

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2013

Public Authority: The Legal Services Commission
Address: 8th Floor
102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information from the Legal Services Commission (LSC) about legal aid payments in relation to named defendants and the nature of their cases. The LSC neither confirmed or denied holding the requested information.
2. The Commissioner's decision is that confirmation or denial would disclose third party personal data and that the disclosure of this personal data would be in breach of the first data protection principle. His decision therefore is that the LSC correctly refused the request for information under section 40(5)(b)(i) of the FOIA. He requires no steps to be taken.

Request and response

3. On 17 August 2012 the complainant made the following request for information under FOIA:

"... would it be possible please to tell me whether the defendants named below received or are receiving legal aid, whether the cases were VHCC cases, and, if so, the total sums paid in respect of these individuals?"

I realise that in the [name redacted] case, payment might not have been made yet, but confirmation of whether it is legally aid and whether it is a VHCC case would be much appreciated.

As you can see from the links pasted below, all these cases have attracted considerable publicity already and are of considerable public interest because of the scale of the offences committed".

4. The cases referred to involved four named individuals jailed for fraud. In the context of the request, the Commissioner understands that 'VHCC' cases are Very High Cost Criminal cases.

5. The LSC responded on 17 September 2012 neither confirming or denying whether it holds the requested information, citing section 40(5)(b)(i) of FOIA.

6. In this respect, the LSC told the complainant:

"The LSC ... considers section 40(2) of the FOI Act where it gets requests about legal aid for specific named individuals.We consider that the first principle of fair and lawful processing would be breached in view of the fact that these individuals, if indeed funded by legal aid, could not consent to such use and disclosure of their personal information and we would therefore breach the DPA in disclosing it. However, this should not be taken as conclusive evidence that the information you requested exists or does not exist".

7. Following an internal review the LSC wrote to the complainant on 15 October 2012 upholding its decision.

Scope of the case

8. The complainant contacted the Commissioner on 19 October 2012 to complain about the way his request for information had been handled.

9. In bringing his complaint to the Commissioner's attention, he referred in particular to two of the individuals named in his request. Arguing that it was in the public interest for the requested information to be disclosed, he told the Commissioner:

"here were two men who received legal aid on the grounds that they met the financial criteria for doing so (ie they had inadequate means to pay for themselves) when a High Court judge later ruled that, in fact, at the time of their trial they were extremely wealthy men, owning properties in some of the most expensive parts of London and the South East, as well as other assets".

10. The complainant also told the Commissioner that he considered that the LSC, in refusing his request:

"failed to address my point that the awarding of legal aid ... was confirmed in a published High Court document".

11. In that respect, the LSC told the complainant:

"You have mentioned that information about these individuals is already in the public domain but that does not reduce the LSC's obligation as a data controller under the DPA..."

12. The Commissioner considers the scope of his investigation to be the LSC's application of section 40.

Reasons for decision

Section 40 personal information

13. Generally, the provisions of section 40(1) to (4) exempt 'personal data' from disclosure under FOIA if to do so would breach the data protection principles. Section 40(5)(b)(i) further excludes a public authority from complying with the duty imposed by section 1(1)(a) - confirming whether or not the requested information exists - if complying with that duty would contravene any of the data protection principles or section 10 of the DPA, or would do so if the exemptions in section 33A(1) of the Data Protection Act (DPA) were disregarded.

14. In this case, the LSC argued that to confirm or deny whether the requested information is held would not be fair and would therefore contravene the first data protection principle.

15. The Commissioner has first determined whether the requested information constitutes personal data.

Is the information personal data?

16. Personal data is defined in section 1(1) of the DPA 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 intention of the data controller or any other person in respect of the individual."

17. The two main elements of personal data are that the information must 'relate' to a living person and that the 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.
18. With respect to those aspects of the request that relate to the receipt of legal aid and the sums involved, the Commissioner has found on a previous occasion that legal aid is information relating to an individual¹.
19. Having considered the wording of the request in this case, which specifies that the complainant is seeking information about named individuals, the Commissioner is satisfied that the request relates to living individuals who can be identified.

Is the information sensitive personal data?

20. Sensitive personal data is personal data which falls into one of the categories set out in section 2 of the DPA. In this case, the information sought relates to the receipt of legal aid payments in respect of criminal proceedings and the nature of those proceedings. The Commissioner therefore considers that the relevant categories in this instance are:

2. In this Act "sensitive personal data" means personal data consisting of information as to

"(g) the commission or alleged commission by him of any offence, or

(h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings".

21. Having considered the wording of the request, the Commissioner considers that the information, if held, constitutes sensitive personal information. In his view the personal data in question, if held, is clearly information "as to" the fact that the individuals receiving the VHCC payments have been charged with criminal offences. The personal data, if held, is also directly connected to the proceedings for the alleged offences.

¹ FS50076855

22. Furthermore, the Commissioner is satisfied that confirming or denying if the information is held would constitute processing by the public authority of the sensitive personal data of those individuals named in the request, irrespective of whether such information is already in the public domain via other means. Therefore, he has considered whether confirming or denying in relation to the request would in itself breach the first data protection principle.

Would confirming or denying that the requested information is held breach a data protection principle?

23. The first data protection principle requires that personal data is processed fairly and lawfully and that:
- 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.
24. The Commissioner considers the most applicable condition for processing in this case is likely to be Schedule 3, condition (1) or condition (5) which state respectively:
- the data subject has given his explicit consent to the processing of the personal data; and
 - the information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.
25. The Commissioner is not aware that the individuals concerned have actively put such information into the public domain. Nor is he aware of anything to suggest that their consent – freely given and informed – has been sought or obtained in relation to the requested information in this case. In other words, having considered the relevant Schedule 3 provisions in this case, the Commissioner has concluded that neither apply.

Conclusion

26. In correspondence with the Commissioner, the complainant argued that there is an *“overwhelming public interest in disclosure of legal aid payments to such people”*.
27. The Commissioner does not dispute that there is public debate surrounding legal aid payments. However, in the absence of a Schedule 3 condition, he has concluded that confirming or denying that the requested information is held would constitute a disclosure of sensitive

personal data which, in the circumstances of this case, would be in breach of the first data protection principle.

28. The Commissioner's decision, therefore, is that the LSC dealt with the request for information in accordance with FOIA in that the exemption from the duty to confirm or deny provided by section 40(5)(b)(i) is engaged.

Right of appeal

29. 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

30. 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.
31. 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

Steve Wood
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