

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 August 2015

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

Decision (including any steps ordered)

1. The complainant requested information relating to Mahmood Hussein Mattan, an individual whose conviction for murder was overturned.
2. Ministry of Justice (MoJ) provided some information within the scope of the request, but withheld the remainder citing section 40(2) of FOIA (personal information).
3. The Commissioner's decision is that MoJ withheld information appropriately. He requires no steps to be taken.

Background

4. The request in this case relates to the 1952 murder of shopkeeper Lily Volpurt. Mahmood Mattan was charged with the murder, found guilty and hanged later in 1952.
5. Mr Mattan's conviction was quashed by the Court of Appeal in 1998.

Request and response

6. On 24 January 2014 the complainant wrote to MoJ and requested information in the following terms:

"...any records (other than those covered by request [request reference redacted]) held by the Ministry of Justice relating to Mahmood Hussein Mattan, who was executed for murder at Cardiff in September 1952, and whose conviction was quashed by the

Court of Appeal in 1998. For your information, these may include (but will not necessarily be limited to) records relating to the campaign to clear his name in the 1990s, the reburial of his remains in a public cemetery in 1996, the consideration of his case by the Criminal Cases Review Commission and the quashing of his conviction by the Court of Appeal in 1998. If any of the records cannot be released, please indicate the dates of the records and summarise their contents in as much detail as possible."

7. MoJ responded on 21 February 2014. It confirmed that it holds some of the requested information. It disclosed it to him, explaining that personal information had been redacted. It cited the section 40(2) exemption (personal information) as its basis for withholding information.
8. Further correspondence followed in which the complainant asked MoJ to confirm his understanding of its response – namely that the only information within the scope of the request that had been withheld was represented by the redactions that are visible in the files it sent him.
9. The complainant requested an internal review on 19 March 2014 in which he pointed out that his request for summaries of any withheld documents had not been addressed. MoJ sent him the outcome of its internal review on 16 April 2014, upholding its original position.

Scope of the case

10. The complainant contacted the Commissioner on 14 August 2014 to complain about the way his request for information had been handled.
11. He told the Commissioner:

"Redacted versions of prison records from 1952 have been released, but other documents have been withheld in their entirety, as exempt under Section 40(2) (personal information). It is claimed that not even the dates of these documents can be released, and that it is not possible to give any kind of summary of their contents without disclosing exempt information.

Regarding the request for dates and summaries of the contents of withheld documents, obviously the date of a document alone cannot constitute the personal information of an identifiable individual.... Similarly, it must be possible to give summaries of the withheld documents at some level of detail without unfairly disclosing personal information".

12. In relation to MoJ's citing of section 40(2) he said that, as far as it is practicable, it should be dealt with by redaction rather than by withholding entire documents.
13. During the course of the Commissioner's investigation, MoJ provided some further information to the complainant.
14. In light of the above, the Commissioner considers the scope of his investigation to be MoJ's application of section 40(2) to the information redacted from the documents provided to the complainant.
15. He has also addressed the matter of whether summary information and dates can be provided in respect of any documents that have been withheld in their entirety.

Reasons for decision

Section 40 personal information

16. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
17. The withheld information in this case relates to redactions applied to information within documents that MoJ disclosed to the complainant.
18. The complainant disputes the application of section 40 on the basis that most of the individuals are now dead or can be presumed to be dead. In respect of any living individuals, he considers that there is a legitimate public interest in disclosure.
19. The first step for the Commissioner to determine is whether the withheld information constitutes personal data as defined by the DPA. If it is not personal data then section 40 cannot apply.

Is the information personal data?

20. The definition of personal data is set out in section 1 of the 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.
21. The DPA defines personal data 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."

22. 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 or has them as its main focus.
23. Having viewed the withheld information, the Commissioner is satisfied that the redactions relate to a number of individuals who were involved, to a greater or lesser extent, in the case of Mr Mattan. Clearly this information would both relate to and identify the parties concerned. This information is, therefore, personal data according to the definition given in section 1(1) of the DPA.
24. Having concluded that the withheld information is the personal data of the parties concerned, the Commissioner will next consider some points made by the complainant prior to going on to consider whether or not disclosure of the information would be in breach of the DPA.
25. The complainant disputes the application of section 40 on the basis that, due to the passage of time, most of the individuals are now dead or can be presumed to be dead. In respect of any living individuals, he considers that there is a legitimate public interest in disclosure.
26. With respect to the complainant's view that most of the individuals are deceased, the Commissioner notes that the complainant has provided details of those individuals he believes are no longer alive.
27. In correspondence with the Commissioner, MoJ acknowledged that:

"The information in scope of the request is historic in nature, in that it relates to the case of Mr Mahmood Mattan who was executed in 1952".

