

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 June 2015

Public Authority: Government Legal Department
Address: 1 Kemble Street
London
WC2B 4TS

Decision (including any steps ordered)

1. The complainant has requested information from the Government Legal Department. The Commissioner's decision is that – in relation to the information withheld - the complainant has requested her own personal data and that the Government Legal Department should have neither confirmed nor denied holding any information by virtue of section 40(5)(a) of the FOIA. He does not require any steps to be taken.

Background

2. Where a person dies intestate, and without known next of kin, the Government Legal Department (GLD) Bona Vacantia Department becomes the executor of the estate.
3. The complainant asserts that she has a legal and/or a beneficial interest in Bona Vacantia property.

Request and response

4. On 2 June 2014 the complainant requested information of the following description from GLD:
 - A copy of GLD letter to her of 18 August 2010.

- Details of those solicitors who contacted GLD prior to Mr John Wray's letter to the complainant in early 2014 and copies of any contact correspondence.
 - A copy of the recorded information with regard to the closing of the file on 14 May 2012.
5. GLD responded on 6 June 2014. It stated that it held the requested information. It provided her with a copy of its letter to her dated 18 August 2010, the contact details of the solicitors as requested and a copy of the recorded information regarding the closing of the file.
 6. However GLD withheld from her a copy of the contact correspondence and relied on the exemptions provided by sections 41 and 42 of the FOIA to do so.
 7. Following an internal review GLD wrote to the complainant on 15 September 2014 explaining that it upheld its decision.

Scope of the case

8. The complainant contacted the Commissioner on 6 October 2014 to complain about the way her request for information had been handled.
9. The Commissioner considers the scope of his investigation to be whether the complainant is entitled, under the FOIA, to receive the information withheld by GLD.

Reasons for decision

10. Under the FOIA, any individual can make a request for access to any information held by a public authority. However, an individual's own personal data is exempt from the FOIA's access right. It should instead be dealt with according to subject access rights established under the Data Protection Act 1998 (DPA).
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).”

Is the requested information (if held) the complainant’s personal data?

13. The DPA defines personal data as:

“...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.”

14. The two main elements of personal data are that the information must ‘relate’ to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

15. The Commissioner has established, by reading the correspondence in this matter, that the requested information was generated by – and connected to - the complainant’s assertion that she has a legal and/or a beneficial interest in Bona Vacantia property. The Commissioner is therefore satisfied that this information is the personal data of the complainant as it sufficiently relates to her.

16. The Commissioner would point out that responses to requests under the FOIA are “applicant blind”. Therefore confirming that this information was held would inform the public that GLD holds information regarding the complainant’s assertion about that beneficial interest.

17. All such the information would accordingly be exempt from disclosure under section 40(1) and therefore GLD, by virtue under section 40(5)(a) GLD, was not required to confirm or deny whether it held the requested information. However, this should have been made clear to the complainant.

18. The Commissioner has therefore not gone on to consider the application by GLD of sections 41 and 42 of the FOIA.

Other matters

19. This decision will not disadvantage the complainant as she will still be able to pursue her personal data right under the DPA. Furthermore, the Commissioner considers that it is appropriate that any decision as to whether or not a data subject is entitled to be told whether personal data about them is being processed should be made in accordance with the scheme of that Act.

Right of appeal

20. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

21. 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.
22. 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

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