



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

Appeal No: EA/2016/0316

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50647030
Dated: 20 December 2016

Appellant: Daniel Odoom

Respondent: The Information Commissioner

On the papers

Before

HH Judge Shanks

And

Pieter de Waal and Michael Jones

Date of decision: 26 April 2017

Date Promulgated: 27 April 2017

Subject matter:

Freedom of Information Act 2000 (FOIA)
Section 40(5) (Personal information)

DECISION OF THE FIRST-TIER TRIBUNAL

For the reasons set out below the Tribunal dismisses the appeal.

REASONS FOR DECISION

1. On 20 February 2012 the Appellant, Daniel Odoom, wrote to HM Courts and Tribunal Service (which is an agency of the Ministry of Justice) stating:

On June 22nd 2007, I was involved in a trial at Harrow Magistrates' Court ... I was originally represented by a solicitor called [BG], but I had a lot of problems with him so I had to transfer to a new firm ... My new solicitors told me that [BG] was punished by the court. I have to know what [BG] was punished for, and what punishment he received.

Please could you supply me with this information?

HMCTS confirmed that it held information answering to the request but refused to supply it in reliance on section 40(2) of FOIA on the grounds that it was personal data and its disclosure would contravene a data protection principle.

2. In 2016 Mr Odoom contacted his MP who in turn wrote to the Information Commissioner who advised him to make a fresh request, which he did on 30 April 2016. This request was answered in a similar way to the 2012 request. Mr Odoom sought a review and the Ministry of Justice Information Directorate wrote to him on 12 July 2016 confirming that no information could be supplied but that they should have relied on section 40(5) of FOIA to "neither confirm nor deny" whether any information was held by HMCTS rather than on section 40(2). That position was upheld by the Information Commissioner in a decision notice dated 20 December 2016.
3. Mr Odoom has appealed against the Commissioner's decision notice. His grounds are stated as follows:

The Ministry of Justice has handled my request under the Freedom of Information Act but it is not a Freedom of Information request.

The law says that as the victim of [BG's] crimes, I must be told what he was punished for, and what punishment he received.

The Ministry of Justice has admitted that they have the details of [BG's] punishment but they are refusing to tell me. There is no excuse for this ...

With the consent of the parties we have considered the appeal without a hearing; we are satisfied that we can properly resolve the issues in that way.

4. So far as the FOIA is concerned for the reasons which follow we have no doubt that the Commissioner was right to conclude that the Ministry was entitled (and indeed obliged) to respond to Mr Odoom's request by neither confirming nor denying that the requested information was held by virtue of section 40(5).
5. Section 40(5) of FOIA says this:

The duty to confirm or deny-

...

(b) does not arise in relation to ... information if ...

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles ...

Information held by the Ministry of Justice as to whether [BG] had committed any offence and was punished by a court was undoubtedly BG's "personal data" under the Data Protection Act 1998 and, furthermore, his "sensitive personal data" by virtue of section 2(g) and (h) thereof. The first data protection principle requires that such data cannot be processed (which includes disclosed) unless at least one condition in Schedule 2 and one condition in Schedule 3 is met.

6. The only condition in Schedule 2 that is potentially relevant is condition 6(1) which provides:

The processing is necessary for the purposes of legitimate interests pursued by ... the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of the prejudice to the rights and freedoms or legitimate interests of the data subject.

Although Mr Odoom protests that he is entitled to receive the information he seeks there is nothing before us to indicate what interest he is pursuing in seeking it or why it is necessary for him to receive it in order to pursue that interest. Further, it is clear that in any event none of the conditions in Schedule 3 is even arguably met. In those circumstances confirmation or denial by the Ministry that the requested information was held would have involved an infringement of the first data protection principle and was therefore not required by virtue of section 40(5) of FOIA.

7. If (which is a moot point in the jurisprudence of the Tribunal) the duty to confirm or deny was only disapplied if the public interest in maintaining the exclusion provided by section 40(5) outweighed that in disclosing whether the Ministry held the information in question (as provided by section 2(1)(b)), we are quite satisfied that the public interest favoured disapplying the duty. Disclosure would have involved an infringement of the first data protection principle by the Ministry of Justice but, as we say above, we have been given no indication of why the information was required by Mr Odoom. We are therefore satisfied that the Commissioner was right to uphold reliance on section 40(5).
8. Mr Odoom appears to be saying in his grounds of appeal that he is entitled to be provided with the information he seeks by reason of some other right, not arising under FOIA. We are not aware of any such right but, in any event, we only have jurisdiction to consider whether the provisions of FOIA have been complied with so, even if there was some other right, we are afraid that we would not be able to help Mr Odoom.
9. Accordingly we unanimously dismiss his appeal.

HH Judge Shanks

26 April 2017