

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 May 2016

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information concerning whether two Home Office employees had completed specified e-learning courses. The Home Office refused to confirm or deny whether it held this information and cited the exemption provided by section 40(5) (personal information) of the FOIA.
2. The Commissioner's decision is that the Home Office cited section 40(5) correctly so it was not obliged to confirm or deny whether the requested information was held.

Request and response

3. On 17 November 2015 the complainant wrote to the Home Office and requested information in the following terms:

"(i) Does the Home Office hold any independent, centrally-held record of either the G6 or the G7 having ever completed both the required e-learning courses?"

(ii) If so, when did the G6 and G7 complete each course?"

(iii) If there is no such independent, centrally-held record, why is there none?"

(iv) If there is no such independent, centrally-held record, how does the Home Office reliably monitor and prevent abuse of process when its managers instigate disciplinary procedure?"

4. After a delay, the Home Office responded on 21 December 2015. It refused to confirm or deny whether the requested information was held and cited the exemption provided by section 40(5) (personal information) of the FOIA.
5. The complainant responded on 22 December 2015 and requested an internal review. The Home Office responded with the outcome of the review on 25 January 2016. The conclusion of this was that the refusal to confirm or deny under section 40(5) was upheld.

Scope of the case

6. The complainant contacted the Commissioner initially on 29 December 2015. After having been advised to wait until the Home Office had completed the internal review, the complainant contacted the Commissioner again on 9 February 2016 and confirmed that he had received a response to his request for an internal review and wished to complain about the refusal to confirm or deny in relation to the information he had requested. The complainant indicated that he did not agree that the exemption cited by the Home Office had been applied correctly and gave reasoning for this.

Reasons for decision

Section 17

7. Section 17(1) of the FOIA requires that a response that refuses an information request is sent within 20 working days of receipt of the request. In this case the Home Office failed to respond within 20 working days and in so doing breached the requirement of section 17(1).

Section 40

8. The Home Office cited section 40(5). This section provides an exemption from the duty to confirm or deny where to do would involve a disclosure of personal data and that disclosure would be in breach of any of the data protection principles. There are two stages to consideration of this exemption; first provision of the confirmation or denial must involve a disclosure of personal data. Secondly, that disclosure must be in breach of at least one of the data protection principles.

9. Covering first whether confirmation or denial would involve a disclosure of personal data, the definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA):

“personal data’ means data which relates 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”.

10. Elsewhere in the correspondence in which he made his information request, the complainant named the individuals to whom his information request relates. The Commissioner is of the view that confirmation or denial in response to the requests would, therefore, involve a disclosure of information that would both identify and relate to the individuals to whom the request refers and so would be their personal data according to section 1(1) of the DPA. Whilst part (i) of the request refers to “either” of those individuals and so it appears could be answered by reference to only one of them, it is clear from part (ii) of the request that the complainant actually seeks information about both of these individuals. Also, whilst parts (iii) and (iv) of the request less clearly relate to these individuals, they are predicated on the Home Office having already confirmed or denied in response to the first two requests, so the Commissioner is satisfied that confirmation or denial in response to those requests would involve disclosure of the personal data of those individuals.
11. The next step is to consider whether disclosure of that personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on the first data protection principle, which states that personal data shall be processed fairly and lawfully. In particular, the focus here is on whether disclosure would be, in general, fair to the data subjects.
12. In forming a conclusion on this point the Commissioner has taken into account the reasonable expectations of the data subjects and what consequences disclosure may have. He has also considered what legitimate public interest there may be in disclosure of the confirmation or denial in question.
13. Covering first the reasonable expectations of the data subjects, the personal data in question relates to the data subjects in their professional capacities. The general approach of the Commissioner is that it will be less likely to be unfair to disclose information relating to

an individual in their professional capacity than it would be in relation to information concerning an individual's private life. The likelihood of disclosure will generally increase where the relevant information relates to a publicly funded role they fulfilled at the time the information was recorded.

14. The confirmation or denial concerns whether the data subjects had completed courses and would relate to those individuals solely in their professional capacities. Given this, the Commissioner's view is that the loss of privacy to those individuals through the disclosure of the confirmation or denial would be minimal. Given that this information relates to these individuals acting in a professional and publicly funded role, and that the Commissioner's view is that any loss of privacy would be minimal, he believes that the data subjects could reasonably hold only a very limited expectation that the confirmation or denial information would not be disclosed.
15. As to the consequences of disclosure upon the individuals named in the withheld content, the question here is whether disclosure would be likely to result in damage or distress to those individuals. On this point, the Commissioner accepts that some minor distress may occur through disclosure contrary to the very limited expectation of confidentiality referred to above. He does not, however, believe that any more material damage would be likely to occur.
16. The next step is to consider whether there would be any legitimate public interest in the disclosure of this information. Whilst section 40(5) is an absolute exemption and not qualified by the public interest, the public interest is relevant here as it is necessary for there to be a legitimate public interest in order for disclosure to be compliant with the first data protection principle.
17. It is on this point that the Commissioner's view is that it is more difficult to justify disclosure, as he sees no legitimate public interest in knowing whether two Home Office employees had completed e-learning courses. Whilst this information is of personal interest to the complainant, it is not of wider public interest.
18. The Commissioner does not believe that disclosure of details of whether two Home Office staff members had completed e-learning courses is necessary in order to satisfy any legitimate public interest. As a result he concludes that disclosure of the confirmation or denial would be in breach of the first data protection principle.
19. Having found that confirming or denying whether the information requested by the complainant was held would involve a disclosure of personal data and that this disclosure would be in breach of the first

data protection principle, the conclusion of the Commissioner is that the exemption provided by section 40(5) of the FOIA is engaged. The Home Office was not, therefore, obliged to confirm or deny in response to the complainant's request and this notice does not require any steps.

Other matters

20. As well as the finding above that the Home Office breached section 17(1) of the FOIA by failing to respond to the request in this case within 20 working days, the Commissioner has also made a separate record of this breach. This issue may be revisited should evidence from other cases suggest that this is necessary.

Right of appeal

21. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

22. 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.
23. 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

Ben Tomes
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