

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2012

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

Decision (including any steps ordered)

1. The complainant requested details of a named solicitor's qualifications. The Information Commissioner's decision is that the Ministry of Justice (the MOJ) correctly identified the information as personal data of a third party and withheld it as such under section 40(2) of the Freedom of Information Act 2000 (the FOIA). The Information Commissioner does not require the MOJ to take any remedial steps.

Request and response

2. On 12 April 2011, the complainant requested information in the following terms:
"I am currently preparing the grounds [of an appeal], and it is pertinent to a strand of my application to know what [named solicitor]'s qualifications are..."
3. Scunthorpe Magistrates' Court responded on 14 April 2011. It refused to disclose the information in a normal course of business reply stating that the information was *"confidential and protected"*.
4. The complainant responded on 18 April 2011. He asked why the information was considered confidential and drew the Court's attention to its obligations under the FOIA.
5. On 6 May 2011 the Court responded to the complainant and stated that the request did not *"involve the Freedom of Information Act."*
6. On 9 May 2011 the complainant wrote to the Court and asked it to consider the request under the FOIA.

7. The Court forwarded the request to the correct department on 13 May 2011. This was acknowledged by the department on 16 May 2011.
8. On 26 May 2011 the North East Regional Office responded to the complainant and withheld the requested information under section 40(2) of the FOIA.
9. On 10 June 2011 the complainant made a complaint to Scunthorpe Magistrates' Court regarding the way his request for information had been handled. He was dissatisfied that the request had not been dealt with under the FOIA in the original response from the Court.
10. On 20 June 2011 the Court responded to the complainant. It explained that it had failed to recognise that the request was a valid request under the FOIA as no reference to freedom of information had been made. However, the Court made the point that a response under the FOIA had now been provided.
11. On 20 July 2011 the complainant contacted the North East Regional Office and requested an internal review of its decision to uphold the section 40(2) refusal. He provided clear arguments as to why he considered it fair that the information should be in the public domain and why the information did not engage the exemption.
12. The request for an internal review was acknowledged by the MOJ on 25 July 2011. On 5 August 2011 the MOJ provided the outcome of the internal review to the complainant. The MOJ upheld its original decision to withhold the information under section 40(2) as personal data of a third party.

Scope of the case

13. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He was dissatisfied that the MOJ had initially failed to recognise his request as a valid request for information under the terms of the FOIA. The complainant also disputed the fact that the MOJ had withheld the information under section 40(2) of the FOIA.
14. The Information Commissioner considers that the request of 12 April 2011 did constitute a valid request for recorded information. Section 8(1) of the FOIA states that a valid request for information must be in writing, state the name and address of the applicant and describe the information being requested.

15. In response to the Information Commissioner's enquiries, the MOJ acknowledged that the request should have been dealt with under the FOIA in the first instance but made the point that the business as usual response was provided in a timely fashion and appropriately withheld the information as confidential, personal information.

Reasons for decision

16. Section 40(2) of the FOIA states that:

"Any information to which a request for information relates is also exempt information if-

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied."

17. Section 40(2) of the FOIA provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 ("the DPA").

Is the withheld information personal data?

18. Personal data is defined by the DPA as any information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.
19. The Information Commissioner is satisfied that the withheld information falls within the definition of personal data as set out in the DPA because it 'relates to' an identifiable living individual.

Would disclosure contravene any of the Data Protection Principles?

20. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Information Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Information Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations

21. The withheld information in this case relates to the academic qualifications of a named legal individual. The MOJ explained to the Information Commissioner that the named solicitor had not given her consent to the disclosure of the information and that she had an expectation that none of her personal data would be disclosed under the FOIA. Information disclosed under the terms of the FOIA would be disclosed not just to the complainant in this case but disclosed to the wider world and remain in the public domain indefinitely.
22. The MOJ went on to explain that the information had been obtained as part of a recruitment, human resources process. It asserted that the named solicitor would have a reasonable expectation, as perhaps most people would, that part of her personnel file would not be disclosed into the public domain.
23. The Information Commissioner agrees that details of the named solicitor's qualification would have been provided in confidence and that she would have a reasonable expectation that the information would remain confidential and not be disclosed to the wider public domain under the FOIA.
24. However, the Information Commissioner also considers that the requested information relates to the named solicitor's professional life and, therefore, while an expectation of privacy would still remain, it would be to a lesser degree than perhaps people carrying out non-public functions.

