

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 August 2016

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

#### Decision (including any steps ordered)

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1. The complainant gave the name and address of an individual and requested information relating to whether that individual was a Magistrate. The Ministry of Justice (MoJ) refused to confirm or deny whether it held any information falling within the scope of this request and cited the exemption provided by section 40(5) (personal information) of the FOIA.
2. The Commissioner's decision is that the MoJ cited section 40(5) correctly so it was not obliged to confirm or deny whether it held this information.

#### Request and response

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3. On 6 February 2016 the complainant wrote to the MoJ and requested information in the following terms:
  - "i. I wish to know if [name and address of third party] has been appointed as a Justice of the Peace?*
  - ii. If so, I wish to know the date of her appointment, and also which Bench she has been appointed to?*
  - iii. If this information isn't retained by the Ministry of Justice, I would be most grateful if you could inform me which body would hold this information?"*

4. The MoJ responded on 24 February 2016. It refused to confirm or deny whether it held the requested information and cited the exemption provided by section 40(5) (personal information) of the FOIA.
5. The complainant responded on 22 March 2016 and requested an internal review. The MoJ responded with the outcome of the internal review on 6 April 2016. The conclusion of this was that the refusal to confirm or deny under section 40(5) was upheld.

## Scope of the case

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6. The complainant contacted the Commissioner on 25 April 2016 to complain about the refusal of his information request. The complainant indicated that he did not agree with the reasoning of the MoJ for the refusal of his request.

## Reasons for decision

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### Section 40

7. The MoJ cited section 40(5). This section provides an exemption from the duty to confirm or deny where to do so would involve a disclosure of personal data and that disclosure would be in breach of any of the data protection principles. There are two stages to consideration of this exemption; first, provision of the confirmation or denial must involve a disclosure of personal data. Secondly, that disclosure must be in breach of at least one of the data protection principles.
8. Covering first whether confirmation or denial would involve a disclosure of personal data, the definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA):

*"'personal data' means 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".*

9. The request is for information relating to a specified and named individual. Clearly this information would both identify and relate to that individual and so would be their personal data according to the definition in section 1(1) of the DPA.

10. The next step is to consider whether disclosure of that personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on the first data protection principle, which states that personal data shall be processed fairly and lawfully. In particular, the focus here is on whether disclosure would be, in general, fair to the data subject.
11. In forming a conclusion on this point the Commissioner has taken into account the reasonable expectations of the data subject and what consequences disclosure may have. He has also considered what legitimate public interest there may be in disclosure of the confirmation or denial in question.
12. The Commissioner notes first that it is reasonable to assume that the MoJ does not hold information that records who is *not* a magistrate, so accepts that a confirmation that relevant information is held could be taken as an indication that the individual named in the request is a Magistrate, and denial the opposite. The issue for the Commissioner to consider here is if it would be fair to confirm whether a particular individual of a specified address is a Magistrate.
13. On the issue of information already in the public domain, the Commissioner notes that the identity of Magistrates would not generally be considered confidential. Neither would home addresses. It would be possible for research to be carried out through, for example, the Electoral Register and by attending Magistrates' Court hearings that could result in the gathering of information about Magistrates' home addresses. The Commissioner does, however, accept that compliance with this request would place additional information into the public domain, by confirming whether as a matter of fact an individual of a particular address is a Magistrate.
14. The complainant also argued that the individual named in the request had already stated that they were a Magistrate in correspondence that the complainant had been privy to. The request above was an attempt to verify that claim. The Commissioner's view on that point is that a disclosure made in correspondence would not equate to a disclosure made through the FOIA, the effect of which is that the information in question is disclosed into the public domain. Any disclosure that was made by the data subject in correspondence would not, therefore, preclude the use of section 40(5) in this case.
15. As to the reasonable expectations of the data subject, the main concern of the MoJ related to the data subject's home address having been stated in the wording of the request. The MoJ acknowledged that the identities of Magistrates is generally available; they sit in open court and may be named in media reports, as well as their identities possibly being

disclosed in materials published by the Judicial Office. It also noted that the home address of an individual will generally be publicly available, including through the Electoral Register. Its argument was that it would not be appropriate to disclose into the public domain whether a named individual of a specified address was a Magistrate and that the individual named in the request would have a reasonable expectation that this information would not be disclosed.

16. If the issue here was only whether the data subject should have been expected to hold a reasonable expectation that it would be confirmed whether they were a Magistrate, it is likely that the Commissioner would have found that such an expectation would have been reasonable. However, she does not believe that this could be applied to disclosure of their address in conjunction with potential confirmation that they are a Magistrate. The Commissioner takes the refusal to confirm or deny in this case as indicating that Magistrates are not notified by the MoJ that their home address could be disclosed along with confirmation of their appointment. Short of such a notification having been given, she does not believe that the data subject would hold a reasonable expectation that the confirmation or denial in response to the request would be disclosed.
17. The complainant argued that the data subject could not hold a reasonable expectation of non-disclosure as information concerning service as a Magistrate would relate to that individual in a professional capacity. The Commissioner agrees that, whilst voluntary, service as a Magistrate is akin to a professional role and her general approach is that it will be less likely to be unfair to disclose information relating to an individual in their professional capacity than it would be in relation to information concerning an individual's private life. However, as covered above, this analysis is focussed on the issue of associating a home address with a Magistrate. Home address is not information that concerns professional life, so the Commissioner does not agree that the data subject's reasonable expectations should be judged as if the request was for information that relates to them in their professional capacity.
18. On the issue of what consequences disclosure may have, the Commissioner believes that provision of the confirmation or denial contrary to the reasonable expectation of the data subject would be distressing to that individual. Given the role of a Magistrate, the Commissioner also recognises that linking that role with a particular address could result in more substantive consequences for the data subject, as targeting by those resentful of actions taken by a Magistrate may occur.

19. The next step is to consider whether there would be any legitimate public interest in the disclosure of this information. Whilst section 40(5) is an absolute exemption and not qualified by the public interest, the public interest is relevant here as it is necessary for there to be a legitimate public interest in order for disclosure to be compliant with the first data protection principle. The question here is whether any public interest in disclosure should be considered to outweigh the factors against disclosure covered above.
20. Clearly there is a public interest in the judicial system being open and transparent and the identities of Magistrates is information that generally is available. The Commissioner does not, however, believe that disclosure of the address related information in question here is necessary for the purposes of that public interest and struggles to discern any other legitimate public interest in disclosure of information relating to this individual.
21. In conclusion, the Commissioner has found that the data subject would hold a reasonable expectation that the personal data in question here would not be disclosed and that disclosure of this personal data may have negative consequences for them. She has also not found any legitimate public interest that would outweigh these grounds for non-disclosure and so finds that disclosure of this personal data would be unfair and in breach of the first data protection principle. Having already found that confirmation or denial in response to this request would involve a disclosure of personal data, the overall finding of the Commissioner is that the exemption provided by section 40(5) is engaged and so the MoJ was not obliged confirm or deny whether it held the information requested by the complainant.

## Right of appeal

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22. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

23. 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.
24. 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 .....**

**Ben Tomes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**