

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 4 September 2014

**Public Authority:** Ministry of Justice

**Address:** 102 Petty France  
London  
SW1H 9AJ

#### Decision (including any steps ordered)

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1. The complainant requested information relating to court proceedings involving himself. The Ministry of Justice (MoJ) confirmed it held some of the requested information but stated that the information was exempt from disclosure by virtue of sections 40(1) and (2) (personal information) and 32 (court records) of FOIA.
2. The Commissioner's decision is that the MoJ correctly applied section 40(1) (personal information of the applicant) to the withheld information. He is also satisfied that, on the balance of probabilities, the MoJ does not hold some of the requested information. He requires no steps to be taken as a result of this decision notice.

#### Request and response

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3. On 25 September 2013 the complainant wrote to Barnet County Court and made a multi-part request for information about a court hearing. The subject line of the email was entitled:

*'[name redacted] v [complainant] Purported 'hearing' 20/09/2013'.*

4. Full details of the request – comprising points 1-11 - can be found in the annex to this decision notice.

5. He made a further multi-part request for information to the same court on 30 September 2013. The subject line of that email was as above. Full details of that request – comprising points a-g – can also be found in the annex to this decision notice.
6. In bringing his complaint to the Commissioner's attention, the complainant provided a copy of the response from the county court dated 10 October 2013. The Commissioner notes that that business-as-usual correspondence responds to some of the points raised by the complainant in his two requests for information. The correspondence concludes by saying:

*"I have passed your email onto our Data Access and Compliance Unit for them to consider your other requests".*
7. The MoJ subsequently provided its substantive response - by way of a single response to both requests - on 23 October 2013.
8. The MoJ said that its response only addressed some of the points made by the complainant in his two requests for information. It explained that points within the requests that do not relate to recorded information do not fall within the scope of a freedom of information request. In respect of those points, the MoJ advised that it was unable to comment on them as the FOIA does not place a duty upon public authorities to answer a question unless recorded information exists.
9. With respect to the remaining points within the two requests:
  - it confirmed that it held some of the requested information but stated that it was exempt from disclosure. It cited sections 40(1) (personal information), 40(2) (personal information) and 32 (court records) of FOIA as its basis for doing so;
  - it advised the complainant how to make a subject access request for any information held by the court relating to him and his cases;
  - it advised the complainant about the process for obtaining court transcripts;
  - it said that point (7) was being addressed separately; and
  - it denied holding the requested information relating to the number and frequency with which the District Judge orders litigants to leave the court room and/or deploys her panic button in order to summon court staff.
10. The complainant requested an internal review on 24 October 2013. The MoJ sent him the outcome of its internal review on 2 December 2013. It

revised its position with respect to point (7), providing him with information within the scope of that part of the request. It provided further explanation about its response to point (e) and said that it considers that section 40(2) applies to point (4) of the request as well as section 32.

## Scope of the case

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11. The complainant contacted the Commissioner on 11 May 2014 to complain about the way his request for information had been handled.
12. The Commissioner is under no duty to deal with a complaint if he considers that there has been undue delay in bringing it to his attention. In this case, he exercised his discretion in accepting the complaint.
13. In correspondence with the Commissioner, the complainant disputed the way in which the MoJ responded to various points within his two requests - including some of those points which the MoJ said were not for recorded information.
14. The Commissioner's website provides advice to requesters on how to access information from a public body. That advice states<sup>1</sup>:  
  
*"Your request can be in the form of a question, rather than a request for specific documents, but the authority does not have to answer your question if this would mean creating new information or giving an opinion or judgment that is not already recorded".*
15. In light of the above, and taking into account the correspondence received by the complainant about his requests, the Commissioner considers the scope of his investigation to be whether the MoJ is entitled to rely on sections 32(1), 40(1) and 40(2) as a basis for refusing to provide the information requested at points (b), (c) and (4). He has also considered whether the MoJ holds information within the scope of point (e) of the request.

