

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 August 2012

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

Decision (including any steps)

1. The complainant has requested information about alleged complaints made by a named party, or confirmation that complaint/s had been received. The public authority neither confirmed nor denied holding any information by virtue of section 40(5). The Information Commissioner's decision is that the exemption is engaged. The public authority is not required to take any steps.

Background

2. The complainant corresponded with the Office of Judicial Complaints (the "OJC") about his request for information. The Ministry of Justice has informed the Information Commissioner that it regards the OJC as being within its remit when considering Freedom of Information Act matters. The Information Commissioner has therefore conducted his investigation into this case with the Ministry of Justice and served this decision notice on that public authority.

Request and response

3. On 31 January 2012, the complainant wrote to the public authority and requested information which can be summarised as follows:
 - *any letters of complaints from [name removed] of [company name removed] to the Office for Judicial Complaints (OJC);*
 - *any replies from the OJC [name removed]; and*

- *in the event that letters are not available, confirmation that complaints against [two named District Judges] were made by [name removed].*

(A redacted copy of the full request can be found at the end of this notice).

4. The public authority responded on 27 February 2012. It stated that it could neither confirm nor deny holding any information as to do so would breach one or more principles of the Data Protection Act (the "DPA"). It further stated that the information was also exempt under section 44 of FOIA by virtue of section 139 of the Constitutional Reform Act 2005.
5. When asking for an internal review the complainant advised that he was *"well aware that a complaint was in fact made"* and he did not believe that confirming this, and providing dates, would be personal data.
6. At internal review the public authority maintained its position.

Scope of the case

7. On 2 April 2012 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He advised the Information Commissioner:

"I would like ... sight of the letters which I know were sent to the OJC by [name removed] regarding the DJ's and the OJC replies.

Short of that I think dates when the letters were sent and dates of the subsequent replies confirming no findings of fault as alleged should, in my view, be available as this information does not compromise any confidence or personal data".

Reasons for decision

Section 40(5)(b)(i) – personal information

8. Section 40(5)(b)(i) provides that a public authority is not obliged to confirm or deny whether requested information is held if to do so would:
- constitute a disclosure of personal data, and
 - this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act (DPA).
9. The Information Commissioner's analysis of whether the above criteria would be satisfied follows.

Would confirming or denying that the requested information is held constitute a disclosure of personal data?

10. The DPA defines personal information 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 data controller or any person in respect of the individual".

11. In his guidance on the section 40 exemption¹, the Information Commissioner expanded on what constitutes personal data:

"The two main elements of personal data are that information must 'relate to' a living person, and that 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, has them as its main focus or impacts on them in any way."

12. The Information Commissioner considers that the way in which the request is worded clearly indicates that the complainant is seeking information which can be linked with three named individuals, ie the

¹http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/personal_information.pdf

party he alleges has made a complaint/complaints, and the two parties he believes the complaint/s are about. The Information Commissioner considers that to comply with section 1(1)(a) of the FOIA (ie to either confirm or deny holding the information) would inevitably put into the public domain information about the existence or otherwise of information about each of those individuals, which in turn would constitute disclosure of information that would relate to that individual.

13. Therefore, the Information Commissioner considers that to confirm or deny whether the requested information is held would in itself constitute a disclosure of personal data.

Would disclosure of this personal data breach a data protection principle?

14. The first principle of the DPA states that personal data must be processed fairly and lawfully.
15. In considering whether it would be unfair to confirm or deny that a complaint had been received, the Commissioner has taken the following factors into account:
 - the consequences of disclosure;
 - the data subject's reasonable expectations of what would happen to their personal data; and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

Consequences of disclosure

16. The parties concerned fall into two categories, ie the party who allegedly made a complaint/s, and the District Judges he or she allegedly complained about. However, the wording of the request has particular relevance here. It would not be possible to consider the fairness of confirming whether or not any complaints have been received about the two District Judges without first concluding that it is fair to confirm that the named party has in fact made any such complaints. For example, had the request simply stated, 'do you hold any complaints about either District Judge', then this would lead to a different analysis to a request in the terms: 'do you hold any complaints about these District Judges made by a named party'.
17. Disclosure of information under the FOIA constitutes disclosure to the world at large. It is clear that confirmation of whether complaints have been made by an individual is not information which would usually be in the public domain. Its disclosure may therefore be concerning to the individual concerned.

