

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 29 March 2010

Public Authority: Ministry of Justice
Address: Data Access and Compliance Unit
6th floor
102 Petty France
London
SW1H 9AJ

Summary

On 27 May 2009 the complainant submitted a Freedom of Information request to the Ministry of Justice (the 'MoJ') regarding the number of cases a named judge had heard during a given time period. The complainant also wanted to know the retirement date of the judge and whether he had been subject to disciplinary proceedings. The MoJ refused the case information under section 12, the retirement date under section 40(2) and the disciplinary information under section 40(5). The Commissioner upheld the exemptions applied by the MoJ with respect to all the elements of the request. The Commissioner does not require the public authority to take any steps in relation to the complainant's request.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 27 May 2009 the complainant requested the following information from the Ministry of Justice (the 'MoJ'):

- (1) *How many cases District Judge [name redacted] has heard throughout his career?*
 - (2) *How many of those cases that District Judge [name redacted] heard involved at least one party being a litigant in person, and in such cases did he rule in favour of such a litigant?*
 - (3) *What year will District Judge [name redacted] retire from the bench?*
 - (4) *Has District Judge [name redacted] been subject to disciplinary action in relation to his position as serving judge and if so what was the nature of the offence?*
3. The MoJ acknowledged this request on 4 June 2009.
4. The MoJ replied on 18 June 2009. Each question was addressed in turn:

Request 1

The MoJ explained that the named judge has sat at three different courts over the past 17 years. The information regarding the number of cases he has heard is not held centrally. To find this information would require an individual to examine all the cases heard at the three courts and this would exceed the cost limit.

It would take 3.5 working days and cost more than £600.

The MoJ refused the request under section 12 of the Freedom of Information Act 2000 (the 'Act').

Request 2

The MoJ explained that the information requested was not held centrally. Information on the number of cases heard is only available from court lists which are destroyed after a year.

Request 3

The MoJ argued that this information is exempt under section 40(2) of the Act as it constitutes third party data. It argued that under section 40(2) and section 40(3)(a)(i) disclosure of data relating to a third party would breach the fair processing principle as there is a legitimate expectation by a third party that this information would remain confidential.

The MoJ provided the complainant with information regarding the compulsory retirement age of judicial office holders.

Request 4

The MoJ considered such information to be exempt under section 40 of

the Act and explained that under section 40(5) of the Act it had no duty to confirm or deny that it held the information sought.

5. On 11 August 2009 the complainant requested a review and stated that this was based on the following request:

How many cases have been held before a male judge with around 17 years experience in that role, serving at Brighton Court for 2006 to date, that judge having also worked at Lewes and Hastings in the role of District Judge, is currently employed at Brighton, involved one party being a litigant in person?

How many of the total number of same such case referred to in (1) went in favour of litigants in person cases covering the same period?

6. On 18 September 2009 in an internal review, the MoJ again refused to provide the requested information. It provided the following arguments:

Requests 1 and 2

The MoJ informed the complainant that the county court computer database system does not have the functionality of allowing for a search for individual cases which have been heard where litigants were unrepresented or for cases where an unrepresented litigant had not been successful.

It cannot also search for a particular judge. A manual search of all Court files, allowing for 3 minutes a file, would exceed the cost limit of 3.5 working days.

The MoJ therefore upheld its original decision that this part of the information requested was exempt under section 12 of the Act.

The MoJ asked the complainant if he wished to reduce the time period covered by his request; however, it did still consider that even so, the cost limit exemption might still apply.

Request 3

The MoJ upheld the application of the exemption provided by section 40(2) as it was clear that disclosing information about the retirement of the District Judge would breach one of the data protection principles. As one of the conditions in the section 40(3) was therefore satisfied, the use of section 40(2) was justified.

Request 4

The MoJ concluded that section 40(5) had been correctly applied with respect to the request regarding disciplinary action.

The Investigation

Scope of the case

7. At internal review the complainant specified that the information he required regarding court cases (request 1 and 2) was limited to the years 2006 to 2009.
8. On 27 October 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the public interest in the disclosure of information which would provide performance data about the judiciary. He believed the judge in question was biased against minority groups and worked for a "sleazy corrupt administration". He was concerned that the public should be protected against "homophobia, racism and other prejudices".

Chronology

9. On 15 December 2009 the Commissioner wrote to the MoJ and requested further clarification regarding its cost estimate with respect to requests 1 and 2.
10. On 15 December 2009 the Commissioner informed the complainant that he would be likely to uphold the MoJ's application of section 40(2) of the Act with respect to request 3. He also provisionally agreed with the application of section 40(5) with respect to request 4. The Commissioner informed the complainant that the MoJ had been asked for further details regarding the section 12 cost exemption with respect to the information required about court cases (request 1 and 2).
11. On 29 December 2009 the complainant wrote to the Commissioner to complain about the above response.
12. On 15 January 2010 the MoJ provided the requested clarification to the Commissioner.
13. On 27 January 2010 the Commissioner wrote to the complainant and explained that he was satisfied that the work involved in answering request 1 and 2 would exceed the guidelines as laid out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
14. On 6 February 2010 the complainant wrote to the Commissioner to express his dissatisfaction with the proposed outcome of this case.