28. However, it told the Commissioner:

"Under the 100 year rule we have assumed the lifetime of the CJS professionals to be 100 years. Furthermore given that it is not reasonable or practicable to ascertain their ages at the time we have followed data protection practice for adults and assumed an age of 18. This gives a lifetime span which ends in 2034".

29. In the absence of other officially verified information, the Commissioner considers that a life expectancy of 100 years is a reasonable basis on which to proceed. Although some of the people referred to in the withheld information may be deceased the Commissioner's position in this case is to agree with the MoJ and be cautious and assume that the information is personal data because he does not have the capability or resource to investigate this and nor, for the same reason, does he expect the MoJ do so. This position has been previously accepted by the First-Tier Tribunal.

Would disclosure contravene the first data protection principle?

30. The first data protection principle states -

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."

31. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and meet one of the DPA Schedule 2 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

32. The Commissioner has first considered whether disclosure would be fair. In doing so he takes into account the following factors:

- the individual's reasonable expectations of what would happen to their information;
- the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
- the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

33. In the Commissioner's view, MoJ failed to explain to the complainant why it considered disclosure in this case would not be fair. However, in correspondence with the Commissioner MoJ said that it considered that disclosure would not be fair because the officials concerned:

"were properly engaged in the professional duties in the management of a prisoner, Mr Mattan, who was scheduled for execution. The duties and observations described in the information

disclosed to [the complainant] are something specific to the time at which the notes were made (during 1952) the individuals in question would have had no expectation that their identities would be disclosed".

34. MoJ also considered it relevant that the individuals "will likely have retired from the Department". In its view, this adds weight to its assessment that disclosure would affect their private lives.
35. In relation to the reasonable expectation of the individuals concerned, the Commissioner considers that they would have had no reasonable expectation that this information would be placed in the public domain, even after this length of time.
36. When considering the consequences of disclosure on a data subject, the Commissioner will take into account the nature of the withheld information. He will also take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the public at large, without conditions. Given the nature of the material, and the sensitivity of the subject matter, disclosure in this case could lead to an intrusion into the private lives of the individuals concerned and the consequences of any disclosure could be damaging or distressing to them.
37. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.
38. In considering these 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
39. In that respect, MoJ told the Commissioner:

"In terms of considerations in relation to 'legitimate public interest' the names of the individuals ... does not add anything to the substantial amount of information about Mr Mattan's case that is already in the public domain.... However, disclosure of an individual's involvement in a miscarriage of justice case could reasonably cause distress to those individuals were they targeted or contacted [as a result of the Department's disclosure]".
40. In light of the nature of the information and the reasonable expectations of the individuals concerned, the Commissioner is satisfied that release of the withheld information would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the data subjects. He considers that these arguments outweigh any legitimate interest in disclosure. He has therefore concluded that it would be unfair

to disclose the withheld information - in other words, disclosure would breach the first data protection principle. He therefore upholds MoJ's application of the exemption at section 40(2) in this case.

41. As disclosure would not be fair, the Commissioner has not gone on to consider in any detail whether disclosure is lawful or whether one of the schedule 2 DPA conditions is met. However, his initial view is that no such condition would be met.
42. With respect to the complainant asking MoJ to summarise the contents of any records that cannot be released, the Commissioner considers that the small amount of such information within the scope of this case cannot be usefully summarised.

Other matters

43. In the Commissioner's view, the internal review process affords public authorities the opportunity to reconsider the handling of requests and to address any outstanding issues but he does not consider that the internal review in this case clarified matters.
44. The Commissioner considers that it was not until his investigation had commenced that the MoJ properly considered its handling of certain aspects of the request for information. This was despite the applicant having asked MoJ to reconsider whether, for example, summary information about any documents which could not be released could be provided.
45. In the Commissioner's view, an internal review provides the opportunity for a public authority to reconsider its handling of the request when, as in this case, an applicant complains about the authority's response to his or her request. The Commissioner considers that the circumstances of this case highlight the shortcomings of the internal review MoJ conducted. However, having considered the information that was ultimately made available to the complainant as a result of this request, the Commissioner is satisfied that, if the request was made again, section 21 (information accessible to applicant by other means) of FOIA would apply.
46. The Commissioner notes the apparent overlap between the information considered within the scope of this case and that considered within the scope of FS50551750. In the latter case, the Commissioner considers MoJ's handling of a related request for information.

Right of appeal

47. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

48. 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.
49. 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

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF