

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 April 2014

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

Decision (including any steps ordered)

1. The complainant has requested information about the prison sentences of five named individuals.
2. The Commissioner's decision is that the information in question is sensitive personal data and the Ministry of Justice has applied section 40(2)(personal information) appropriately.
3. The Commissioner does not require the Ministry of Justice to take any further steps.

Request and response

4. On 21 August 2013 , the complainant wrote to the Ministry of Justice (MoJ) and requested information in the following terms:
"How many years did each of the following people convicted of murder serve? [five named people]".
5. The MoJ responded on 6 September 2013. It confirmed that it held the requested information but was withholding it under section 40(2).
6. Following an internal review the MoJ wrote to the complainant on 7 October 2013. It upheld its decision to withhold the requested information under section 40(2).

Scope of the case

7. The complainant contacted the Commissioner on 14 October 2013 to complain about the way his request for information had been handled.
8. The Commissioner will consider whether the MoJ has applied section 40(2) appropriately.

Reasons for decision

9. Section 40(2) of FOIA provides an exemption from the disclosure of personal data where the information is the personal information of a third party and its disclosure would breach one of the data protection principles of the Data Protection Act (DPA).

Is the information personal data?

10. The Commissioner must first determine whether the requested information constitutes personal data, as defined by the DPA.
11. Personal data is defined in section 1(1) of 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 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."
12. The two main elements of personal data are that the information must 'relate' to a living individual and that the individual must be identifiable. Information will relate to an individual if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
13. The names of the parties concerned clearly identify them and are therefore their personal data.

Is any of the information sensitive personal data?

14. Section 2 of the DPA defines sensitive personal data as personal data that consists of information about the following:

- an individual's mental or physical health,
- their political opinions,
- their sex life,
- their racial or ethnic origin, their religious beliefs,
- whether they are a member of a trade union,
- the commission or alleged commission of an offence by them, or any proceedings for any offence they have committed or are alleged to have committed.

15. The Commissioner considers that the requested information falls into the last category and therefore represents the sensitive personal data of multiple individuals.

Would disclosure contravene a data protection principle?

16. Having accepted that the requested information constitutes the sensitive personal data of living individuals other than the applicant, the Commissioner must go on to consider whether disclosure would breach one of the data protection principles.

17. The MoJ explained that it considers that disclosure would breach the first data protection principle. This principle deals with the privacy rights of individuals and the balance between those rights and other legitimate interests in processing personal data. It 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."

18. In the case of an FOI request, the 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 fair, lawful and meet one of the DPA Schedule 2 conditions (and in this case, Schedule 3 conditions). If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

Would it be fair to disclose the requested information?

19. When considering the fairness element of the first data protection principle, the Commissioner takes into account a number of factors depending on the circumstances of each case. In this case, he considered:

- the reasonable expectations of the data subjects and the nature of the information;
- the consequences of disclosure; and
- any legitimate interests in the public having access to the information.

Reasonable expectations of the data subjects

20. The MoJ explained to the Commissioner that there was no record of any of the five individuals providing consent for disclosure. The MoJ argued that the information in question is private information and that it would be reasonable for the five individuals to expect the information not to be disclosed.

21. The Commissioner acknowledges that there will be circumstances where for example, due to the nature of the information and/or the consequences of it being disclosed, an individual will have a strong expectation that the information will not be disclosed.

22. In this case, the information in question is sensitive personal data, therefore the Commissioner considers that there will be an even greater expectation that the information would not be disclosed.

Consequence of disclosure

23. When considering the consequences of disclosure in this case, the Commissioner has taken into account the nature of the withheld information. He has also considered the fact that disclosure under FOIA is to the world at large and not just to the complainant.

24. The MoJ explained that disclosure of the information could, for example, prejudice any rehabilitation.

25. Given the nature of the information (ie that it is sensitive personal data), and the reasonable expectations of the individuals concerned, the Commissioner is satisfied that disclosure of the withheld information could cause unnecessary and unjustified distress to the individuals.

Balancing the rights and freedoms of the data subjects with legitimate interests

26. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the information if there is an overriding legitimate interest in disclosure to the public.
27. The Commissioner accepts that there is a wider public interest in transparency when it comes to the sentencing of people found guilty of murder. However, in this case, the individuals in question have already been dealt with by the courts.
28. In the circumstances of this case, the Commissioner does not consider that the legitimate interest in the public accessing the withheld sensitive personal information would outweigh the potential damage and distress which could be caused to the data subjects by disclosure of the information.
29. Therefore, the Commissioner does not consider that disclosure of the withheld information is necessary to meet a legitimate public rather than personal, interest.
30. In view of the above, the Commissioner is satisfied that the withheld information is sensitive personal data and that disclosure of any of it would breach the first data protection principle, as it would be unfair to the individuals concerned.
31. As the Commissioner has determined that it would be unfair to disclose the requested sensitive personal information, it is not necessary to go on to consider whether disclosure is lawful or whether one of the conditions in Schedule 2 and Schedule 3 of the DPA, are met. As section 40(2) is an absolute exemption, there is no need to consider the public interest in disclosure.

Right of appeal

32. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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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