

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 23 October 2006

Public Authority: Legal Services Commission
Address: 85 Gray's Inn Road
London
WC1X 8TX

Summary Decision

The complainant requested information on the amount of money his opponent in legal proceedings had received in legal aid. The Legal Services Commission (the "LSC") refused the request on the basis that the information constituted personal data about the complainant's opponent and so was exempt under section 40(2) of the Act. The Commissioner agrees with the LSC that the information is personal data. Furthermore, although it is likely that some of the information requested was already known by the complainant as a consequence of his involvement in the legal proceedings, disclosing the information to the public at large, which is the test under section 40(2), would breach the Data Protection Act 1998. Therefore the information is exempt and the Commissioner upholds the LSC's decision to refuse the request.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

2. The complainant had been involved in civil proceedings in which his opponent had received legal aid. Following the conclusion of those proceedings the complainant wrote to the LSC on the 22 March 2005 and requested the "amount of costs paid to [his opponent's] solicitor under the certificate", the certificate in

question being the legal aid certificate establishing a person's eligibility for legal aid.

3. The LSC refused the request on 29 March 2005. The refusal notice informed the complainant that the LSC considered the specific costs paid in the case to be personal data relating to his opponent, who they referred to as the funded client. It went on to say that unless there was an overriding public interest in disclosing the amount paid in a specific case, the LSC would be in breach of the principles of the Data Protection Act 1998 (the DPA) to comply with this request without the consent of either his opponent or his opponent's solicitor. Their consent had been sought and both had refused. In light of this the request was refused under section 40(2) of the Act – third party personal data.
4. In broad terms section 40(2) provides that information is exempt where it is personal data about a third party and to disclose that personal data to the public at large would breach any of the data protection principles created by the DPA. The data protection principles establish a set of rules for the good handling of personal information and combine to protect the privacy of individuals. The first data protection principle requires that the processing of personal data (which includes disclosing that information) has to be fair and lawful and sets out a number of conditions, at least one of which needs to be satisfied before the processing takes place. The full text of section 40 is provided in full in the Legal Annex attached to this Decision Notice.
5. The complainant sought an internal review of that decision in an undated letter which the LSC received on 18 April 2005.
6. The complainant was advised of the outcome of the internal review in a letter dated 13 May 2005. The internal review upheld the original decision to refuse his request under the exemption provided by section 40(2). The review letter explained that the LSC administered the payment of public money in the form of legal aid on behalf of the government and that although the money is paid directly to the funded client's solicitor, a person's eligibility for that legal aid is based on their financial circumstances and as such could be considered to be a state benefit.

The Investigation

Scope of the case

7. On 23 May 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He explained that he did not believe the LSC were correct to refuse his request. Therefore the Commissioner's investigation is concerned with the validity of the LSC's application of the exemption relating to third party personal data provided by section 40(2).

Chronology

8. **25 May 2006.** The case was allocated to a Complaints Resolution Officer for investigation.
9. **6 June 2006.** The complainant rang the Commissioner's office and was advised that the Commissioner's initial view was that the information requested was likely to constitute personal data about his opponent.
10. The complainant disagreed with this view, arguing that information on the costs of court case did not reveal anything private or personal about his opponent. He also stated that the costs were revealed in open court and suggested that this information may form part of the court record.
11. Finally the complainant argued that there was a very strong public interest in revealing this information and supported this point by referring to recent media coverage in the amount of money that solicitors were earning in the form of legal aid. He developed his argument further, explaining that the costs of defending the court case had bankrupted him and he had advised his opponent's solicitors, and it is understood, the LSC, that this being so, there was little point in pursuing him for the money it was alleged he owed. In light of this the complainant felt very strongly that it was a matter of public interest that the LSC had funded a case that, as he saw it, served no purpose.
12. **26 June 2006.** Having considered the complainants arguments the Commissioner wrote to the LSC on 26 June 2006 and advised it that his initial view was that the information on costs did constitute personal data about the complainant's opponent. However it was not clear whether disclosing the information would breach the principles of the DPA. The Commissioner went onto ask a number of questions concerning the expectation of some one applying for legal aid regarding what information would be made public together with the extent to which the information on costs had been revealed in court and, if it had, whether this information would form part of a permanent record of the court case to which the general public had access.
13. **20 July 2006.** In response to the Commissioner's letter the LSC firstly explained that there was nothing in the Legal Aid Scheme's administrative procedures which would lead an individual to believe that their costs would be made public. Indeed the LSC took the view that individuals would have an expectation that this information would not be made public.
14. Regarding the extent to which information on costs is revealed in court the LSC explained that when someone is granted legal aid their solicitor is required serve

a notice to that effect on both the court and on the other party to those proceedings. Furthermore the parties to litigation are generally required to disclose the amounts of costs incurred at different stages of the proceedings. Where someone receiving legal aid is successful in proceedings and is awarded costs, their solicitor's bill will be disclosed to the defeated party in order to recover those costs.

