

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 September 2018

Public Authority: Ministry of Justice

Address: 102 Petty France

London

SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information relating to court proceedings with a specific case reference number. The Ministry of Justice (MoJ) neither confirmed nor denied holding the requested information, citing sections 32(3) (court records) and 40(5) (personal information) of the FOIA.
2. The Commissioner has considered the MoJ's application of section 40(5) of the FOIA. Her decision is that the MoJ was entitled to rely on that exemption to neither confirm nor deny holding the requested information.
3. The Commissioner requires no steps to be taken as a result of this decision.

Background

4. HM Courts & Tribunals Service and the UK Supreme Court charge fees for work that is carried out in the courts and tribunals. A system of fee waivers and reductions, known as the remission system, is available. The fee remission system allows access to court and tribunal services free of charge (a full remission) or at a reduced rate (a partial remission)¹.

¹ <https://www.stepchange.org/Portals/0/DI&A%20images/EX160.pdf>

5. Court and tribunal fees are different from legal costs, for example paying for a solicitor.²

Request and response

6. On 19 August 2017, the complainant wrote to the MoJ and requested information in the following terms:

"Under law of freedom of information act

Please provide information, from central london county court strand, london, u.k

1. Why you fail or do not reply to the application for fee remission lodged, and confirmed received. By you.

2. Why you do not give reply, confirmation if application, accepted or not accepted.

3 What communication you have given to plaintiffs, if [sic] relation to this fee remission application.

4 what total court fees you have received in relation to plaintiff claim submitted, where is the origin of these monies, account name bank".

7. The title of the email in which he made this request was:

"[name redacted] v [name redacted]; Claim No: [reference redacted]. Central london county court".

8. The MoJ responded on 13 September 2017. It refused to confirm or deny whether it held the requested information, citing the following exemptions as its basis for doing so:

- section 32(3) court records
- section 40(5) personal information.

9. Following an internal review the MoJ wrote to the complainant on 9 October 2017 upholding its view.

² <https://www.gov.uk/court-fees-what-they-are>

Scope of the case

10. Following earlier correspondence, the complainant provided the Commissioner with the relevant documentation, on 23 May 2018, to support his complaint about the way his request for information had been handled.
11. During the course of the Commissioner's investigation, the MoJ confirmed its application of sections 32(3) and 40(5) of the FOIA to the requested information.
12. The analysis below considers the MoJ's application of section 40(5) of the FOIA to the requested information.

Reasons for decision

Section 40 personal information

13. Section 40(5) of the FOIA sets out the conditions under which a public authority can give a "neither confirm nor deny" response where the information requested is, or would be, personal data. It includes provisions relating to both personal data about the requester and personal data about other people.
14. In this case, the MoJ has not specified which limb of section 40(5) applies. However, with due regard to the wording and context of the request, the Commissioner considers section 40(5)(a) applies as, from the correspondence he provided in support of his complaint, she understands that the request is for information concerning himself.
15. Section 40(5) of the FOIA states:

"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)...".
16. Section 40(5)(a) of the FOIA excludes a public authority from complying with the duty imposed by section 1(1)(a) of the FOIA - confirming whether or not the requested information is held - in relation to information which, if held by the public authority, would be exempt information by virtue of subsection (1).
17. Section 40(1) of the FOIA states that:

"Any information to which a request relates is exempt information if it constitutes personal data of which the applicant is the data subject".

18. The definition of personal data is set out in section 1 of the Data Protection Act 1998 (DPA), the legislation in force at the time of this request. Section 1 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."

19. 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.

20. In correspondence with the complainant, the MoJ told him:

"FOI is a public disclosure regime, not a private regime. This means that any information disclosed under the FOIA by definition becomes available to the wider public. If any information were held, confirming this would reveal to the world at large that this individual was involved in the justice system; this would constitute the personal data of that individual.

To disclose this fact would breach the Data Protection Principles; individuals have a clear and strong expectation that their personal data will be held in accordance with the DPA and not disclosed to the public under the FOIA".

21. It also told him:

"Your request relates to a specific case and if the information were held it would constitute the personal data of the people involved in this case".

22. Having considered the wording of the request in this case, the Commissioner is satisfied that the complainant is, or would be, the subject of the requested information. This is because the information he has requested is, by its own definition, about or connected to the complainant himself.

23. It follows that the Commissioner considers that the complainant is the data subject within the meaning of the section 40(1) exemption.
24. In relation to such information, the provisions of section 40(5) of the FOIA mean that the public authority is not required to comply with the duty to confirm or deny that the information is held, as the duty to confirm or deny 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).
25. The Commissioner is satisfied that complying with section 1(1)(a) in this case would effectively confirm or deny whether the requested information is held in connection with the complainant.
26. The Commissioner considers that context is important here. She considers it inescapable that confirmation or denial in response to any part of the request would disclose whether the MoJ holds personal data relating to the proceedings specified in the request. This would inevitably put into the public domain the existence, or otherwise, of information about the named individual, which in turn would constitute disclosure of personal information that would relate to him. She therefore considers that the section 40(5) exemption was correctly relied upon by the MoJ in this case.
27. Having reached that conclusion, it has not been necessary for the Commissioner to consider whether the other exemption cited by the MoJ would also apply to the request.

Other matters

28. The Commissioner acknowledges that the complainant specified that he was making his request under the FOIA. However, in the Commissioner's view, it is appropriate that any decision as to whether or not a data subject is entitled to be told if personal data about them is being processed should be made in accordance with the subject access provisions of the DPA.
29. If a data subject is dissatisfied with the outcome of a subject access request, they can raise their concern about how the organisation handled that request with the Commissioner.
30. It is not clear whether the MoJ advised the complainant with respect to the subject access provisions of the DPA. However, the Commissioner is satisfied that the MoJ provided him with guidance on the mercantile court, including a link to the complaints procedure.

Right of appeal

31. 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

32. 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.
33. 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

**Deborah Clark
Group Manager
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SK9 5AF**