

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 July 2023

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

Decision (including any steps ordered)

1. The complainant requested the name of a Court Clerk who had presided over a specified hearing. The Ministry of Justice refused to disclose the name of the now former clerk, citing section 40(2) (personal information) of FOIA.
2. The Commissioner's decision is that the MOJ was entitled to apply section 40(2) to refuse the request.
3. The Commissioner requires no steps as a result of this notice.

Request and response

4. On 22 May 2023, the complainant wrote to the MOJ and requested information in the following terms:

"I wish to start a complaint of corruption against the clerk of the court Re Case [number redacted] on the 28th October 2018.

Please can I have the name of the clerk of the court who was in charge and directing that case..."

5. On 26 May 2023, the MOJ sought clarification from the complainant as there was no record of a hearing on that date. It said it had located a possible hearing which took place on 26 October 2018; the complainant confirmed that this was the hearing he was concerned with.

6. The MOJ provided a "business as usual" ('BAU') response on 2 June 2023. It said that in most cases, the name of a Court Clerk who sat on a particular case can be released to the public. However, it explained that this Clerk no longer works for HMCTS (His Majesty's Courts and Tribunals Service) and, therefore is no longer in a "public facing" role. The MOJ cited section 40(2) of FOIA to withhold the requested name because it said this change in circumstances means that the name cannot be released (see 'Scope' section below for details of the formal FOIA response).
7. The MOJ further explained that a "complaint" could be raised in relation to the outcome of that case without the complainant requiring the name of the Court Clerk.
8. The complainant expressed dissatisfaction with the BAU reply on 5 June 2023, objecting to the MOJ's reliance on section 40(2) of FOIA. He stated that he considered the Court Clerk to be a "corrupt court official who deliberately exceeded his powers and ignored previous Judicial Review decisions concerning hardship and court costs". The complainant also stated his intention to complain about the clerk by complaining to HMCTS' headquarters.
9. On 8 June 2023, the MOJ wrote to the complainant (again as BAU) maintaining its position. It also stated that an appeal could be raised within 21 days of the hearing at which the court order was made, adding that individuals can apply to the particular court for permission to appeal out of time where the 21 days' period has been exceeded.

Scope of the case

10. The complainant contacted the Commissioner on 19 June 2023 to complain about the way his request for information had been handled.
11. The Commissioner contacted the complainant seeking any specific grounds of complaint at the start of his consideration of this complaint. On 3 July 2023, the complainant confirmed that he wished the investigation into his complaint to secure the name of the Court Clerk to continue.
12. On 27 June 2023, the MOJ informed the Commissioner that it now intended to provide a formal response under FOIA. It did so on 4 July 2023, maintaining that section 40(2) of FOIA applied.
13. That same day, the Commissioner contacted the complainant seeking any final FOIA concerns following receipt of the formal FOIA substantive response.

14. The complainant responded on 8 July 2023 confirming he remained dissatisfied with the MOJ's response.
15. The Commissioner has considered whether the MOJ had correctly applied section 40(2) of FOIA in relation to this request.

Reasons for decision

Section 40 – personal information

16. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
17. Section 3(2) of the Data Protection Act 2018 (the 'DPA') defines personal data as:

“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. The Commissioner acknowledges that disclosure of the requested name would render that individual identifiable and, therefore, he is satisfied that the requested information constitutes the 'personal data' of the particular Court Clerk.
20. The Commissioner is also mindful that the Court Clerk concerned was no longer employed by HMCTS (part of the MOJ) at the time of the request and has taken this into consideration.
21. The next step is for the Commissioner to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed on principle (a), which states:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”
22. In the case of an FOIA request, 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.
23. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider:

- whether a legitimate interest is being pursued in the request for information;
 - if so, whether disclosure is necessary to meet the legitimate interest in question; and
 - whether those interests override the rights and freedoms of the data subject. (ie the Court Clerk in this case).
24. The Commissioner is satisfied that a legitimate interest is being pursued in the request for information. The complainant wants to know who the Court Clerk was in the specified case as he wishes to raise a complaint about them. However, the Commissioner is not aware why the complainant is now seeking this information under FOIA, almost five years after the hearing in question took place.
25. The Commissioner has then considered whether disclosure is 'necessary' to meet that legitimate interest. The test is one of reasonable necessity and 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. If less intrusive means are available, disclosure will not be 'necessary', and will be unlawful.
26. Disclosure under FOIA is to the world at large. The Commissioner understands that data subjects have a clear and strong expectation that their personal data will be held in accordance with data protection laws. The Commissioner considers that the data subject in this case would have a reasonable expectation that their identity as a person no longer employed by HMCTS, would not be released to the world at large by means of an FOIA request. The Commissioner considers that it would be an intrusion of privacy that could potentially cause unnecessary and unjustified distress to the data subject.
27. The Commissioner notes that the MOJ has explained that there is a right of appeal to the outcome of the specified court case and, subject to the agreement of that court, to an appeal submitted out of time. The Commissioner has also noted that having the name of the Court Clerk does not prevent the appeal process happening nor from an interested party seeking potential redress to the court's decision.
28. The Commissioner further notes that the complainant can complain to HMCTS about the conduct of the now former Court Clerk. The complainant does not need to have the name of the particular Court Clerk in order to submit any such complaint; provision of the court case reference number and the correct date, together with the defendant's name (which is already available to the complainant) would enable the complaint to be submitted.

29. The Commissioner is, therefore, satisfied, that there are channels through which the complainant could pursue his concerns, which would not necessitate the disclosure of the data subject's identity to the world at large via FOIA.
30. The Commissioner considers that while the complainant has a legitimate interest in the withheld information in this case, its disclosure is not necessary to meet that legitimate interest. The data subject has a strong expectation of privacy relating to the requested information in what was a former role and, as disclosure is not necessary, the data subject's consequent loss of privacy would be disproportionate and unwarranted. The Commissioner has therefore determined that disclosure of the data subject's personal data would be unlawful and in contravention of data protection principle (a), as set out under Article 5(1)(a) of the UK General Data Protection Regulation.
31. As disclosing the data subject's personal data would be unlawful, section 40(2) is engaged. The Commissioner's decision is therefore that the MOJ was entitled to apply section 40(2) of FOIA to withhold the requested information.

Other matters

32. It seems to the Commissioner that the complainant may be seeking information relating to his own court case. If so, unless he has already done so, he could consider making a request under the DPA to request his own personal information. However, it should be noted that he may not be entitled to be provided with any third party personal data.

Right of appeal

33. 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

34. 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.

35. 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

**Carolyn Howes
Senior Case Officer
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Wycliffe House
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