Findings of Fact

15. In its response of 18 June 2009, the MoJ informed the complainant that the Judicial Pension and Retirement Act 1993 ('JUPRA') provides in section 26 that judicial office holders have a compulsory retirement age of 70 years. Section 26 of the JUPRA also contains provision for the appointment to be extended beyond the age of 70 years, on a yearly basis, up to the age of 75 years. The provision of section 26 only applies, however, to those appointed to judicial office for the first time on or after 31/03/1995. Judicial office holders appointed to judicial office on or before 30/03/1995 retain their original retirement date under the terms of the Transitional Provision within Schedule 7 of JUPRA.

Analysis

Substantive Procedural Matters

Section 12

16. Section 12(1) states:

'Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.'

The appropriate limit is currently set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). A public authority may take into account the cost of locating, retrieving and extracting the requested information in performing its calculation. For central government, this cost limit is currently set at £600 and equates to 24 hours of work at £25 per hour.

17. The MoJ argued that providing the information asked for in requests 1 and 2 would exceed the cost limit. The two requests would involve one search of the same paper files. However, the MoJ provided few calculations to support this contention.
18. Subsequently, at the request of the Commissioner, the MoJ provided further calculations to support its view that complying with the request would exceed the cost limits set out in the Regulations.
19. The MoJ confirmed that the information requested regarding court cases is not centrally held. The court lists (which do hold information

regarding cases a particular judge has sat on) are routinely destroyed after a year. The court does not hold the number of cases heard by each judge on a computer system.

20. Likewise, the county court computer database system does not have the functionality of allowing for a search for individual cases which have been heard where litigants were unrepresented or for cases where a litigant in person had been successful. The requested information is not held centrally.
21. The only way to locate the requested information is to search the individual case files which are held in paper form. The judge had not sat at Hastings or Lewes during the requested years. The number of cases and files held at Brighton County Court were as follows:

2006: 6607
2007: 4895
2008: 4638
2009: 4358
22. The total number of files that would need to be searched for the information therefore totalled 20,498. At a conservative estimate of 3 minutes a file, the MoJ estimated that this would take 1025 hours. Even if this took 1 minute a file, the time involved would be 342 hours.
23. It was clear from this detail that it would not be possible to limit the request to one year alone.
24. The MoJ therefore calculated that it could not provide the information with regard to request 1 or 2 within the cost limit. The Commissioner has examined the evidence and is satisfied with the MoJ's calculations. He has therefore concluded that Section 12(1) has been correctly applied to requests 1 and 2. As it is apparent that the cost exemption would also apply to a refined request which might limit the time period to one year, the MoJ is unable to offer advice and assistance as required under section 16(1) of the Act.

Exemptions

Section 40(2)

25. The full text of section 40(2) is available in the Legal Annex at the end of this Notice.
26. The MoJ has argued that request 3 was exempt from disclosure under Section 40(2) of the Act. The MoJ has provided the complainant with information regarding the compulsory retirement age of judicial office

holders but argues that it would not be fair to disclose the specific retirement date of the judge.

27. Section 40(2) of the Act specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles. The first principle of the Data Protection Act 1998 (the 'DPA') states that personal data must be processed fairly and lawfully.
28. 'Personal data' is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller.
29. The retirement date of the named judge is clearly personal data as it relates to an identifiable living individual.
30. In considering whether disclosure of a retirement date would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
 - Whether the requested information is sensitive personal data
 - The consequences of disclosure
 - The data subject's reasonable expectations of what would happen to their personal data
 - The balance between the rights and freedoms of the data subject and the legitimate interests of the public
31. Any consideration of fairness must therefore determine whether the requested information is defined as sensitive under the DPA. Section 2 of the DPA defines sensitive personal data as information which relates to:
 - (a) racial or ethnic origin
 - (b) political opinions
 - (c) religious beliefs
 - (d) trade union membership
 - (e) physical or mental health
 - (f) sexual life
 - (g) criminal offences, sentences, proceedings or allegations.
32. A retirement date would not fall into any of these categories. The Commissioner would therefore not consider it to be sensitive personal data.

33. In this case, it is not clear that the consequences of disclosure would have a detrimental effect upon the individual in question. It is unlikely to cause him harm or to subject him to threats or harassment. It is unlikely to cause distress. However, a retirement date is undoubtedly personal information and there may be valid reasons why an individual would not wish it to be made public.
34. The MoJ have argued that it would not be fair to disclose this information as it would be within the reasonable expectation of the individual that it would remain private and confidential. The Commissioner would argue that an individual's right to privacy is an important consideration in this instance. The Commissioner agrees that the District Judge would have a reasonable expectation that his retirement date would not be released to the public. The nature of the information would suggest that it should remain private and should remain a matter for agreement between employee and employer.
35. It could be argued that the seniority of a District Judge and the fact that his job places him in a public facing role which is financed by public money means that information about his professional life should be released. There is an obligation upon senior public servants to ensure that they are accountable and transparent in the fulfilment of their roles. This was recognised by the Information Tribunal in the case of *The Corporate Officer of the House of Commons v IC and Norman Baker MP (EA/2006/0015 & 0016)* where it was said that there was an greater expectation that information should be disclosed when it "relates to the performance of public duties or the expenditure of public money".
36. However, the Commissioner's guidance on section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life. Although the guidance acknowledges that there are no hard and fast rules its states that:

'Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned.'

This distinction was recognised by the Information Tribunal in the Norman Baker case (*EA/2006/0015 & 0016*).

37. The Commissioner considers that a retirement date can reasonably be described as information about an individual's personal life. It undoubtedly relates to the role of the individual as a public servant; however there is limited public interest in releasing such information. A retirement date does not contribute to the accountability of the judiciary. It does not shed light on how public duties have been performed or how public money is spent.
38. The Commissioner therefore concludes that the individual would have a reasonable expectation that this information would remain private and that it would not be fair to release the retirement date of the judge.
39. As the Commissioner is satisfied that providing the retirement date of the District Judge would contravene the first data protection principle, he has not gone on to consider the other data protection principles.

Section 40(5)(b)(i)

40. The full text of section 40(5) and section 1(1)(a) is available in the Legal Annex at the end of this Notice.
41. With regard to request 4, the Commissioner considers that the judge in this case would also reasonably expect that the details of any disciplinary proceedings would not be made public. Such information constitutes the personal data of the data subject and it is a well-recognised principle of the DPA that information of this nature would not normally be provided to third parties.
42. The Decision Notice for the case FS50145985 came to a conclusion relevant to this case. In this decision, the Commissioner upheld the refusal of the MoJ to disclose details about disciplinary action taken against judges. In reaching this conclusion, the Commissioner was mindful of the fact that the MoJ now publishes broad categories of the reasons why disciplinary action has been taken against members of the judiciary. The Commissioner acknowledged that the release of such statistics is intended to increase the public confidence in the judiciary.
43. In that case, the Commissioner also acknowledged that disclosure of disciplinary information might contribute to increasing the public's confidence in the integrity of the judiciary and thereby reassure the public that where necessary appropriate disciplinary action had been taken. However, he weighed this consideration against the interests of the individuals and considered that release of such information would be an unwarranted intrusion into their private lives. Whilst he is mindful of the fact that the individuals' actions in their private lives has or may have impacted on their professional lives he considered that the procedures in place for investigating judicial complaints as laid out

in the Judicial Complaints Protocol provide the public with some reassurance that complaints against members of the judiciary are properly investigated.

44. In the Decision Notice for the case FS50169734, the Commissioner also concluded that whether or not a complaint has been made against a named individual acting in their professional capacity is information which constitutes the personal data of that individual.
45. It is therefore the judgement of the Commissioner that in this instance, the MoJ is not under any obligation to either confirm or deny whether or not the requested disciplinary information exists. Section 40(5)(b)(i) excludes a public authority from complying with the duty imposed by section 1(1)(a) if complying with that duty would contravene any of the data protection principles. It is the Commissioner's view that it would not be fair to confirm whether or not the MoJ held disciplinary information with respect to this judge. Disclosure would therefore breach the first data protection principle. The District Judge would have a reasonable expectation that information of this nature would not be made public.
46. The Commissioner is satisfied that any response provided with regard to disciplinary information would contravene the fairness element of the first data protection principle. The Commissioner therefore finds that the MoJ was not obliged to respond to the complainant's request in accordance with the duty imposed on it by the provisions of section 1(1)(a) by virtue of the provisions of section 40(5)(b)(i).
47. As the Commissioner is satisfied that complying with section 1(1)(a) would in this case contravene the first data protection principle, he has not gone on to consider the other data protection principles.

The Decision

48. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

49. The Commissioner requires no steps to be taken.

Right of Appeal

50. 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
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 29th day of March 2010

Signed

**David Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Section 12(2) provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

Section 12(3) provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

Section 12(4) provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in

pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Section 12(5) – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

Personal information

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

- (i) any of the data protection principles, or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress) and

- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Section 40(5) provides that –

“The duty to confirm or deny-

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either-

(i) the giving to a member of the public of the confirmation or denial that would have

to be given to comply with section 1(1)(a) would (apart from this Act) contravene

any of the data protection principles or section 10 of the Data Protection Act 1998

or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the

information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”

Section 40(6) provides that –

“In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.”

Section 40(7) provides that –

“In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.”

The Data Protection Act 1998

Schedule 1 – the Data Protection Principles

1. "Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in schedule 3 is also met."