

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 February 2019

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information about the 'chain of command' at two specified courts. The Ministry of Justice (the 'MOJ') provided some of the requested information but withheld the remainder under section 40(2) of FOIA – personal information.
2. The Commissioner's decision is that the MOJ has correctly withheld the remainder of the requested information in accordance with section 40(2) of FOIA. She does not require the MOJ to take any steps to ensure compliance with the legislation.

Background

3. As the MOJ's refusal of the request was after 25 May 2018, which was the date the new Data Protection Act 2018 ('DPA') and General Data Protection Regulation ('GDPR') legislation came into force, the Commissioner considers that the DPA/GDPR applies.
 4. The Commissioner has provided the complainant with a link to her section 40 guidance¹ with a view to aiding his understanding of how this exemption works.
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¹ https://ico.org.uk/media/for-organisations/documents/1549/determining_what_is_personal_data_quick_reference_guide.pdf and <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

Request and response

5. On 30 July 2018, the complainant wrote to the MOJ and requested information in the following terms:

"Please can you provide the following information for Clerkenwell and Shoreditch County Court & [sic] Edmonton County Court:

1) What is the chain of command as far as the managerial positions are concerned? For instance every court has a manager who presumably reports to an area manager, operation managers, cluster managers, etc. Please provide this information as far high up to the overall Director & Chief Executive.

2) What are their names, email addresses & telephone numbers?"

6. The MOJ responded on 14 August 2018. It provided the chain of command information requested in part 1 of the request, together with the name of the Chief Executive for Her Majesty's Courts and Tribunals Service ('HMCTS').
7. For part 2 of the request, the MOJ also gave the complainant the name of the next person below the Chief Executive, namely that of the Delivery Director, whom it explained has responsibility for both specified courts. However, the MOJ refused to provide the remainder of the information requested in part 2, citing section 40(2) of FOIA – personal information.
8. On 15 August 2018 the complainant requested an internal review, specifying that he had not requested any "*personal information*" as he required the court officers' "*work email, telephone numbers and names*". The MOJ provided the outcome of its internal review on 8 September 2018, in which it maintained its original position.

Scope of the case

9. The complainant contacted the Commissioner on 15 October 2018 to complain about the way his request for information had been handled. Whilst accepting that the court chain of command had indeed been provided by the MOJ, he commented that it was "*very confusing*" as it did not state who reports to whom. As part of her investigation, the Commissioner therefore asked the MOJ to clarify this; it said that each role in the chain provided reports into the one above.

10. As part of his grounds of complaint, the complainant reiterated that he had not requested any personal information; rather he had asked for “*work contact details*”.
11. The withheld information in this case consists of the names of those officers below Delivery Director level in the specified two courts’ chain of command, together with their respective email addresses and telephone numbers. It also includes the email addresses and telephone numbers of the Chief Executive and the Delivery Director, whose names the MOJ has provided.
12. The Commissioner has therefore considered whether the MOJ has correctly relied on section 40(2) in relation to the remainder of the information requested in part 2 of this request.

Reasons for decision

Section 40 - personal information

13. 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(3A)(3B) or 40(4A) is satisfied.
14. In this case the relevant condition is contained in section 40(3A)(a)². This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data set out in Article 5 of the GDPR (‘the DP principles’).
15. 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 FOIA cannot apply.
16. 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?

17. Section 3(2) of the DPA defines personal data as:-
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² As amended by Schedule 19 Paragraph 58(3) of the Data Protection Act 2018

“any information relating to an identified or identifiable living individual”.

18. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
19. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
20. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
21. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to individuals or ‘data subjects’. She is satisfied that this information both relates to and identifies those data subjects concerned. This information therefore falls within the definition of ‘personal data’ in section 3(2) of the DPA.
22. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the data protection principles.
23. The Commissioner agrees that the most relevant data protection principle in this case is principle (a).

Would disclosure contravene principle (a)?

24. Article 5(1)(a) GDPR states that:-

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”

25. In the case of an FOI 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 lawful, fair and transparent.
26. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

27. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that *“processing shall be lawful only if and to the extent that at least one of the”* lawful bases for processing listed in the Article

applies. The Commissioner considers that the lawful basis most applicable is basis (f) which states:-

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”³.

28. In considering the application of Article 6(1)(f) GDPR in the context of a request for information under FOIA it is necessary to consider the following three-part test:-

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

29. The Commissioner considers that the test of “necessity” under stage (ii) must be met before the balancing test under stage (iii) is applied.

³ Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA 2018) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

Legitimate interests

30. In considering any legitimate interest(s) in the disclosure of the requested information public under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
31. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
32. In the case under consideration here, the complainant is seeking names, telephone numbers and emails addresses for those officers in the chain of command at the named courts. This information may be of interest to the complainant but he has not presented the Commissioner with any wider legitimate interest arguments to support a position that the individual names, email addresses and telephone numbers of those in the named courts' chain of command have any wider public interest.
33. The Commissioner has herself also considered whether there are any legitimate interests in the remaining requested information being disclosed. She has considered the general principles of transparency and accountability and concluded that the public has a legitimate interest in knowing who senior staff are in an organisation where salaries are paid from the public purse. She also considers that the public should be able to contact staff performing specific roles should they need their assistance in a particular matter.

Is disclosure necessary?

34. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
35. The Commissioner has established that the general telephone contact numbers and email addresses for the specified courts are available in

the public domain⁴ and it is not otherwise obvious why disclosure of the more detailed information is necessary in this case. She therefore does not consider it '*necessary*' for individual names and contact details to be disclosed as a result of this FOIA request in order for the MOJ to provide its services to the public. She also notes that staff may change so their details can become obsolete at any time and that members of the public may therefore end up trying to contact staff who have either changed roles or left the organisation.

36. The complainant has not explained why he has a legitimate interest in the requested information being disclosed and it is not obvious to the Commissioner why details at this level are actually necessary. Provided that members of the public have appropriate contact details which enable their queries to be dealt with, which seems to be the case here, then she considers that this is adequate and that this is the least intrusive way of any legitimate interest being met.
37. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, she has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).
38. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that she does not need to go on to separately consider whether disclosure would be fair or transparent.
39. The Commissioner had therefore decided that the MOJ was entitled to withhold the remaining information in part 2 of the request under section 40(2), by way of section 40(3A)(a).

⁴ <https://www.lawontheweb.co.uk/court-directories/county-courts/edmonton-county-court-and-family-court> and <https://www.lawontheweb.co.uk/court-directories/county-courts/clerkenwell-and-shoreditch-county-court-and-family-court>

Right of appeal

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

Website: 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
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