

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 March 2023

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

Decision (including any steps ordered)

1. The complainant has requested information from the Ministry of Justice ("the MoJ") regarding expense claims made by, and paid to a specific District Judge. The MoJ withheld the information, citing section 40(2) of FOIA – personal information and section 38(1)(a) and (b) of FOIA – health and safety.
2. The Commissioner's decision is that the MoJ has correctly withheld the requested information under section 40(2) of FOIA.
3. The Commissioner does not require the public authority to take any further steps as a result of this decision notice.

Request and response

4. On 8 February 2022, the complainant wrote to the MoJ and requested information in the following terms:

"Please provide any/all expenses claims made/claimed/paid in relation to [Named Judge] between the following dates:

01/07/2020 and 01//01/2020..."

5. The MoJ responded on 24 February 2022. It stated that it holds the information, however, as it is personal data, it is withheld under section 40(2) of FOIA.
6. Following an internal review the MoJ wrote to the complainant on 13 April 2022. It stated that it upheld its original position; information being withheld due to it being personal data.
7. During the course of the Commissioner's investigation, the MoJ also applied section 38(1)(a) and (b) of FOIA – health and safety, to the withheld information.

Scope of the case

8. The complainant contacted the Commissioner on 5 October 2022 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of this complaint is to determine if the MoJ is correct to withhold the requested information under section 40(2) of FOIA and section 38(1)(a) and (b) of FOIA. The Commissioner will consider firstly the application of section 40(2). Only if this exemption is not found to apply to the withheld information will he go on to consider whether section 38 applies in the alternative.

Reasons for decision

Section 40(2) – personal information

10. This reasoning covers whether the public authority was correct to apply section 40(2) of FOIA to the request¹.
11. Section 40(2) says that information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

12. In this case, the requested information is for expenses claimed by a specific judge, along with receipts in support of expenses claims, or other supporting evidence where a receipt was not provided.
13. The MoJ has explained that the details contained in individual expenditure claims made and reimbursed, relate specifically to a named person and, as such, it considers such expense details to be personal data belonging to the named individual. The Commissioner has viewed the withheld information and is satisfied that it contains the personal information of the specific judge.
14. The MoJ explained further that expense claims are linked to the individual, used to inform decisions affecting them, such as whether to grant the claim and has them as its main focus. The MoJ advised that judges have a clear and strong expectation that their personal data will be held in confidence and not disclosed to the public under FOIA.
15. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
16. The Commissioner considers that the complainant is pursuing a legitimate interest but that disclosure of the information through FOIA is not necessary to satisfy it. This is because the legitimate interest of transparency about how public servants claim expenses has been met already through the safeguards and mechanisms that already exist before any expense claim can be paid. The Commissioner therefore considers that disclosing the requested information would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation. The public authority was therefore correct to apply section 40(2) of FOIA to this request.
17. As the Commissioner considers that all of the information is exempt under section 40(2) of FOIA he has not gone on to consider the application of section 38 of FOIA.

Right of appeal

18. 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

19. 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.
20. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF