

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 October 2022

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

Decision (including any steps ordered)

1. The complainant requested information relating to the payment, by a third party, of court fees.
2. The Ministry of Justice (MoJ) neither confirmed nor denied holding the requested information.
3. The Commissioner's decision is that the MoJ was entitled to rely on section 40(5B) (personal information) of FOIA to refuse to confirm or deny whether any information was held.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. At some point prior to 19 July 2022, the complainant wrote to the MoJ and requested information in the following terms:

"I refer to letters from the County Court at Prestatyn Justice Centre dated 9/8/21 & 10/8/21 enclosing Application Notices dated 4/8/21 & 5/8/21 from the Defendant, (name redacted) in connection with the above.

In order to establish whether the said Applications are valid and there has not been any detrimental discrimination in this matter I would be grateful if the Court could confirm:-

1. That the defendant has paid the relevant fees required for such Applications, in the same manner advised to the Claimant, in accordance with the requirements detailed in the Ministry of Justice Form Ex50A dated May 2021.
 2. The amount of the said fees.
 3. The date when they were paid”.
6. The MoJ refused to confirm or deny that it held any information – a position it upheld at internal review.

Reasons for decision

7. The following analysis explains why the Commissioner is satisfied that the MoJ was entitled to neither confirm nor deny holding the information that has been requested.
8. Section 40(5B) of FOIA allows a public authority to refuse to confirm or deny that it holds particular information if the mere act of confirming (or denying) that information is held would, in itself, reveal personal data about an identifiable individual and would contravene one of the data protection principles.
9. The original wording of the request states the name of a third party. The Commissioner therefore considers that the third party would be identifiable.
10. The Commissioner understands that the form Ex50A referred to in the request relates to fees charged in the civil and family courts.
11. If the MoJ was to confirm or deny that it did hold the requested information it would be confirming whether or not the individual named in the request had paid the relevant court fees. The MoJ therefore cannot confirm or deny that it holds information within the scope of the request without disclosing personal data about a third party, in this case the individual named in the request.
12. The Commissioner has next considered whether confirming or denying that the information is held would contravene one of the data protection principles.
13. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed – or as in this case the public authority can only confirm whether or not it holds the requested information - if to do so would be:

- lawful (i.e. it would meet one of the conditions of lawful processing listed in Article 6(1) UK GDPR);
 - fair; and
 - transparent.
14. The Commissioner recognises that individuals have a clear and strong expectation that their personal data will be held in accordance with data protection laws. In this case, he is satisfied that the person concerned would not reasonably expect the MoJ to confirm to the world at large whether or not it held the requested information in response to a FOI request.
15. He has also determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms, and that confirming whether or not the requested information is held would not be lawful.
16. As there is no lawful basis for doing so, confirming or denying would be unlawful and therefore the MoJ is entitled to rely on section 40(5B) of FOIA to neither confirm nor deny that the requested information is held.

Right of appeal

17. 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

18. 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.
19. 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

Laura Tomkinson
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF