

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 July 2013

Public Authority: The Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested a copy of an incident report regarding the use of force against a particular individual at the Tinsley House Immigration Removal Centre. The Home Office originally withheld the requested information in its entirety on the basis of section 40(2) of FOIA, the personal data exemption. During the course of the Commissioner's investigation the Home Office disclosed a redacted version of the report. The Commissioner is satisfied that the redacted parts of the report are exempt on the basis of section 40(2).

Request and response

2. Having received a response to a previous FOI request regarding complaints made by detainees at the Cedars Family Detention House (the Cedars), the complainant submitted the following request to the Home Office on 28 September 2012:

'Previously earlier with this FOI you have explained that the large number of complaints has given difficulties to sharing the requested information.

You now offer 3 complaints.

Here below is part of the Tinsley House report that included [sic] Cedar Family Detention unit.

Please provide all the information [sic] on the incident using force and the 86 complaints of 2011.

please respond to this request as soon as possible to avoid a complaint to the Information Commissioner

[name of complaint redacted]

<http://www.justice.gov.uk/publications/c...>

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"During our reporting period there was only one reported occasion where the need for use of force was used in the Family Suite.

Type of Complaint 2011 2010 2009

Food 25 2

Missing property 15 20

Medical 9 9

Staff conduct 4 6

Fellow detainees 8 -

Other 25 10

TOTAL 86 47 55"¹

3. The Home Office contacted the complainant on 24 October 2012 and explained that it was considering his request. It explained that it considered some of this information to be exempt from disclosure on the basis of section 31(1)(f) of FOIA and that it needed further time to consider the balance of the public interest test.
4. The Home Office contacted the complainant again on 21 November 2012 and explained that it had completed its consideration of the public interest test. It explained that it was prepared to disclose redacted copies of the 86 complaints made by detainees at Tinsley House, along with the responses to these complaints, but it needed him to provide a postal address to which this information could be sent. In relation to the one incident of force relating to the Tinsley House Family Unit, the Home Office explained that this was being withheld on the basis of section

¹ Despite the suggestion in the request, although the Tinsley House Immigration Removal Centre (Tinsley House) includes a dedicated secure family suite it is in fact a completely different centre to the Cedars Family Detention Centre (the Cedars). Therefore, the annual [report](#) to which this request refers to and quotes from does not actually relate to the Cedars. Rather, the 86 complaints noted on page 25 of the report and the one reported use of force noted on page 21 of the report relate solely to incidents at Tinsley House.

31(1)(f) of FOIA and the public interest favoured maintaining the exemption.

5. The complainant contacted the Home Office on 26 November 2012 and asked it to conduct an internal review of its handling of his request. He specifically argued that a redacted version of the information regarding the use of force that was withheld could be disclosed with individuals' details and the 'secret methods of restraint' removed.
6. The Home Office informed him of the outcome of the internal review on 24 January 2013. The review concluded that the withheld information regarding the use of force was exempt in its entirety in the basis of section 40(2) of FOIA. In relation to the application of section 31(1)(f), the review also found that:

'[the] argument that disclosing methods of restraint used would undermine the maintenance of security and good order in institutions such as The Cedars and Tinsley House, is not a strong one, as similar information has been disclosed in the past. However, as the information about the method of restraint used consisted of a part of one sentence and the whole report is exempt under section 40(2) – personal information – I am satisfied that the decision to withhold the information was correct.'

7. During the course of the Commissioner's investigation, on 9 July 2013, the Home Office provided the complainant with a redacted version of the information relating to the incident in question. It explained that redactions had been made on the basis of section 40(2). The Home Office also confirmed that it was no longer seeking to rely on section 31(1)(f) to withhold any parts of this information.

Scope of the case

8. The complainant originally contacted the Commissioner on 14 February 2013 in order to complain about the Home Office's handling of his request. Following the Home Office's further disclosure of information on 9 July 2013, the Commissioner established with the complainant that although he does not dispute the Home Office's decision to redact the individual's names from the requested information, he considers the level of redaction to be excessive. Therefore, the Commissioner has considered whether the information redacted from the incident report (with the exception of the individual's names) is exempt from disclosure on the basis of section 40(2) of FOIA.

Reasons for decision

9. Section 40(2) of FOIA states that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the Data Protection Act (DPA). The Home Office argued that disclosure of the redacted information would be unfair and thus breach the first data protection principle which states that:

'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.'*

10. Clearly then for section 40(2) to be engaged the information being withheld has to constitute 'personal data' which is defined by the DPA as:

'...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'

11. The Home Office explained that the 'Tinsley House Independent Monitoring Board 2011 Annual Report', which was published on the Ministry of Justice website provided a summary of the incident in question, confirming force was used against a mother holding her child due to her aggressive behaviour. The Home Office confirmed that the unredacted parts of the report in the version that was provided to the complainant was the information that was used to create this summary.
12. The Home Office argued that redacted information, which consisted of further and specific details of the incident to be the personal data and sensitive personal data of the family in question. The Home Office noted that the redacted information contained names of the family, ages and details of their children. It also contained a description of the family's actions and experiences within the Tinsley House facility. The Home Office emphasised that the incident and details are particularly specific,

and it is reasonable to suggest that disclosure could reduce or remove the anonymity of the family in reference to the information contained within the documents.

13. The Commissioner appreciates that the complainant has explained that he does not dispute the decision to redact the names of the individuals concerned. The Commissioner has therefore considered whether disclosure of the report, simply with the individuals' names redacted, would still constitute the disclosure of personal data. In other words, could the redacted information still be used to identify the family in question even without their names being disclosed?
14. Having considered the contents of the redacted information carefully, the Commissioner is satisfied that it could. This is because of the specific and detailed descriptions of the incident in question that are included in the redacted information along with further information that could be used to identify the family in question (e.g. the nationality of the family and ages of children). Whilst it is clear that not all members of the public would be able to identify the family if the redacted information was disclosed, the Commissioner is satisfied that other individuals who were also present at the facility at the same time could use the redacted information to identify the family in question. The Commissioner is therefore satisfied that the redacted information is the personal data of the family in question. (The Commissioner notes that the Home Office did not specify on what basis it believed that the redacted information was also considered to be the family's *sensitive* personal data. Consequently, and in light of his findings in relation to section 40(2), he has not considered this further.)
15. Having found that the withheld information constitutes personal data, the Commissioner must therefore consider whether disclosure of this information would breach the first data protection principle and thus be exempt from disclosure on the basis of section 40(2).
16. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
 - The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights;

- the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
- The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;
 - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
17. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
18. In considering 'legitimate interests' in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.
19. The Home Office argued that there would be no expectation on behalf of the family that their personal information of this nature would be disclosed under FOIA. The Home Office also argued that disclosure of the information would be unfair because of the harm and distress disclosure could cause to the family involved by potentially damaging individuals' reputations or causing distress to family members including the young children in the future. Furthermore, the Home Office explained that it did not believe that there was a strong public interest in disclosing this information. Rather it argued that the public interest had been served by the disclosure of the summary of the events in the Tinsley House Annual Report referenced in the request and in the partial

disclosure of information made during the course of the Commissioner's investigation.

20. The Commissioner agrees with the Home Office that all individuals who are processed by detention centres such as Tinsley House would have a strong and reasonable expectation that details regarding their detention would not be disclosed under FOIA. The Commissioner has no hesitation in finding that such an expectation clearly extends to the disclosure of information about the specific incident such as that described in the requested information. The Commissioner also agrees that given the contents of the redacted information, i.e. a detailed description of the use of force on a member of the family, disclosure of the information would clearly infringe the privacy of the family in question and would be likely to cause them distress.
21. Whilst the Commissioner believes that it could be argued that disclosure of the redacted information would inform the public about how detention centres of this type operate, in his opinion any such interest is significantly outweighed by the legitimate interests of the family in question, particularly when taking into account the details of the incident that have now been disclosed by the Home Office. The Commissioner is therefore satisfied that disclosure of the redacted information would be unfair and thus breach the first data protection principle. The redacted information is therefore exempt from disclosure on the basis of section 40(2) of FOIA.

Right of appeal

22. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

23. 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.
24. 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

Alexander Ganotis
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