

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 March 2023

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

Decision (including any steps ordered)

1. The complainant has requested information about a prisoner complaint he submitted. The Ministry of Justice ('MoJ') disclosed some information, but refused to disclose the name of the decision maker for the complaint, citing section 40(2) (Personal information) of FOIA.
2. The Commissioner's decision is that the MoJ was entitled to apply section 40(2) to refuse the request. However, it breached section 10(1) (Time for compliance) of FOIA in its handling of the request.
3. The Commissioner requires no steps as a result of this decision.

Request and response

4. Outside the remit of FOIA, the complainant had submitted a Level 1 prisoner complaint, which was responded to in a document dated 10 February 2022. The document was 'signed':

"Staff Name: Business Hub Position: Admin"
5. On 14 August 2022, the complainant wrote to the MoJ and requested information in the following terms:

"You will note that the author of the response document dated 10/02/2022, has been purposely concealed under the department name. This [sic] contrary to the Prisoner Complaints Policy

Framework 01/08/2019¹ – Responding to a complaint sect. 4.25, but more so 4.31:-

“4.31 The name of the person responding must be legible so that prisoners know who has been involved in dealing with their complaint.”

Please be advised that the prison will not impart with [sic] the information requested in connection with the above.

FOIR [Freedom of Information Act Request]

- The information that I seek is the digital date and time of the response of the document dated 10/02/2022 (enc), and
 - the electronic author of that document.”
6. The MoJ responded 28 working days later, on 26 September 2022. It provided the date and time of the document, but refused to disclose the name of the author, citing section 40(2) of FOIA. It maintained this position at internal review.
 7. However, in both communications it said it understood the complainant had been provided with the name, verbally, by staff at the prison, outside of FOIA. In his complaint to the Commissioner, the complainant has denied this.

Reasons for decision

8. The analysis below considers whether the MoJ was entitled to apply section 40(2) of FOIA to refuse the request. Section 40(2) of FOIA states that information is exempt from disclosure if it is the personal data of another individual and disclosure would contravene one of the data protection principles.
9. The withheld information in this case is the name of the individual who was the electronic author of the document dated 10 February 2022. The Commissioner understands this to be, in effect, a request to know who made the decision about the complainant’s prisoner complaint.

¹ <https://www.gov.uk/government/publications/prisoner-complaints-policy-framework>

10. The Commissioner is satisfied that the withheld information is the personal data of that individual ('the data subject'), it being their name.
11. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed on principle (a), which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
12. In the case of an FOIA request, 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 lawful, fair and transparent.
13. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider:
 - whether a legitimate interest is being pursued in the request for information;
 - if so, whether disclosure is necessary to meet the legitimate interest in question; and
 - whether those interests override the rights and freedoms of the data subject.
14. The Commissioner is satisfied that a legitimate interest is being pursued in the request for information. The complainant wants to know who determined his complaint, and this is information which the MoJ's own Prisoner Complaints Policy Framework ("the Complaints Policy") says complainants should be told, but which he was not given in the response to his complaint.
15. The Commissioner has then considered whether disclosure is 'necessary' to meet that legitimate interest. The test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question. If less intrusive means are available, disclosure will not be 'necessary', and will be unlawful.
16. Disclosure under FOIA is to the world at large. The Commissioner understands that data subjects have a clear and strong expectation that their personal data will be held in accordance with data protection laws. The Commissioner considers that the data subject in this case would have a reasonable expectation that their identity as a person dealing with prisoner complaints, would not be released to the world at

large by means of an FOIA request. The Commissioner considers that it would be an intrusion of privacy and could potentially cause unnecessary and unjustified distress to the data subject.

17. The Commissioner notes that the MoJ maintains that the complainant has been given the data subject's name, outside of FOIA. It says it has been told this by the prison in question, which has also given assurances that complaint outcomes will, in future, be signed with a name.
18. The Commissioner has seen no information which would cause him to question this. The MoJ clearly accepts that, according to its own Complaints Policy, a complainant should be told who has determined their complaint. Its position is simply that the information is not suitable for disclosure more widely, under FOIA.
19. While the Complaints Policy says that complainants should be told who has decided their complaint, this is not a statutory obligation (ie it is a policy and not law). Furthermore, it is clear that this is information which is meant to help individual complainants understand how their complaint has been dealt with, rather than to be shared with the world at large.
20. If the complainant contends that the information has not, in fact, been provided to him verbally by staff at the prison, there are channels through which he could pursue his concerns, which would not necessitate the disclosure of the data subject's identity to the world at large via FOIA. It is open to him to take the matter up with the prison in question – from the information the MoJ has provided, the Commissioner sees no reason why it would not tell him the name, if it has not already done so. He may invoke the prisoner complaints mechanism if he is not satisfied with the prison's response.
21. The Commissioner considers these to be the appropriate avenues for the complainant to pursue his concerns, rather than trying to access the information via FOIA, which, as stated above, involves the publication of information to the world at large; it is not a private disclosure to the requester alone.

The Commissioner's decision

22. The Commissioner considers that while the complainant has a legitimate interest in the withheld information in this case, its disclosure is not necessary to meet that legitimate interest. The data subject has a strong expectation of privacy relating to the requested information and as disclosure is not necessary (ie the complainant may obtain it otherwise than under FOIA), the data subject's consequent loss of privacy would be disproportionate and unwarranted.

23. The Commissioner has therefore determined that disclosure of the data subject's personal data would be unlawful and in contravention of data protection principle (a), as set out under Article 5(1)(a) of the UK General Data Protection Regulation.
24. As disclosing the data subject's personal data would be unlawful, section 40(2) is engaged. The Commissioner's decision is therefore that the MoJ was entitled to apply section 40(2) of FOIA to withhold the requested information.

Procedural matters

25. The MoJ breached section 10 of FOIA as it failed to respond to the request within 20 working days.
26. The Commissioner has made a note of this delay for monitoring purposes.

Right of appeal

27. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.

29. 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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF