

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2015

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

Decision (including any steps ordered)

1. The complainant requested information about legal aid costs relating to a number of cases involving named individuals. The Ministry of Justice (MoJ) neither confirmed nor denied holding the requested information citing section 40(5) (personal information) of the FOIA.
2. The Commissioner's decision is that MoJ was entitled to rely on section 40(5)(b)(i). He requires no steps to be taken.

Request and response

3. On 17 October 2014, the complainant wrote to the Legal Aid Agency (LAA), an executive agency of the MoJ, and requested information regarding the legal aid costs relating to a number of named individuals. Full details of the five requests can be found in the Appendix to this decision notice. The requests can be summarised as follows:

"Request 1

[redacted] : information regarding the Legal Aid costs concerning the prosecution of R. v. [redacted], in case no. [redacted] heard at the Newcastle Magistrates' Court and ensuing in the Carlisle Crown Court and Newcastle Crown Court before His Honour Judge Hughes at Carlisle Crown court and Recorder Prosser at Newcastle Crown Court in 2010.

Request 2

[redacted]: information regarding the Legal Aid costs concerning the prosecution of R. v.[redacted], heard at the Newcastle and

Middlesborough Crown Court in 2014.

Request 3

[redacted]: information regarding the Legal Aid costs concerning the prosecution of R. v. [redacted], heard at the Stafford Crown Court in 2006.

Request 4

[redacted]: information regarding the Legal Aid costs concerning the prosecution of [redacted] heard at the Hastings Magistrates' Court in 2006.

Request 5

[redacted]: regarding the Legal Aid costs concerning the appeal in DPP v. [redacted] against his conviction for allegedly assaulting a court officer in the execution of his duty under section 53 of the Courts Act 2003, heard at St. Albans Crown Court in 2014".

4. MoJ responded on 14 November 2014. It refused to confirm or deny that it held the requested information relating to requests 1-5 above. It cited section 40(5) of FOIA (personal information).
5. The complainant requested an internal review on 15 November 2014. With respect to request 3, he told MoJ that the individual named in the request died in 2009. He asked MoJ to let him know if a death certificate was required in relation to the request for information about that individual.
6. MoJ sent the complainant the outcome of its internal review on 12 December 2014. It upheld its original position. It also advised the complainant what to do if he wished to make a request for information in relation to individuals who have died.

Scope of the case

7. The complainant contacted the Commissioner on 28 December 2014 to complain about the way his request for information had been handled. He told the Commissioner:

"I cannot see that individual "personal data" would be engaged or infringed by the publication of the amounts spent in legal aid in relation to each particular case, as it appears to be data relating to the financial expenditure expended from public funds on public cases that have taken place in public and open courts".

8. As well as disputing that section 40(5) applies to any of the requested information, he explained that, as the DPA only applies to living individuals, the section 40 exemption does not apply in the case of request 3. He explained why he considers that that individual is deceased and told the Commissioner that he "*didn't think it was necessary to go to the expense of providing a death certificate*".
9. During the course of the Commissioner's investigation, the complainant confirmed that he was no longer pursuing the information requested in Request 4.
10. With respect to the individual named in request 3, the MoJ confirmed that, in the absence of the complainant providing evidence to the contrary, its position remains that the DPA applies and section 40 is engaged.
11. The following analysis covers MoJ's application of section 40(5) of the FOIA to the information requested in requests 1, 2, 3 and 5.

Reasons for decision

Section 40(5) neither confirm nor deny in relation to personal information

12. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
 - (a) the duty to inform the applicant whether or not requested information is held and, if so,
 - (b) the duty to communicate that information to the applicant.
13. Generally, the provisions in section 40 subsections 1 to 4 FOIA exempt personal data from disclosure. Section 40(5) of FOIA states that the duty to confirm or deny whether information is held does not arise if providing the public with that confirmation or denial would contravene any of the data protection principles set out in the DPA.
14. In this case, MoJ considers section 40(5)(b)(i) applies.
15. MoJ argued that confirming whether or not it held the requested information would breach the data protection rights of the individuals named in the request as it would reveal under FOIA whether they had been recipients of legal aid. Such an argument is relevant to the exemption contained at section 40(5)(b)(i).

16. In relation to a request which constitutes the personal data of individual(s) other than the applicant (i.e. the person making the request), section 40(5)(b)(i) excludes a public authority from complying with the duty imposed by section 1(1)(a) FOIA if compliance would contravene any of the data protection principles or section 10 of the Data Protection Act 1998 (DPA) or would do so if the exemptions in section 33A(1) of the DPA were disregarded.
17. Consideration of section 40(5) involves two steps: first, whether providing the confirmation or denial would involve the disclosure of personal data, and secondly, whether disclosure of that personal data would be in breach of any of the data protection principles.

