

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 October 2013

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

Decision (including any steps ordered)

1. The complainant requested information relating to various court cases. The Ministry of Justice (MoJ) provided some relevant information but said that it did not hold any further information within the scope of the request.
2. The Commissioner's decision is that, if held, the requested information is the requester's own personal data and, therefore, section 40(1) of the FOIA (personal information) applies. He requires no steps to be taken.

Request and response

3. Following earlier correspondence, and with reference to various dates of court hearings in 2008, on 7 October 2012 the complainant requested information of the following description:

"I wish to know firstly which justice sat on the bench at Stevenage Magistrates Court – who then sat with Judge at Luton crown court.

....

Also you have stated that you have no breakdown of costs.

...

Therefore there will be a record electronic/hand written notes / computer notes of the appeal hearing at the Luton crown court.

...

I am entitled to this information under the Freedom of Information Act – it is not going to be disclosed to the public”.

4. The MoJ responded on 9 November 2012. It told the complainant that the hardcopy file that relates to their hearings held in 2008 has been destroyed in line with the MoJ's file retention and destruction policy. It confirmed that it has *“no access to physical records that relate to your case”*.
5. The MoJ also said that, while it had been able to locate the relevant electronic file, trial transcripts for the hearings on the specified dates in 2008 do not exist *“as no recording was made of these hearings”*.
6. With respect to the names the complainant requested, the MoJ provided the complainant with the names of the judiciary it considered relevant.
7. The complainant was advised that they could request a review of the way it had handled their request for information by writing to the MoJ within two months of the date of its letter. It appears that, although there was further correspondence about this matter, the complainant did not request a review until some considerable time later.
8. On 13 April 2013, the complainant wrote to the MoJ saying that their request was not about the transcript of hearings at Stevenage Magistrates Court on specific dates in 2008, nor about a trial held in 2008. The complainant clarified their request as follows:

“Asking for details of my appeal notes or audio recordings of the appeal in June 2009 at the Luton crown court. Asking about how these costs I was ordered to pay came about”.

9. The MoJ was advised by the Commissioner's office that he had received a complaint from the complainant stating that they had not received a response regarding an internal review requested on 16 March 2013, a request that was repeated on 13 April 2013.
10. Following the Commissioner's intervention, the MoJ wrote to the ICO on 10 June 2013. It explained that:

“Over the last six months correspondence from [name redacted] has included numerous FOI requests, a Subject Access Request and a significant volume of general enquiries and telephone calls”

11. With respect to the letter of 16 March 2013, the MoJ told the Commissioner that that letter was not received. With respect to the letter of 13 April 2013, the MoJ told the Commissioner that, *“due to the multitude of ongoing communications”* from the complainant the correspondence was assumed to be general correspondence. It told the Commissioner:

"As such no Internal Review has been carried out for the original FOI request referenced above (letter of 07 October) and indeed it remains unclear whether the attached correspondence relates to that original request or other pieces of correspondence from [the complainant]".

12. The MoJ also confirmed that, in its view, its original response:

"was fully compliant with the FOI Act providing all information held...".

Scope of the case

13. The complainant first contacted the Commissioner in February 2013 to complain about the way their request for information had been handled.
14. During the course of his investigation, the Commissioner has had the opportunity to consider a large amount of correspondence from both parties.
15. The Commissioner has some sympathy with the complainant whose position appears to be confused by the different enforcement regimes set up by Parliament in relation to personal data and other information. The Data Protection Act (DPA) provides the data subject with a private right of access to their personal data. This is different from the FOIA which provides a public right of access to relevant recorded information.
16. The Commissioner considers the scope of his investigation in this case to be to determine whether the MoJ handled the request for information in accordance with the FOIA.

Reasons for decision

Section 40 personal information

17. Section 40(1) of FOIA states that:

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

18. Under section 40(1) information that is requested that constitutes the applicant's 'personal data' is exempt information. This exemption is absolute and requires no public interest test to be conducted. In other words, first party personal data is absolutely exempt from disclosure under the Act by virtue of section 40(1).

19. In addition, in relation to such information public authorities are not obliged to comply with section 1(1)(a) - confirming whether or not the requested information is held - by virtue of section 40(5)(a). In other words, the public authority does not have to confirm or deny that it holds information that is the personal data of the requester: it should deal with the request as a subject access request under the DPA.
20. The DPA defines personal data 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."*
21. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
22. Having considered the wording of the request in this case, the Commissioner is satisfied that the complainant is, or would be, the subject of the requested information. In the Commissioner's view, the requested information, if held, would identify the complainant and be linked to them in respect of their court cases.
23. The Commissioner therefore considers that, as section 40(1) would apply in this case, the MoJ was not required to comply with section 1(1)(a) because section 40(5)(a) would apply.

Other matters

24. In the Commissioner's view, a decision such as the one reached in this case will not disadvantage a complainant. He considers that an applicant wishing to access their own personal data is able to pursue this right under the DPA. Furthermore, he considers that it is appropriate that any decision as to whether or not a data subject is entitled to be told whether personal data about them is being processed should be made in accordance with the scheme of that Act.
25. In this case, however, from the evidence he has seen, the Commissioner is satisfied that the MoJ has already responded to a subject access request from the complainant under the DPA legislation.

Right of appeal

26. 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

27. 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.
28. 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

Jon Manners
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