

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2017

Public Authority: Ministry of Justice

Address: 102 Petty France

London

SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information relating to two named lay panel members of the War Pensions and Armed Forces Compensation Tribunal including in relation to their swearing of the Judicial Oath.
2. The Ministry of Justice (MoJ) confirmed it held the requested information but refused to provide it citing section 40(2) of the FOIA (personal information).
3. The Commissioner's decision is that the MoJ correctly applied section 40(2) to the requested information. She requires no steps to be taken as a result of that decision.

Background

4. The request in this case relates to the members of the First-tier Tribunal (War Pensions and Armed Forces Compensation). That tribunal is responsible for handling appeals by current and former servicemen or women in England and Wales against decisions by Veterans UK in relation to pensions, compensation and other amounts¹.

¹ <https://www.gov.uk/courts-tribunals/first-tier-tribunal-war-pensions-and-armed-forces-compensation>

5. The tribunal² is made up of:

- a judge
- a medical member
- a service member

Request and response

6. On 1 June 2017 the complainant wrote to the MoJ and requested information in the following terms:

"1. Copies of all correspondence including emails to and from the Ministry of Justice also to include all correspondence and emails to and from the First tier tribunal service of the War Pensions and Armed Forces Compensation chamber from [name redacted] medical panel member and [name redacted] military panel member, who are employed as appeal panel members by the Ministry of Justice ...

2) The documentation I require under the FOIA is pertaining to the above panel members swearing the judicial Oath and being sworn in as judicial office holders.

3) I also require under the FOIA the name rank and position of the judicial officer who resided [sic] over the swearing of the judicial oath by the above mentioned panel members, and likewise the name of the judicial officer who swore the above mentioned panel members in, as Judicial office Holders".

7. The MoJ responded on 30 June 2017. It refused to confirm or deny whether the requested information was held, citing section 40(5) of the FOIA.

8. Following an internal review, the MoJ wrote to the complainant on 27 July 2017. It appeared to revise its position, apparently confirming that the requested information is held but refusing to provide it, citing section 40(2) of the FOIA (personal information).

² <https://www.gov.uk/war-pension-armed-forces-compensation-tribunal/tribunal-hearing>

Scope of the case

9. The complainant contacted the Commissioner on 1 August 2017 to complain about the way her request for information had been handled. She disputed the MoJ's refusal of her request:

"... regarding the swearing of the Judicial Oath and the Swearing in as Judicial Office Holders of [the two named individuals] and those individuals who administered the Swearing of the Judicial Oath".

10. She told the Commissioner that the individuals named in the request are employed by Her Majesty's Courts and Tribunal Service within the War Pensions and Armed Forces Compensation Chamber as Lay Panel Advisory Members of the First-tier Tribunal Appeal Hearings.

11. She disputed the MoJ's refusal to provide information relating to the legality and authority of those that hold public office, especially the judiciary. In that respect she told the Commissioner:

"Transparency on their qualifications and legal authority from the Lord Chief Justice down goes without saying, is of immense importance and of public interest".

12. In support of her complaint, the complainant provided the Commissioner with copies of the exchange of correspondence between herself and the MoJ about this matter. In respect of the various points covered in that correspondence she confirmed the matter that she wished the Commissioner to address, namely:

"... to ascertain documented proof that those that sit and pass judgement ... are legally qualified and allowed to do so...".

13. In light of the above, the analysis below considers the MoJ's handling of the requested information within the scope of parts (2) and (3) of the request.
14. During the course of the Commissioner's investigation the MoJ confirmed its application of section 40(2) of the FOIA to the information to those parts of the request for information.
15. The Commissioner has considered the application of section 40(2) to a request for the disclosure of information about the swearing-in of lay panel members of the War Pensions and Armed Forces Compensation Tribunal Panel on another occasion. Her decision in that case

(FS50681607) was issued on 27 November 2017. That decision can be found on her website³.

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 one of the conditions listed in section 40(3) or 40(4) is satisfied.
17. In this case the relevant condition is contained in section 40(3)(a)(i). This applies where the disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act 1998 (DPA).
18. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the DPA. If it is not personal data then section 40 cannot apply.
19. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.

Is the information personal data?

20. Section 1 of 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."

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2172854/fs50681607.pdf>

21. 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.
22. The request in this case is for information relating to the swearing-in as Judicial Office Holders of two named individuals who are lay panel members of the War Pensions and Armed Forces Compensation Tribunal Panel.
23. The Commissioner considers that her decision in case reference FS50681607 is relevant here.
24. The Commissioner's decision in that case was that the MoJ correctly applied section 40(2). Having considered all the factors applicable to this case, the Commissioner is satisfied that the similarity between this case and FS50681607 is such that she is able to reach the same decision about disclosure without the need for further analysis.

Right of appeal

25. 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

26. 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.
27. 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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