

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 May 2014

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

#### Decision (including any steps ordered)

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1. The complainant has requested information about his own case.
2. The Commissioner's decision is that the complainant has requested his own personal data and that the public authority should have neither confirmed nor denied holding any information by virtue of section 40(5)(a) of the FOIA.
3. The Commissioner does not require the Ministry of Justice to take any steps.

#### Request and response

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4. On 28 June 2013, the complainant wrote to the Ministry of Justice (the MoJ) and requested information in the following terms:

*"1. Copies of the notes made during my visits to the court since 12.04.2013.*

*2. Copies of any documents, letters, email notes of phone calls etc- received from the both the Tribunals, and related to my case.*

*3. Copies of the correspondence of [name removed]- letters, emails, notes etc with the Upper and First Tier – tier Tribunal: and with the Information Commissioner related to my case.*

*4. Copies of HH Judge Goss QC's notes related to the preparation of his judgment; and also any letters, emails, notes etc. related to my case.*

*5. Copies of any extraneous papers from other sources used or considered in the preparation of the decision of my case."*

5. The MoJ responded on 12 December 2013. It confirmed that it held some of the requested information but was withholding it under section 32(1) (court records) of the FOIA. The MoJ also explained that the information in question constituted the applicant's own personal information and that it was therefore not obliged to consider his request by virtue of section 40(1) of FOIA. It went on to explain to the complainant how he could request his own personal data under the subject access provisions of the Data Protection Act 1998 (the DPA).
6. The MoJ sent the outcome of its internal review on 17 January 2014, upholding its original decision.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 4 December 2013 to complain about the way his request for information had been handled, including the application of sections 40(1) and 32(1) and the length of time taken to deal with his request.
8. The Commissioner will consider these below.

### **Reasons for decision**

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#### **Section 10**

9. Section 10(1) of the FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1)(a) initially requires a public authority in receipt of a request to confirm whether it holds the requested information.
10. In this case, the request was submitted on 28 June 2013 and the MoJ did not respond until 12 December 2013. The Commissioner therefore finds that the MoJ has breached section 10(1) by failing to comply with section 1(1)(a) within the statutory time period.

#### **Section 40 – personal information**

11. Section 40(1) of the FOIA 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".*

12. Section 40(5) of the FOIA 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)".*

13. According to the Commissioners' guidance<sup>1</sup>: *"If someone requests their own personal data, there is an exemption from the duty to confirm or deny under FOIA, but the public authority should deal with the request as a subject access request under the Data Protection Act (DPA)."*
14. The Commissioner notes the wording of the complainant's request which includes the phrases: *"notes made during my visits to court"*, *"related to my case"* and *"preparation of the decision of my case"*. He takes this as the complainant's acknowledgement that the request, although being requested under the FOIA, is clearly made in relation to him and his own personal case; therefore, any data which may be held by the MoJ, will be held in connection to that case.
15. The Commissioner is of the opinion that any information requested, if held, would be the personal data of the complainant, as it relates specifically to his own case. All information would accordingly be exempt from disclosure under section 40(1) and therefore, under section 40(5)(a), the MoJ is not required to confirm or deny whether it holds the requested information.
16. As the Commissioner considers that the MoJ should have applied section 40(5) he will not go on to consider the application of section 32(1).

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[http://ico.org.uk/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/Neither\\_confirm\\_nor\\_deny\\_in\\_relation\\_to\\_personal\\_data\\_and\\_regulation\\_foi\\_eir.pdf](http://ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/Neither_confirm_nor_deny_in_relation_to_personal_data_and_regulation_foi_eir.pdf)

## Right of appeal

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17. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

18. 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.
19. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**