Is the information personal data?

18. On the issue of whether confirmation or denial in response to the complainant's request would involve the disclosure of personal data, the definition of personal data is given in section 1(1) of the DPA:

"personal data' means data which relate to a living individual who can be identified:

(a) from those data, or

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

19. MoJ told the complainant:

"I am satisfied that the information that you have requested would constitute personal data, because information relating to whether or not an individual is in receipt of legal aid can be classed as personal data, as it implies something about that person's financial circumstances".

20. It also told him that confirming whether or not it held the requested information:

".. would be actively placing personal data about these individuals into the public domain".

21. The complainant told the Commissioner:

"I don't agree that the section 40 of the Data Protection Act 1998 is applicable, as I believe that the amounts of costs that were expended on each individual case can be supplied without giving "personal data" in respect of each case".

22. The Commissioner considers that the way in which the request is worded clearly indicates that the complainant is seeking information which can be linked with the named individuals.
23. The Commissioner has previously considered the issue of whether legal aid constitutes personal information. His decision in case reference FS50076855¹ was that whether or not an individual is in receipt of legal aid implies something about that person's financial position and is therefore personal data.
24. The Commissioner considers that to comply with section 1(1)(a) of the FOIA (ie to either confirm or deny holding the information) would inevitably put into the public domain information about the existence or otherwise of information about each of those individuals, which in turn would constitute disclosure of information that would relate to those individuals.
25. Therefore, the Commissioner considers that to confirm or deny whether the requested information is held would in itself constitute a disclosure of personal data.

Would confirmation or denial breach one of the data protection principles?

26. MoJ told the complainant that the LAA would be in breach of the first data protection principle if it were to confirm the status of the named individuals in regard to the information he had requested.
27. In this case, MoJ told the Commissioner:

"For the LAA to confirm whether it holds data in scope of the request, would outline that some, none or all of the individuals qualified for legal aid. Even if the LAA then went on to exempt that information, it would still have breached the data rights of the individuals involved by placing information about their financial circumstances (in the fact they did or didn't have sufficient financial means to qualify for legal aid) in the public domain".
28. When considering the first principle the Commissioner will generally look to balance the reasonable expectation of the data subject(s) with the

¹ https://ico.org.uk/media/action-weve-taken/decision-notice/2006/383306/DECISION_NOTICE_FS50076855.pdf

consequences of compliance with the request, and general principles of accountability and transparency.

29. The first data protection principle requires that personal data is processed fairly and lawfully and that one of the conditions in schedule 2 of the DPA is met in order to disclose personal data.
30. The complainant said that details of legal aid expenditure have been provided on other occasions in relation to FOIA requests. He provided MoJ with recent examples, including the cases of Michael Adebolajo, the Lee Rigby case, Terence Shepherd and David Bieber.
31. MoJ acknowledge that, in some cases, the disclosure of the amount of legal aid paid to individuals – and by extension confirmation that they received legal aid – is fair and lawful.
32. In that respect, MoJ told the Commissioner that each case is considered on a case-by-case basis and the fact that legal aid figures have been disclosed on other occasions does not set a precedent for disclosure.
33. During the course of his investigation, MoJ provided the Commissioner with an explanation of the factors it takes into account when determining whether to confirm or deny in a case such as this. The Commissioner recognises that these assessment criteria are in accord with his guidance on section 40².
34. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
 - the individual's reasonable expectations of what would happen to their information;
 - the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

² <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

Reasonable expectations

35. MoJ stated that there is no expectation on the part of the LAA's funded clients that such information, if held, will be disclosed. It also considers that the named individuals do not hold an official position or post that would lead them to expect greater levels of transparency.
36. On this occasion, the Commissioner is satisfied that the data subjects would reasonably expect their personal data, if held, would not be disclosed.

Consequences of disclosure

37. MoJ told the Commissioner that disclosure would cause some damage or distress to the data subjects. Although it did not provide evidence in support of this view, nevertheless, the Commissioner acknowledges that there is the potential for confirmation or denial in this case to cause damage or distress to the individuals concerned. This is because, when information is disclosed under the FOIA, it is effectively disclosed to the world at large, not only to the requester.

General principles of accountability, transparency and legitimate public interest in disclosure

38. MoJ recognise that legal aid costs are ultimately funded by the tax payer and, as such, there is a public interest in knowing how taxpayer money is spent. In that respect, MoJ told the Commissioner that the LAA publishes a range of official statistics which serve to meet the public interest in openness and transparency in the operation and expenditure of the legal aid system.

Conclusion

39. The Commissioner appreciates that there is a general public interest in accountability and transparency, and that the public is entitled to be informed about the legal aid costs relating to prosecutions.
40. On the other hand the Commissioner recognises that this legitimate interest must be weighed against any unwarranted prejudice to the rights and freedoms or legitimate interests of any individual who would be affected by confirming or denying that the requested information is held.
41. In considering whether the exemption contained within section 40(5)(b)(i) was correctly applied, the Commissioner has taken into account that disclosure under the FOIA should be considered in its widest sense – which is to the public at large. A confirmation or denial in

the circumstances of this case would reveal to the public information which is not already in the public domain.

42. With due regard to the reasonable expectations of the data subjects, and the potential impact on them if the existence of their personal data were to be confirmed or denied, the Commissioner considers that it would be unfair to do so. While he accepts that there is a limited legitimate interest in the disclosure of this information, he does not consider that this outweighs these other factors.
43. The Commissioner has concluded that confirmation or denial as to whether the requested personal data is held would be in breach of the first data protection principle. He therefore considers that the exemption provided by section 40(5)(b)(i) is engaged and MoJ was not obliged to confirm or deny whether it held the information requested by the complainant.

Right of appeal

44. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

45. 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.
46. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Appendix

The requests for information dated 17 October 2014:

Request 1:

"R v [redacted] CASE NO [redacted] – NEWCASTLE CROWN COURT AND CARLISLE CROWN COURT 2010 – APPLICATION UNDER THE FREEDOM OF INFORMATION ACT 2000

I wish to know the following information regarding the Legal Aid costs concerning the prosecution of R. v. [redacted], in case no. [redacted] heard at the Newcastle Magistrates' Court and ensuing in the Carlisle Crown Court and Newcastle Crown Court before His Honour Judge Hughes at Carlisle Crown court and Recorder Prosser at Newcastle Crown Court in 2010.

1. What was the total costs of the Legal Aid in the Newcastle Magistrates Court for the Defendant?
2. What was the total costs of the Legal Aid in the Carlisle and Newcastle Crown Courts for the Defendant?
3. What was the total costs of counsel's Legal Aid fees for the Defendant in the Newcastle Magistrates Court?
4. What was the total costs of counsel's Legal Aid fees for the Defendant in the Carlisle and Newcastle Crown Courts?"

Request 2:

"R v [redacted] – NEWCASTLE AND MIDDLESBOROUGH CROWN COURT 2014 – APPLICATION UNDER THE FREEDOM OF INFORMATION ACT 2000

I wish to know the following information regarding the Legal Aid costs concerning the prosecution of R. v. [redacted], in heard at the Newcastle and Middlesborough Crown Court in 2014.

1. What was the total costs of the Legal Aid in the Newcastle Magistrates Court for the Defendant?
2. What was the total costs of the Legal Aid in the Newcastle Crown Court for the Defendant?
3. What was the total costs of the Legal Aid in the Middlesborough Crown Court for the Defendant?
4. What was the total costs of counsel's Legal Aid fees for the Defendant in the Newcastle Magistrates Court?

5. What was the total costs of counsel's Legal Aid fees for the Defendant in the Newcastle Crown Court?
6. What was the total costs of counsel's Legal Aid fees for the Defendant in the Middlesbrough Crown Court?"

Request 3:

"R v [redacted] – STAFFORD CROWN COURT 2006 – APPLICATION UNDER THE FREEDOM OF INFORMATION ACT 2000

I wish to know the following information regarding the Legal Aid costs concerning the prosecution of R. v. [redacted], in heard at the Stafford Crown Court in 2006.

1. What was the total costs of the Legal Aid in the Magistrates Court for the Defendant?
2. What was the total costs of the Legal Aid in the Stafford Crown Court for the Defendant?
3. What was the total costs of counsel's Legal Aid fees for the Defendant in the Stafford Crown Court?"

Request 4:

"R v [redacted] – HASTINGS MAGISTRATES COURT 2006-2007 – APPLICATION UNDER THE FREEDOM OF INFORMATION ACT 2000

I wish to know the following information regarding the Legal Aid costs concerning the prosecution of [redacted] heard at the Hastings Magistrates' Court in 2006.

1. What was the total costs of the Legal Aid in the Hastings Magistrates Court for the Defendant?
2. What was the total costs of counsel's Legal Aid fees for the Defendant in the Hastings Magistrates' Court?"

Request 5:

"DPP v [redacted] – ST ALBANS CROWN COURT 2014 – APPLICATION UNDER THE FREEDOM OF INFORMATION ACT 2000

I wish to know the following information regarding the Legal Aid costs concerning the appeal in DPP v. [redacted] against his conviction for allegedly assaulting a court officer in the execution of his duty under section 53 of the Courts Act 2003, heard at St. Albans Crown Court in 2014".