Reasonable expectations

18. The personal data that would be disclosed here would relate to that party in a 'private' capacity. This is significant in that previous decisions issued by the Information Commissioner have been guided by the principle that information about an individual's private life will be likely to deserve more protection than information about someone acting in an official or work capacity.
19. The Information Commissioner would therefore consider that, in the circumstances of this case, the individual making any complaint would have a legitimate expectation that information which may or may not confirm whether he has made complaints about District Judges would not be released to the general public.
20. The Information Commissioner also notes that complaints of the nature caught by this request fall within the remit of section 139 of the Constitutional Reform Act 2005. This prohibits disclosure of information without the consent of the parties concerned, except when agreed with the Lord Chancellor and the Lord Chief Justice. In light of comments made by the information requester here, the Information Commissioner would not expect consent to be forthcoming from the party concerned, if indeed he did make any complaint/s.

The balance between the rights and freedoms of the data subject and the legitimate interests of the public

21. In considering whether the exemption contained within section 40(5)(b)(i) should have been applied to the request the Information Commissioner has taken into account that the FOIA is designed to be applicant blind and that disclosure should be considered in its widest sense – which is to the public at large. He notes the complainant's concerns, and his genuine reason for seeking the information requested. However, if the information were to be disclosed it would, in principle, be available to any member of the public. A confirmation or denial in the circumstances of this case would reveal to the public information which is not already in the public domain and is not reasonably accessible to the general public; indeed, as shown above, it is covered by a statutory bar under the Constitutional Reform Act 2005.

Conclusion

22. Leading on from these considerations, the Information Commissioner has determined that to confirm or deny whether the requested information is held would be unfair to the named party who allegedly

made complaints about the two named District Judges. As disclosure would therefore breach the first data protection principle, section 40(5)(b)(i) is engaged.

23. As the public authority is unable to respond to any part of the request without revealing information about the alleged complainant the Information Commissioner has not considered the fairness in respect of the District Judges.

Right of appeal

24. 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,
Arnhem House,
31, Waterloo Way,
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

25. 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.
26. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

NON-CONFIDENTIAL ANNEX

Full wording of original request:

"I would be grateful for your advice and assistance.

Sometime ago possibly March 2011 a person by the name of [name removed] of [company name removed] filed several complaints against the learned District Judges [names removed] both of Bow County Court. My understanding is that the learned DJ's were subject to these complaints because several actions brought in that court by [name removed] were dismissed by both DJ's and subsequent leave to appeal was also dismissed and as such this exercise of judicial power was thought to be reason for complaint by [name removed]. Both complaints against the learned DJ's were of course dismissed (if this is the right turn of phrase to use) as being totally without merit or not within the remit of the OJC. I cannot remember which but I do recall seeing copies of the replies sent to [name removed] which intimated as much and again I cannot recall if the replies did in fact come from the OJC or from some other regulatory body.

In any event the reason for my inquiry is that for a short while I was employed at [company name removed] hence my having sight of the these (OJC) replies in the first place so I am well aware of the existence of these complaints and (OJC) replies. My question is therefore are these (OJC) replies to [name removed] in relation to his complaints against DJ's [names removed] subject to public scrutiny or in other words could I have copies of these (OJC) replies.

I ask for sight of these replies or if not confirmation that a complaint against the learned DJ's was made by [name removed] or in fact to which regulatory body these complaints were made so that I may ask for their assistance direct because I have had to commence legal proceedings against [name removed] for among other things failing to pay me for my time whilst at his company.

It is not pertinent to go into the details of my claim against [name removed] but suffice to say I did state in my claim how unreasonable he is by citing his unfounded complaints against the learned DJ's as an illustration of how litigious he is and he in turn has decided that this is defamation because he denies ever making such complaints. He is claiming £5.000 from me for supposedly defaming him and the fact that he is trying to commence legal action on such grounds is indication of the litigious way he conducts himself, however in order to safeguard myself and to prove the point that he did in fact file complaints against the learned DJ's which were ultimately dismissed I would be grateful if it is possible for me to have copies of his complaints against the DJ's and copies of what I believe are the OJC replies. Alternatively if disclosing such information would be a breach of confidence

or data protection then a letter merely confirming that complaints against the learned DJ's were filed by him would I suspect suffice. If it the case that the latter option rather than the former would not breach any confidence if that letter stated in general terms and without disclosing anything sensitive some details, for example, dates of the complaints and the outcome of the complaint that would also suffice.

I hope you can assist".