Personal information) of FOIA.
2. The Commissioner's decision is that the MOJ was correct to rely on section 40(5) of FOIA to NCND holding any information. No steps are required.

Request and response

3. The Commissioner understands that the complainant originally made a request, on 25 June 2021, to Her Majesty's Courts & Tribunal Service (which falls under the remit of the MOJ) at Rugeley, Staffordshire. It is understood to have been worded as follows:

"It grieves me to have to press for the information asked in my last under stress of The Law - but The Treasury Solicitor has treated me abominably by telling lies to Set Aside The Award Stoke Court Granted me which I am not minded to allow, so;

Would you please confirm that you received my Claim when it was originally sent to you by CCMCC [County Court Money Claims Centre] Salford, and that, therefore, you saw it. No possible blame can attach to you for admitting what must clearly have been the truth".

4. On 18 November 2011, having received no response, the complainant contacted the Commissioner. He said:

"I have been obscenely prostituted by The Treasury Solicitor who committed perjury in his efforts to 'Set-Aside' a Court Award made to me by Stoke Court. My efforts to obtain the necessary proof from CFEU Rugeley [sic] (whose behaviour to me over 4 years was the reason for The Award) have proved fruitless, even when pressed under FOI. All they need to do is admit that my original claim (which resulted in The Award) - sent to them by HMCTS Stockport - was sent to them and they saw it; but all I have is silence. I am well aware The Treasury Solicitor is bringing pressure to bear on CFEU Rugeley because their acknowledgement would enable me to charge him with perjury.

I am horrified that the FOI understandings are regularly being ignored by government and also that new 'Laws' are being put on the Statute Book which specifically negate the principles of FOI - which is the route to a Secret Police and Police State - which Britain is fast becoming. When Her Majesty's Solicitor can commit perjury with equanimity in order to achieve his prostitutions then The Dictator State is upon us, so;

Please can you help me extract the, entirely reasonable and legal, information I need from CFEU Rugeley".

5. The Commissioner wrote to the MOJ on 17 December 2021 and was advised that the request had not been received.
6. On 7 January 2022, the MOJ responded to the complainant. It advised him that his request was being handled under FOIA. It would neither confirm nor deny holding the information, citing sections 32(3) (Court records) and 40(5) (Personal information) of FOIA.
7. The complainant asked for an internal review on 10 January 2022.
8. On 11 February 2022, the MOJ provided an internal review. It maintained its position.

Scope

9. The complainant has written to the Commissioner on a number of occasions. The Commissioner understands the crux of his complaint to be as per the following, in a letter to him dated 4 April 2022:

"All I have ever sought is that The ICO obliges CFEU Rugeley to 'admit' to 'having received and read' my original claim against them before they sent it to The Treasury Solicitor to set aside that claim. they have admitted as much in writing to me by claiming they were 'aware' but I need that admission they 'saw and read' which has to be a self-evident truth.

Will you please, as your remit claims (Freedom of Information?) Get this admission from CFEU Rugeley - I need it to proceed in my case against The Treasury Solicitor, for falsely setting aside the judgement Stoke Court gave me".

10. The Commissioner has not had sight of the internal review request made by the complainant on 10 January 2022 but does not consider this necessary in order to reach a decision in this case. He further notes the complainant's continued reference to FOI rather than the Data Protection Act 2018 (the DPA).
11. The Commissioner considers this to clearly be a request by the complainant for his own personal data. Therefore, he has not deemed it necessary to conduct a full investigation and he has reached a decision under FOIA on the basis of the information provided to him.

Reasons for decision

Section 40 – Personal information

12. Section 40(1) of FOIA states 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. Section 40(5A) of FOIA states that:

"The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)".

14. In other words, while section 40(1) of FOIA provides an exemption from the right to information if the requested information is the requester's personal data, section 40(5A) of FOIA provides an exemption from the duty to confirm or deny whether requested information is held, if to do so would disclose personal data of which the applicant is the data subject.

Would the confirmation or denial that the requested information is held constitute the disclosure of personal data?

15. Section 3(2) of the DPA defines personal data as "any information relating to an identified or identifiable living individual".
16. The two main elements of personal data, therefore, are that the information must relate to a living person, and that the person must be identifiable.
17. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data or an online identifier; or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
18. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
19. The Commissioner acknowledges that the context of the request in this case concerns whether or not Rugeley Court will 'admit' to 'having received and read' a claim made by the complainant.
20. Given the wording of the request, the Commissioner is satisfied that any requested information, if held, would relate to the complainant. He is further satisfied that the individual is identifiable from that information as it would relate to his own personal claim. The information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
21. In his guidance¹ entitled 'Neither confirm nor deny in relation to personal data', the Commissioner states:

"If the requested information is the requester's personal data, it is exempt under section 40(1) of FOIA. Furthermore, under section 40(5A), you are not required to confirm or deny if you hold the information. You can therefore respond to the freedom of information (FOI) request by saying that you neither confirm nor deny that you hold the personal data. This applies whether or not you do actually hold it. The issue to consider is not whether you

¹ <https://ico.org.uk/media/for-organisations/documents/2021/2619041/s40-neither-confirm-nor-deny-in-relation-to-personal-data-section-40-5-and-regulation-13-5-final-version-21.pdf>

hold it but rather, if you did hold it, would confirming or denying that it was held in itself disclose personal data relating to the requester?

... Therefore, if you receive an FOI or EIR request where confirming or denying whether you hold the information would involve disclosing the requester's personal data, you should treat this as a data protection subject access request. You should tell the requester that you will deal with the request under the data protection legislation, rather than FOIA or the EIR. You should carefully word any refusal notice to avoid implying whether you do or do not hold the information and to avoid inadvertently disclosing any personal data".

22. In this case, the Commissioner is satisfied that disclosure, by way of confirmation or denial, would reveal whether or not the requester's claim was received and read at Rugeley Court.
23. There is no right of access to an individual's own personal data under FOIA. A request made under FOIA is effectively a request made to disclose that information to the world at large. The information, if it were held, would be exempt from disclosure under section 40(1) and therefore, under section 40(5A), a public authority is not required to confirm or deny whether it holds it.
24. The Commissioner has therefore decided that the MOJ was entitled to refuse to confirm whether or not it holds the requested information on the basis of section 40(5A) of FOIA.
25. As he has determined that the MOJ was entitled to rely on section 40(5) the Commissioner has not found it necessary to consider the applicability of section 32 to the request.

Other matters

26. Individuals should make requests for their own personal information under the remit of the Data Protection Act 2018. If the complainant has not already done so, details of how to make such a request can be found on the MOJ's website².

² <https://request-personal-info.form.service.justice.gov.uk/>

Right of appeal

27. 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

28. 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.
29. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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SK9 5AF