

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 March 2024

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

Decision (including any steps ordered)

1. The complainant requested information relating to a specified court case involving a fine. The Ministry of Justice (the 'MOJ') refused the request citing section 40(2) of FOIA – the exemption for personal information.
2. The Commissioner's decision is that the MOJ was entitled to rely on section 40(2) of FOIA to withhold the requested information.
3. No steps are required as a result of this notice.

Request and response

4. On 12 August 2023, the complainant wrote to the MOJ and requested information in the following terms:

'My request relates to the following news story from May 2022 regarding a [name and address redacted].

[Link to media article redacted].

In August 2021 [location redacted] Magistrates Court found that [name redacted] had breached lockdown laws on multiple occasions in November 2020. Consequently fines and costs totaling [sic] £9,052.92 were imposed. The news story indicates that as of May 2022 the fines were unpaid based on the following quote from HMCTS [His Majesty's Courts and Tribunals Service]:

"The fines remain fully unpaid. Enforcement action is being pursued to seek what is owed."

I am requesting that you provide me with the full details of what has transpired with this case since HMCTS issued the above quote.'

5. The MOJ responded on 6 September 2023. It refused to provide the requested information citing section 40(2) of FOIA – the exemption for personal information.
6. Following an internal review the MOJ wrote to the complainant on 19 October 2023. It maintained that section 40(2) applied.

Scope of the case

7. The complainant contacted the Commissioner on 24 October 2023 to complain about the way his request for information had been handled. He argued that section 40(2) could not apply as he does not consider the status of a fine to constitute personal data. He also queried why the MOJ had previously provided fine related information to the media and was now refusing to provide it to him under FOIA.
8. The Commissioner has considered whether the MOJ was entitled to rely on section 40(2) of FOIA to withhold the requested information.

Reasons for decision

Section 40 – personal information

9. Section 40(2) 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.
10. Section 3(2) of the Data Protection Act 2018 (the 'DPA') defines personal data as:

"any information relating to an identified or identifiable living individual".
11. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
12. 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, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

13. 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.
14. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information does relate to the data subject. The individual is named in the request and the Commissioner acknowledges that disclosure as to whether or not that individual had paid the fine imposed would clearly reveal something about the named party.
15. The MOJ argued:

“The requester requested that Enforcement provide him with the full details of what has transpired with this case since HMCTS issued the quote. The information was refused because it falls into the category personal information. The categories of personal data relating to the requester FOIA request include the following: name, date of birth, address, national insurance number, telephone number, contact telephone number, employer details, fine information, fine payments, financial information, court register, correspondence, and electronic communications. In the circumstances of this case, having considered the withheld information, the MOJ is satisfied that the information requested on the status of fine imposed, in a specific criminal case, relates to and is linked to a specific individual directly, has them as its focus and inform decision about them such as whether a court may take any action against them. The MOJ are unable to share information of any specific enforcement action taken against the defendant, or anyone else, who is not a party in the proceedings.”

16. This information therefore falls within the definition of ‘personal data’ in section 3(2) of the DPA.
17. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
18. The most relevant Data Protection (‘DP’) principle in this case is principle (a).

Would disclosure contravene principle (a)?

19. Article 5(1)(a) of the GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

20. In the case of an 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 lawful, fair and transparent.
21. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.
22. In addition, if the requested data is criminal offence data, in order for disclosure to be lawful and compliant with principle (a), it must also meet the requirements of Article 10 of the UK GDPR.

Is the information criminal offence data?

23. Information relating to criminal convictions and offences is given special status in the UK GDPR.
24. Article 10 of the UK GDPR defines ‘criminal offence data’ as being personal data relating to criminal convictions and offences. Under section 11(2) of the DPA personal data relating to criminal convictions and offences includes personal data relating to:
- (a) The alleged commission of offences by the data subject; or
 - (b) Proceedings for an offence committed or alleged to have been committed by the data subject or the disposal of such proceedings including sentencing.
25. Having considered the wording of the request, and viewed the withheld information, the Commissioner finds that the requested information does include criminal offence data. He has reached this conclusion on the basis that it directly relates to a criminal offence and the disposal details of that offence.
26. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes disclosure in response to an information request, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA can be met.
27. The Commissioner considers that the only Schedule 1 conditions that could be relevant to a disclosure under FOIA are the conditions at Part 3 paragraph 29 (consent from the data subject) or Part 3 paragraph 32 (data made manifestly public by the data subject).

28. The Commissioner has seen no evidence or indication that the individual concerned has specifically consented to this data being disclosed to the world in response to the FOIA request or that they have deliberately made this data public.
29. As none of the conditions required for processing criminal offence data are satisfied there is no legal basis for its disclosure. Processing this criminal offence data would therefore breach principle (a) and so this information is exempt under section 40(2) of FOIA.

Right of appeal

30. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Carolyn Howes
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