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<sup>1</sup> [http://ico.org.uk/for\\_the\\_public/official\\_information](http://ico.org.uk/for_the_public/official_information)

## Reasons for decision

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### *Section 40 - personal information*

16. The MoJ told the complainant that some of the information he was seeking constitutes his own personal information and that under section 40(1) of FOIA it was not obliged to provide it to him.

17. Section 40(1) of FOIA states that:

*"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject".*

18. In other words, under section 40(1) of FOIA information that is requested that constitutes the applicant's 'personal data' is exempt information. This exemption is absolute: no consideration of the data protection principles is necessary when considering this subsection and it requires no public interest test to be conducted. In addition, in relation to such information public authorities are not obliged to comply with the obligation to confirm or deny whether they hold the requested information, by virtue of section 40(5)(a).

### *Is the requested information personal data?*

19. The definition of personal data is set out in section 1(1) of the Data Protection Act 1998 (DPA). This provides that, for information to be personal data, it must relate to an individual and that individual must be identifiable from that information.

20. 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.

21. Having considered the withheld information provided to him by the MoJ during the course of his investigation, the Commissioner is satisfied that, in the context of the request, the withheld information constitutes information that falls within the definition of 'personal data'.

22. Furthermore, in the Commissioner's view, given the context and the wording of the request, it is clear that the complainant is requesting his own personal data. He has reached this conclusion on the basis that the withheld information relates to court proceedings and that the complainant is the focus of those proceedings.

23. As one might expect, the information also includes the personal data of other individuals, for example those involved in the administration of the proceedings.
24. Where requested information constitutes the personal data of more than one individual, then all individuals are data subjects for the purposes of section 40. However, in situations like this, where a request is made by one of the data subjects the Commissioner's approach is to consider the information under the section 40(1) exemption.
25. The Commissioner is satisfied that the requested information comprises information from which the requester can be identified. The Commissioner considers that it is appropriate that any decision as to whether or not a data subject is entitled to be provided with their personal data should be made in accordance with the DPA.
26. In this respect, he is satisfied that the MoJ explained clearly to the complainant what information it required from him in order to proceed with a subject access request.

*Section 32 - court records*

27. The Commissioner has next considered the MoJ's application of section 32 to the information withheld by virtue of that exemption.
28. Section 32 of FOIA states that information held by a public authority is exempt information if it is held only by virtue of being contained in:-
  - (a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
  - (b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or
  - (c) any document created by (i) a court, or (ii) a member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter.
29. In the circumstances of this case, the Commissioner considers that the information withheld by virtue of section 32 can be considered the complainant's personal information as it relates to proceedings involving the complainant.
30. As the Commissioner is satisfied that the MoJ was entitled to rely on section 40 to withhold the complainant's personal data he has not gone on to consider the MoJ's application of section 32 to that information.

*Section 1 general right of access*

31. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
32. In bringing his complaint to the Commissioner's attention, the complainant said that he was "*not convinced the response [to point (e)] was correct/complete*".
33. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. In reaching a decision on the matter, the Commissioner is not expected to prove categorically whether the information was held, he is only required to make a judgement on the civil standard of the balance of probabilities as to whether the information was held
34. In this case the MoJ advised the complainant that there is no legal or business requirement to hold such information. It told him that a search had been conducted and enquiries made with the relevant business areas, notably the county court.
35. While appreciating the complainant's frustration in this case, the Commissioner is mindful of the comments made by the Information Tribunal in the case of *Johnson / MoJ* (EA2006/0085) that FOIA:  
  
*"does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold"*.
36. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the MoJ's position that it does not hold the requested information about the District Judge. The Commissioner is satisfied, on the balance of probabilities, that the information is not held by the MoJ.

**Other matters**

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37. In the Commissioner's view, his decision in this case will not disadvantage the applicant. He considers that an applicant wishing to

access their own personal data will still be able to pursue this right under the DPA. In this respect, he is satisfied that the MoJ explained clearly to the complainant what information it required from him in order to proceed with a subject access request.

38. With respect to some of the requested information, the Commissioner notes that the MoJ told the complainant that recordings of court hearings can be accessed through a court transcription company. It also explained the process should he wish to make a request for any relevant court transcript that might exist.
39. The Commissioner is satisfied that the complainant was appropriately advised of the method to obtain a copy of any transcript that may be held.

