

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 July 2012

Public Authority: The Compensation Agency
Address: 6th Floor
Millennium House
Great Victoria Street
Belfast
BT2 7AQ

Decision (including any steps ordered)

The complainant requested information from the Compensation Agency relating to a claim for criminal injury compensation by a certain individual. The Compensation Agency refused to disclose this information, citing section 40(2) of FOIA (personal data of third parties). The Commissioner's decision is that the Compensation Agency has correctly applied section 40(2) (by virtue of section 40(3)(a)(i) to the requested information. Therefore the Commissioner orders no steps to be taken. The Commissioner also finds that the Compensation Agency breached section 17(1) of the Act.

Request and response

1. On 9 January 2012 the complainant wrote to the Compensation Agency and requested information in the following terms: -

"We act on behalf of [name redacted] in relation to allegations of alleged rape and other assault by [name redacted] arising out of an incident on [date redacted]. Can you please forward to us confirmation of the following: -

1. Details of the Criminal Injury Compensation paid to her pursuant to the allegation made by her (and subsequently the subject of Crown Court criminal proceedings which were withdrawn by the Crown).

2. Details of all other Criminal Injury payments made to her pursuant to other allegations against unrelated parties.
2. The Compensation Agency responded on 16 January 2012. It stated that it was refusing to disclose the requested information and cited section 40 of FOIA (personal information) as a basis for non-disclosure.
3. Following an internal review the Compensation Agency wrote to the complainant on 1 March 2012. It stated that it was upholding the original decision not to disclose the requested information under section 40 of FOIA.

Scope of the case

4. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
5. The Commissioner has considered whether the Compensation Agency has correctly applied section 40 to the requested information.

Reasons for decision

6. Section 40(2) of FOIA provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3) or section 40(4) is satisfied.
7. One of the conditions, listed in section 40(3)(a)(i), is where disclosure of the information to any member of the public would contravene any of the data protection principles as set out in schedule 1 to the Data Protection Act 1998 ("the DPA".)
8. The Compensation Agency stated to the Commissioner that the requested information was exempt from disclosure under section 40(2) of the Act by virtue of 40(3)(i)(a) as it was personal data and its disclosure would breach the first and second data protection principles.
9. Section 1 of the DPA defines personal data as data which relates to a living individual who can be identified:
 - from those data,
 - or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

10. Sensitive personal data is defined in section 2 of the DPA as personal data which consists of, amongst other things, information as to the data subject's "physical or mental health or condition".
11. The Commissioner is satisfied that all of the requested information falls within the definition of personal data as set out in the DPA. It contains information about living individuals who it would be possible for the public to directly identify from those data. The information concerns, as stated in paragraph above, compensation paid to a named individual pursuant to an allegation of a criminal offence. Since the information directly relates to that individual, she could be identified from the information.
12. The Commissioner also considers that the requested information is sensitive personal data, as it concerns criminal injury compensation paid for, amongst other things, psychological trauma to an individual caused by the alleged commission of the offences of rape and assault against her. This relates to the individual's physical or mental health or condition, which is one of the categories of sensitive personal data, as defined in section 2(e) of the DPA.

Would disclosure breach the first data protection principle?

13. The first data protection principle states in part that:
"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 is met, and in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."
14. The Compensation Agency claimed that disclosure of the information would cause distress to the individual concerned. The Commissioner has considered whether such disclosure would be unfair and as such breach the first data protection principle.
15. In deciding whether disclosure of the requested information would be unfair the Commissioner has taken into account a range of factors including the potential consequences of disclosing the information, i.e. what damage or distress would the individuals suffer if the information was disclosed?
16. In most cases the very nature of sensitive personal data means it is most likely that disclosing it will be unfair. As it is information of the most private and personal nature, the reasonable expectation of the data subject is that such information would not be disclosed. The consequences of any disclosure could be distressing to them.

17. However, it remains important to consider all the circumstances of the case. In particular it is important to consider both the reasonable expectations of the data subjects regarding their personal information and whether some or all of that information has already been put into the public domain with the knowledge of the data subject, i.e. despite the data falling into the category of sensitive personal data, it is not sensitive to the data subjects. If either factor is relevant, then it is likely that any disclosure would be fair. The Commissioner has considered whether any of these factors are relevant in this case.
18. The Commissioner is satisfied that the requested information would not already be in the public domain as criminal injury compensation claims are treated as private and confidential and therefore would not have been revealed to the wider public.
19. The Commissioner considers that the individual concerned would have a reasonable expectation that any information provided for the assessment of her compensation claim would be kept private and not disclosed. The Commissioner notes that the requested information in this case falls under section 2(e) of the DPA as it relates to the individual's physical or mental health or condition. As such, by its very nature, this has been deemed to be information that individuals regard as the most private information about themselves. Further, having considered all the circumstances of the case and having ascertained that disclosure of this type of information is likely to have a detrimental or distressing effect on the individual concerned, the Commissioner considers that it would be unfair to disclose the requested information.

Procedural Requirements

Section 17 – Refusal of request

20. Section 17(1) of the Act states that:-

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies”.

21. The Compensation Agency, in its refusal notice to the complainant of 16 January 2012, did not specify that it was relying on the section 40(2) exemption or why the exemption applied, although it did so in its submissions to the Commissioner. Therefore, the Commissioner notes that the Compensation Agency has breached section 17(1) of the Act.

Right of appeal

22. 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

23. 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.
24. 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
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