Consequences of disclosure

25. The MOJ did not provide the Information Commissioner with any detailed explanation as to the possible consequences of disclosure; however, it did state that any disclosure would be unfair and therefore it would be safe to assume that some distress would be caused to the named solicitor.
26. The Information Commissioner considers that a likely consequence of disclosure would be that some distress would be caused to the named individual. This is linked to the fact that the named solicitor would have a reasonable expectation of both privacy and that her professional qualifications would not be disclosed under the FOIA.
27. Although some distress may be caused to the named solicitor as a consequence of disclosure, especially if any disclosure was not consented to, the Information Commissioner does note that the information requested concerns academic qualifications linked to the named solicitor's profession. Therefore, she would be likely to expect

her qualifications to be known due to her public role and indeed may want her qualifications to be known to the wider world in order to augment her professional reputation.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

28. The complainant provided the MOJ with arguments in favour of upholding the public's legitimate reasons for disclosure. He argued that the information was not sensitive personal data as defined by the Data Protection Act 1998 (the DPA); the qualifications requested were specific to her professional role and the public function she carries out; and the FOIA itself contains a presumption in favour of disclosure.
29. In answer to these arguments, the Information Commissioner considers that the information is not sensitive personal data but it is still personal data which would engage section 40(2). The Information Commissioner agrees that the information relates to the named solicitor's professional role, but does question how senior her legal position is.
30. The Information Commissioner also acknowledges that the named solicitor carries out a public function and as such it could be argued that she is accountable to the public, but he would draw attention to the fact that this public function differs from elected 'public office' or other public roles where members of government or other public bodies carry out roles which involve a greater degree of public accountability. The Information Commissioner would also point out that the named solicitor could be employed at a private legal firm at some point in her career and as such would have an increased expectation that her qualifications would remain private. The Information Commissioner does, however, acknowledge the complainant's general arguments regarding the Freedom of Information Act's leaning towards openness and transparency and balances this against the named solicitor's expectation of privacy.
31. The Information Commissioner's view is that generally there is a legitimate public interest in information about an individual employed in any role by a public authority. Disclosing information of this nature often promotes transparency and accountability for decisions and actions taken. This may include for example the reasons an individual is suitable for a particular role.
32. The Information Commissioner made enquiries with the MOJ regarding the seniority of the named solicitor in this case in order to ascertain the level of any public interest that may be involved. The MOJ confirmed that the named solicitor's role was not part of the Senior Civil Service. The Information Commissioner accepts that, although the information

requested involves the named solicitor's professional life, her role within the legal system is not senior enough to warrant a strong public interest in the information being made available in the public domain.

33. The Information Commissioner does not, therefore, believe that the reasonable expectation of confidentiality held by the named solicitor is outweighed by any legitimate public interest in disclosure and that disclosure of the requested qualifications would be unfair and unnecessary in the circumstances.

Other matters

34. The Information Commissioner was concerned that, when carrying out his investigation into this case, the MOJ had failed to recognise and treat the complainant's request of 12 April 2011 as a valid request for information under the terms of the Freedom of Information Act. The MoJ therefore failed to issue a valid refusal notice within the 20-day statutory timescale, a breach of section 17(1).
35. The Information Commissioner would, therefore, like to remind the MOJ of its obligations under the FOIA and related codes of practice with regards to valid information requests as defined in section 8 of the FOIA.
36. In recent correspondence to the Information Commissioner, the MOJ provided details of processes it has put in place to ensure information requests are handled under the correct legislation and relevant procedures. The Information Commissioner welcomes this remedial action and recommends that the MOJ continues to follow the processes in place to ensure future compliance with the FOIA.

Right of appeal

37. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

38. 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.
39. 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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