

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 March 2019

Public Authority: Northern Ireland Courts & Tribunals Service

Address: informationaccessnicts@courtsni.gov.uk

Decision (including any steps ordered)

1. The complainant has requested information from the Northern Ireland Courts and Tribunals Service ('NICTS') in relation to the daily lists for the Northern Ireland Court of Judicature. The NICTS refused to disclose that information, citing section 40(2) of the FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the NICTS has correctly applied section 40 (2) of the FOIA to the majority of the requested information. Some of the requested information consists of names of companies rather than individuals, and therefore section 40(2) would not be applicable to that information except in the case where the companies are sole traders.
3. The Commissioner requires the NICTS to reconsider and disclose to the complainant that part of the requested information which consists of names of companies which are not sole traders.
4. The NICTS must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant on 27 March 2017 made the following request for information to the NICTS:-

"Under a Freedom of Information request, I should be grateful if you would provide me with the following information:

"The Daily Court of Judicature list for Northern Ireland for the period 27/03/2007 to 27/03/2017.

I should be grateful if this could be provided in electronic format, preferably XML format or CSV file or Excel. If none of these formats are available then any other electronic format will suffice."

6. The NICTS responded to the complainant's request on 14 April 2017. It stated that it held the requested information, however it refused to disclose that information, citing section 40 (2) of the FOIA as a basis for non-disclosure.
7. On 11 May 2017 the complainant sought to refine his request, stating that he now only wanted the Insolvency matters for the specified period of time, as separated out from the daily lists. This was treated as a request for internal review, and the complainant was notified of this on 22 May 2017.
8. The result of the internal review was provided to the complainant on 30 June 2017. The reviewer upheld the original decision.

Scope of the case

9. The complainant contacted the Commissioner on 29 September 2017 to complain about the way his request for information had been handled.
10. The Commissioner wrote to the NICTS seeking its detailed submissions on 14 June 2018. The NICTS responded to the Commissioner on 6 July 2018, providing its submissions as to its application of the above exemption.
11. The Commissioner has considered the NICTS' handling of the complainant's request.

Reasons for decision

Section 40(2) of FOIA – personal information of third parties

12. Section 40(2) of FOIA states that information is exempt from disclosure if it constitutes personal data and either the first or the second condition in section 40(3) is satisfied. The first condition in section 40(3) states that the disclosure of personal data would (i) contravene any of the data protection principles, or (ii) section 10 of the Data Protection Act 1998 ("DPA"). Whilst the DPA has since been superseded by the Data Protection Act 2018 together with the General Data Protection Regulation ('GDPR') the Commissioner is referring to the previous legislation as that was in force at the time of the complainant's request. In this case the NICTS has explained that it considers that disclosing the withheld information to the complainant would be unfair and would breach the first data protection principle. Therefore, this satisfies the first condition in section 40(3) of FOIA.
13. 'Personal data' is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into possession of the data controller.
14. The Commissioner considers that some of the requested information withheld under section 40(2) is personal data, as it consists of information relating to individuals who were listed to appear in court on certain dates, who are living individuals and could be identified from the information. The remaining requested information is not personal data as it consists of names of companies, who cannot be considered to be living individuals except in the case of sole traders, who can be considered thus as the name of the company would be the same as the name of the individual.

Would disclosure of the withheld information be unfair?

15. The Commissioner has considered whether the disclosure of this information would be fair. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:

- the individuals' 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.

Reasonable expectations of the data subject

16. The NICTS explained that, in relation to the requested information the individuals would have no expectation that this information would be published as a permanently available source. It is important to note that the information requested is not a list of case results but merely a list of proceedings generated for the purpose of signposting the public on the day of the hearing and for use by the Judge and Court Clerk to facilitate the smooth running of the court. The Insolvency court list is included within the Court of Judicature daily law list which is published online and in the Great Hall and copies are also distributed to Court security personnel so they can help and give directions to court users. Copies of the Insolvency lists only are posted outside the actual courtroom where the proceedings are being heard.

Would disclosure cause damage and distress to the data subjects?

17. The NICTS has informed the Commissioner that, as the information was contained in court lists dating back over 10 years, it did not consider it appropriate to seek the consent of the data subjects, so the Commissioner has no first-hand indication of whether damage or distress would be caused to the data subjects by disclosure of their personal information.

18. As the NICTS pointed out, insolvency/bankruptcy of an individual is not a good news story. It is personal information about the state of an individual's financial affairs/debt and although certain parties are informed in the course of the process e.g. creditors, banks, utility service providers, an individual is more likely to be concerned about keeping the fact that they are appearing/have appeared in a bankruptcy/insolvency hearing secret. Also, appearance on a court list does not necessarily indicate bankruptcy or insolvency –arrangements with creditors can be made, debts can be paid off, assets sold etc, so disclosure of the information could present an inaccurate picture of the individuals' financial status.
19. Having viewed a cross sample of the withheld information, the Commissioner considers that, due to the reasonable expectations of the data subjects in this situation, disclosure of the withheld information and the likelihood of identification of individuals from this would constitute an intrusion into their privacy, which would be likely to cause them some degree of distress, given the nature of the information. The Commissioner has gone on to consider whether this intrusion would be unwarranted, or whether there is any legitimate interest in disclosure of the data subjects' personal information.
20. The complainant has raised the fact that, under Rule 5 of Order 66 of the Rules of the Court of Judicature, the following applies:-

(1) Any person shall, on payment of the prescribed fee, be entitled during office hours to search for, inspect and take a copy of any of the following documents filed in the Central Office, the Chancery Office or the Bankruptcy and Companies Office namely- (a) the copy of any writ of summons or other originating process. (b) any judgement or order given or made in court or the copy of any such judgment or order, and (c) with the leave of the Court, which may be granted on an application made ex parte, any other document.
21. According to the complainant, this means that the information contained in the lists should be accessible to the public upon payment of the prescribed fee. However, the NICTS has explained that Rule 5 Order 66 describes the documents to which the Order refers and 'the Daily Court of Judicature list' is not among them because 'it is **not** a document **filed** in the Central Office, the Chancery Office, or the Bankruptcy and Companies Office.' In order to conduct searches, the names of the individuals/companies would need to be known, so the information on the Insolvency Court Lists would not all be available through the search process under Rule 5 of Order 66.

Balancing the rights and freedoms of the individuals with the legitimate interests in disclosure

22. In cases where complying with an information request would involve disclosing personal data, the Commissioner will always be mindful of the importance of protecting the privacy of individuals. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a compelling interest in disclosure which would make it fair to do so.
23. The Commissioner has considered whether there is any wider legitimate interest in the disclosure of the information in question. Clearly disclosure is of great legitimate interest to the complainant, however the Commissioner cannot see any wider legitimate interest which would outweigh the rights and freedoms of the individuals.
24. The Commissioner, having considered all aspects of the complainant's request and the NICTS' response, concludes that it would be unfair to disclose the withheld information and that no legitimate interest exists in favour of disclosure which would outweigh the rights and freedoms of the data subjects involved.

The remaining requested information

25. The NICTS has informed the Commissioner that part of the requested information consists of names of companies rather than individuals. The Commissioner considers that this would not fall under the exemption at section 40(2) as this only relates to living individuals. Therefore, section 40(2) of the FOIA is not engaged in relation to the part of the requested information which relates to companies (other than sole traders).

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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

Deirdre Collins

Senior Case Officer

Information Commissioner's Office

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