## Right of appeal

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40. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

41. 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.
42. 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**



## Annex

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43. The information request of 25 September 2013:

*"Dear Sir/Madam,*

*1. Unfortunately, once again, I was the victim of extremely degrading, abusive and unlawful treatment at your court. I refer to a purported 'hearing' on 20 September 2013. District Judge [name redacted] conducted herself wholly inappropriately. Inter alia, she deliberately violated my rights and became an accessory to, and/or aided and abetted, fraud.*

*2. I should be grateful therefore if you kindly confirm whether an Order was made as the Judge terminated my participation in the purported hearing prior to hearing my case or considering the evidence and therefore perverted the course of justice as an act of gross misconduct in public office. I consider the Judge, and therefore the Court, abused and defrauded me.*

*3. As such I should also be grateful for your confirmation that any Order that was made is void or in the alternative voidable and the correct procedure for having the Order voided if it is not void ab initio - which is more likely the case. Kindly therefore confirm the status of any Order.*

*4. Furthermore, I require a copy of the manuscript version of any Order made by the Judge and a copy of the audio recording of the purported hearing. I should be grateful for the prompt supply of the same.*

*5. In any event the fact that Judge was in a position to make any Order whatsoever is due to previous fraud, negligence and misconduct on behalf of the Applicant, its former solicitors, its current solicitors, HMCTS/RPTS and the members of a purported leasehold valuation tribunal. The system of justice has therefore entirely failed and once again Barnet County Court has abused those unfortunate enough to be obliged to use it.*

*6. I also ask for your proposals to meet my wasted costs. The purported hearing was contrary to any proper public perception of the administration of justice. Justice was neither done nor seen to be done.*

*7. Kindly also supply up to date copies of all applicable complaints procedures (both Judicial and administrative) including your internal complaints handling manuals, all pre-set phrases you are provided with for use when corresponding with Court Users and the identity of the authors of those documents. I also seek the same information and documentation as would have been current between 1998-2012.*

*8. I also seek assurances that unlike previously, Barnet County Court staff will adhere to the Court Service's own complaints procedures and I seek an explanation for why this has not previously been the case.*

*9. Public perception of a Court that perverts its own complaints procedures in order to evade legitimate complaints is that the Court's administrative infrastructure is corrupt and that justice cannot be obtained from HMCS/HMCTS when the subject of a complaint about itself.*

*10. Kindly inform what you intend to do about this and provide all information on how the implementation of your complaints procedures has been improved subsequent to the fraudulent implementation of the same as previously performed by Susan Mosley - who I understand is now the former Court Manager - although I note she continues to be advertised as Court Manager on the Court's noticeboard.*

*11. The treatment provided to myself and others by Barnet County Court continues to be unacceptable. I am effectively prevented from using my local county court due to both administrative and judicial abuse. Kindly inform how this furthers HCMTS' remit and goal".*

44. The information request of 30 September 2013:

*"Dear Sir,*

*Further to the enclosed emails kindly also supply:-*

*(a) The name and firm of the advocate who attended the purported hearing on behalf of the Applicant. I understand he is very familiar to Judge [name redacted] - having appeared before her numerously - and apparently had a further hearing before her almost immediately after the purported hearing in which I have objected to - please confirm if this was the case.*

*(b) A copy of any documentation provided by this advocate in the purported hearing.*

*(c) A copy of all documentation on the Court File and all information and documentation held by the Court relating to myself and my cases.*

*(d) Confirmation of whether the Applicant submitted a fee for adjourning and the re-listing hearing.*

*(e) All information held as to the number and frequency with which District Judge [name redacted] orders litigants to leave the Courtroom and/or deploys her panic button in order to summons court staff to remove litigants to include comparative date with regard to all other Judge's sitting at Barnet County Court*

*(f) A full apology and explanation from Judge [name redacted] for her extraordinary misconduct.*

*(g) A declaration that any Order made by District Judge [name redacted] in this case is void".*