

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 26 October 2022

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

#### **Decision (including any steps ordered)**

---

1. The complainant requested information relating to meetings that he believed to have taken place.
2. The Ministry of Justice (MoJ) provided some information but withheld the remainder, citing section 40(2) (personal information) of FOIA.
3. The Commissioner's decision is that the MoJ was entitled to withhold the information by virtue of section 40(2).
4. The Commissioner requires no steps to be taken as a result of this decision.

#### **Request and response**

---

5. Following an earlier request for information, about information relating to specified meetings, on 6 December 2021 the complainant wrote to the MoJ and requested information in the following terms:  
  
    "... the information that you based your email and letter below on when you state:  
  
    To clarify, there is no record of meetings within the scope of your request, having taken place on the dates provided. Consequently, no recordings, minutes or notes are held".
6. The MoJ responded on 6 January 2022. It confirmed it holds information within the scope of the request and provided it to the complainant. It

told him that some information had been withheld, citing section 40(2) (personal information) of FOIA.

7. The complainant expressed dissatisfaction with that response on 10 January 2022. In his correspondence to the MoJ, he made reference to, and expanded on, his original request for information:

“I would ask again that all notes, actions plans, minutes produced at those meetings and any emails sent to PCS [Public and Commercial Service union] be provided”.

8. Following an internal review, the MoJ wrote to the complainant on 9 February 2022 addressing the various points he raised in his correspondence, including with respect to its application of section 40(2) to the emails it had disclosed to him.

### **Scope of the case**

---

9. Following earlier correspondence, on 25 August 2022 the complainant provided the Commissioner with the necessary documentation to support his complaint about the way his request for information dated 6 December 2021 had been handled.
10. It is accepted that that request was made following the MoJ's response to an earlier request for information. That request, dated 9 November 2021, was for information relating to the recordings of two Teams meetings, on specified dates, the minutes of the meetings and any notes and action plans that those attending may have made.
11. With respect to the request that is the subject of this decision notice, the complainant disputes the MoJ's application of section 40(2) to the personal data of individuals within the emails it disclosed to him.
12. While he recognises that the complainant has concerns about whether some of the MoJ's internal policies were followed correctly, the Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part I of FOIA.
13. Accordingly, the analysis below considers the MoJ's application of section 40(2) to the withheld information.

### **Reasons for decision**

---

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

14. Under section 40(2) of FOIA, information is exempt information if it is the personal data of another individual and disclosure would contravene a data protection principle.
15. In this case, when providing the complainant with information in support of its view regarding the existence, or otherwise, of recordings, minutes or notes from specified meetings, the MoJ withheld personal data under the relevant data protection exemption.
16. The information in question comprises the names and contact details of individuals. The MoJ argued that disclosing the personal data of those individuals, and specifically their names in the context of internal communications in relation to a particular matter, would make that information available to the world at large.
17. The Commissioner considers that, in context, those individuals can be identified from the information and it can therefore be categorised as their personal data under section 40(2).
18. The Commissioner has issued guidance<sup>1</sup> on requests for information that constitutes personal data about employees. In that guidance he states that if disclosure of the information contravenes any of the data protection principles the data is exempt under section 40(2) and section 40(3A).
19. He also states:

“In order for the disclosure to be lawful, it must satisfy one of the UK GDPR Article 6 lawful bases for processing. In most circumstances, the legitimate interests lawful basis is the most relevant”.
20. Disclosure under FOIA is effectively an unlimited disclosure to the world at large, without conditions.
21. The Commissioner appreciates that the complainant has a legitimate interest in the withheld personal information as it is associated with a grievance matter. However, he considers that the complainant’s legitimate interest has been met to an extent (through the information

---

<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1187/section\\_40\\_requests\\_for\\_personal\\_data\\_about\\_employees.pdf](https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf)

provided to him in accordance with the right of access provisions of the DPA) and disclosure to the world at large, not just the complainant, under FOIA does not further serve this legitimate interest.

22. The Commissioner is also satisfied that the individuals concerned would have the reasonable expectation that their personal data would not be disclosed to the wider world in response to a FOIA request. Disclosing their personal data would be likely to cause them harm or distress.
23. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that disclosing the information in question would contravene a data protection principle as it would not be lawful. Therefore, he has decided that the data is exempt under section 40(2) and section 40(3A) of FOIA.
24. It follows that the MoJ is entitled to withhold this information.

## Right of appeal

---

25. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

26. 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.
27. 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 .....**

**Laura Tomkinson  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**