

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 November 2022

Public Authority: The National Archives
Address: Richmond
Surrey
TW9 4DU

Decision (including any steps ordered)

1. The complainant has requested access to a closed file DPP 2/2549.
2. The National Archives refused to provide the file, citing section 40(2) (personal information) of FOIA.
3. The Commissioner's decision is that the National Archives is entitled to rely upon section 40(2), on the basis that the requested information is third party personal data and its disclosure would breach data protection law. The National Archives breached section 17(3) (Refusal of request) of FOIA as it took an unreasonable amount of time to complete its public interest considerations.
4. The Commissioner does not require the public authority to take any steps.

Request and response

5. On 18 February 2021, the complainant wrote to the National Archives ('TNA') and requested the following information:
"DPP 2/2549: DIQUE, Eric Samuel (aged 22): Murder of Annabel HASSAN."
6. On 11 October 2021 TNA responded. It confirmed that the information was exempt from disclosure according to section 38(1)(a) (health and safety) and section 40(2) (personal information).
7. The complainant requested an internal review on 18 October 2021.

8. On 15 November 2021 TNA provided the outcome to its internal review. It upheld its original position.
9. TNA has applied section 38(1)(a) on the basis that disclosure of the file would endanger the mental health of the son of the defendant and the victim named in the request. The complainant disputes this claim.
10. The complainant also disputes TNA's application of section 40(2) on the grounds that the defendant and the victim are both deceased.
11. The Commissioner will first consider TNA's application of section 40(2). Depending on his findings, he may then go on to consider TNA's application of section 38(1)(a).

Reasons for decision

Section 40(2) – personal information

12. The Commissioner has previously considered requests for closed files, from TNA, that relate to murders.¹
13. In paragraphs 49-70 of IC-137873-Z2P1, the Commissioner considered TNA's application of section 40(2) for both special category data and third party personal information. He doesn't deem it necessary to replicate that analysis here.
14. The complainant is incorrect that the closed file only contains identifying information relating to the defendant, the victim and their son. As in IC-137873-Z2P1, the closed file in question contains both special category data, and third party data, of witnesses and third parties mentioned in witness testimonies.
15. In the absence of definitive evidence that proves otherwise, the Commissioner must assume that the data subject(s) concerned are alive. This is in keeping with TNA's usual practice, where if it is not clear whether an individual named in a document is living or dead, and where their age is unknown, it is standard practice to assume that the

¹ [ic-137873-z2p1.pdf \(ico.org.uk\)](https://ico.org.uk/protected-information/subject-access-requests/subject-access-requests-2018-2020/137873-z2p1)

individual was at least 16 years old at the time of the record, and is still living if they would not have reached the age of 100.²

16. The Commissioner must keep in mind the circumstances in which this personal information was collected. He is satisfied that the data subject(s) would have a reasonable expectation that information they provided to the police, as part of a murder investigation, would not be disclosed to the world-at-large during their lifetime. Such disclosure may cause distress or harm to the data subject(s).
17. The Commissioner acknowledges that, due to the passage of time and the number of data subjects typically appearing in archival collections the time needed to trace these individuals and consult them is prohibitive.
18. Ultimately, whilst he is sympathetic to the legitimate interests of the complainant, he does not believe that these identified interests in disclosure outweigh the interests or fundamental rights and freedoms of the data subjects. Therefore, the information should be withheld under section 40(2).
19. TNA has also explained that 'The releasable material from this file makes up only a small fraction of the total content of the files due to the number of identifiers within the record, such as events, dates, known associates, and employment. Therefore, the redaction of this record would severely limit the understanding of the remaining information within the record.' The Commissioner is mindful that if a large amount of information is redacted, this is going to affect the extent to which the information meets the legitimate interest of the request.
20. The Commissioner is also aware that the withheld information in this case is a physical, historical record which makes redaction more difficult.
21. Looking at the withheld information, the volume of exempt material, the scarcity of releasable material and considering the effect redaction would have on a reader's ability to understand the historical narrative of the record; the Commissioner is satisfied that redaction is not possible in this instance and therefore, section 40(2) applies to the whole file.

² <https://cdn.nationalarchives.gov.uk/documents/information-management/guide-to-archiving-personal-data.pdf>

Procedural matters

22. TNA has accepted that it took an unreasonable amount of time to handle this case. The delay came in TNA's consideration of the public test and therefore the Commissioner finds a breach of section 17(3).

Right of appeal

23. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

24. 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.
25. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF