

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 February 2015

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested the name of the Crown Prosecution Service ('CPS') Prosecutor at a specified court case and date. The Ministry of Justice (the 'MOJ') refused to provide the information applying both the exemption for court records (section 32(1)(a)) and for third party personal information (section 40(2)).
2. The Commissioner's decision is that the MOJ, although correct to withhold the information, should have instead relied on the exemption contained within section 40(5) of FOIA. The Commissioner requires no steps to be taken as a result of this decision.

Background

3. On 31 July 2014 the complainant made the same request being considered below to the Crown Prosecution Service. This was refused by the CPS on the basis of section 40(2) of FOIA. The complainant also complained to the Commissioner about the CPS' refusal to provide the requested information. A decision notice in this different case will be issued under reference FS50557186.
4. Although FOIA is both applicant and purpose blind, the complainant explained that he needed the name of the CPS Prosecutor in order to lodge a complaint about his court case. However, through his investigation in the associated case, the Commissioner also determined that the complainant does not need the name of a CPS Prosecutor in order to pursue a complaint about a court case itself.

Request and response

5. On 2 August 2014 the complainant wrote to the MOJ and requested information in the following terms:

"The name of the CPS Prosecutor attending my case at [court name redacted] 18/03/2014."

6. The MOJ responded on 15 August 2014. It refused to provide the requested information on the basis that the information sought is contained within a court record (section 32(1)(a) of FOIA). It also relied on section 40(2) because it said that it was not obliged to provide personal information of another person, if releasing it would contravene any of the provisions in the Data Protection Act 1998 (the 'DPA'), eg, if disclosure would be unfair.
7. Following an internal review the MOJ wrote to the complainant on 21 October 2014. It upheld its original decision.

Scope of the case

8. The complainant initially contacted the Commissioner on 2 October 2014 to complain about the way his request for information had been handled, but at that point he had not exhausted the MOJ's internal review process. He subsequently provided a copy of the internal review result on 21 October 2014 and confirmed that he wished to proceed with his complaint.
9. The complainant's view was that the MOJ had changed its stance at internal review in that it had said that the name of the CPS Prosecutor is 'sensitive' personal data. The Commissioner questioned the MOJ about this and it clarified that it did not consider the CPS Prosecutor's name to be sensitive personal data as defined by the DPA Act 1998. It said that its terminology in describing the information as "*sensitive in nature*" was confusing and that it should have instead stated that the information is "*personal in nature*". The Commissioner's view is that the requested information does not constitute sensitive personal data. He has therefore not considered this aspect further.
10. Although the complainant has requested the Prosecutor's name, which is third party personal information, the Commissioner notes that the request actually focuses on the complainant's own court case, ie as stipulated in the wording of his request, he requires the name of the Prosecutor who was in attendance at "my case". The Commissioner's view is that the Prosecutor's name cannot be sourced without first

confirming and identifying whether or not the complainant has had a court case. For this reason, the Commissioner has considered whether the MOJ should have instead relied on section 40(5)(a) in refusing this request as it would necessarily relate to the complainant personally by confirming to the public at large whether or not he has been to court.

Reasons for decision

11. In considering whether the exemption contained within section 40(5)(a) should have been applied to this request the Commissioner has taken into account that FOIA is designed to be applicant blind and that disclosure should be considered in its widest sense, which is to the public at large. 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, about whether or not the individual was involved in a court case.

Section 40(5) - personal information

12. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
 - a. the duty to inform the applicant whether or not requested information is held and, if so,
 - b. the duty to communicate that information to the applicant.
13. Section 40(5)(a) of FOIA excludes a public authority from complying with the duty imposed by section 1(1)(a) of FOIA - confirming whether or not the requested information is held - in relation to information which, if held by the public authority, would be exempt information by virtue of subsection (1). In other words, if someone requests their own personal data, there is an exemption from the duty to confirm or deny under FOIA.
14. The Commissioner's view is that the MOJ should have argued that confirming whether or not it held the requested information would breach the data protection rights of the complainant himself. Section 40(5)(a) states that the duty to confirm or deny does not arise in relation to information which is, if held, the requestor's personal data and thus exempt from disclosure on the basis of section 40(1) of FOIA.

15. The consequence of these sections 40(1) and 40(5)(a) is that if a public authority receives a request for information which, if it were held, would be the requestor's personal data, then it can rely on section 40(5)(a), to refuse to confirm or deny whether or not it holds the requested information.
16. It is important to note that sections 40(1) and 40(5)(a) are class-based exemptions. This means there is no need to demonstrate that disclosure (or confirmation) under FOIA would breach an individual's rights under the Data Protection Act 1998 (the 'DPA') when engaging these exemptions.
17. Section 40(1) of FOIA states that:

"Any information to which a request relates is exempt information if it constitutes personal data of which the applicant is the data subject".
18. 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."*
19. 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.
20. In the circumstances of this case, the Commissioner is satisfied that the requested information, if held by the MOJ, would be the complainant's personal data. This is because the complainant would be identifiable by confirming or denying that the information that has been requested is held as it would involve searching for the Prosecutor by reference to the complainant's own court case, ie it would not be possible to search for the Prosecutor's details without first looking for the complainant's court case details and confirming or denying that such a court case exists.
21. Although he notes that the request is for a third party's name, if the MOJ were to respond to this FOIA request by providing the complainant with this information (if indeed any such information was held) then it

would, under FOIA, also be confirming that it holds personal data of which he is the data subject, ie it would be confirming that he had been to court.

22. For the reasons set out above, the Commissioner is satisfied that under section 40(5)(a), the MOJ has no duty to confirm whether any such personal data is in fact held.

Other matters

23. The Commissioner also notes that an applicant wishing to access their own personal data is free to pursue this right under the subject access provisions of the DPA.

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,
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

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
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