15. The LSC's role is to administer the payment of legal aid and it had no involvement in the actual court proceedings. It was therefore unable to confirm whether in the specific court proceedings at the centre of the complainant's request, the costs were disclosed or whether they would form part of the court record. However based on its understanding of the court procedures as described above, the LSC thought it likely that the information on costs would have been revealed in court and was likely to form part of the court record. The LSC went on to explain though that this would not mean that the information would be readily available to any member of the public.
16. The LSC directed the Commissioner to rule 5.4 of the Civil Procedure Rules which governs the general public's access to court records of civil proceedings. It explained that under rule 5.4 any member of the public can, on payment of a fee, obtain a copy of a Claim Form (briefly, this is the document initiating civil proceedings issued by the court setting out the particulars of the claimant's grievance and the remedy they seek, this is then served on the defendant) together with a copy of a judgment or order given in public. However a member of the public needs the consent of the court to access any of the other records it holds, including documents relating to the costs of a legally aided party.

Findings of the case

17. Examination of the Civil Procedure Rules confirmed that rule 5.4(5) provided for access to court records in the manner described by the LSC. The Freedom of Information Act 2000 does not provide additional rights of access to information held by the courts.
18. The Commissioner accepts the complainant's assertion that he knew his opponent was receiving legal aid and that at least some information on his opponent's costs were revealed in court.

Analysis

19. The Commissioner has considered the public authority's response to the complainant's request for information.

Exemptions

Section 40(2)

20. In order to rely on the exemption provided by section 40, the information requested must first constitute personal data as defined by the DPA. The complainant has argued that information on the costs his opponent incurred does not reveal anything of a private or personal nature about his opponent. It is certainly true that although an individual's eligibility for legal aid is determined by their personal finances, the actual amount of legal aid paid is determined by the eligible costs of their solicitor. The amount of legal aid paid could not be analysed in some way to reveal details about the recipient's financial position.
21. However the Commissioner considers that the costs incurred by a particular individual in pursuing legal proceedings is information relating to that individual and as such the information would constitute personal data as defined by section 1(1) of the DPA. In this case it is not possible to disassociate the costs incurred from the individual named by the complainant.
22. Furthermore the Commissioner agrees with the LSC that legal aid should be viewed as a state benefit, comparable with housing benefit. This strengthens the argument that the information is personal data as the very fact that an individual is eligible for legal aid implies something about their financial position. The Commissioner is therefore satisfied that the complainant's request could not be complied with without disclosing personal data about his opponent.
23. The question therefore is whether disclosing this personal data would breach his opponent's right to privacy as protected by the data protection principles. In considering this issue it is important to recognise that when applying the exemption provided by section 40(2) the test is whether "...the disclosure of the information to **a member of the public**...would contravene any of the data protection principles...". The fact that the complainant may already have knowledge of the information he seeks through his own involvement in the particular legal proceedings is irrelevant when applying this exemption.
24. The first data protection principle states that personal data shall be processed fairly and lawfully. The Commissioner considers that to disclose, to the general public, information of this kind that would identify an individual as being eligible for legal aid would be unfair. This is despite the fact that the some of the information would already have been revealed to the parties involved in the case and may have been disclosed in open court. This is because disclosures that are required as part of the court proceedings are, in practice, only disclosures to a limited audience. The exception to this is where that same information forms part of a permanent record that is easily accessible by the general public. As discussed at paragraph 16 above, the information on costs is only available at the discretion of the court and therefore cannot be considered easily accessible by the public.

25. It is noted that the accessibility of courts records was considered in an earlier case (see Decision Notice reference FS50075171 paragraph 4.17) and that the position adopted by the LSC is mirrored by the advice provided by Her Majesty's Court Service in relation to records held by magistrates courts, that is, access to such records by a member of the public is at the discretion of the magistrate.
26. In reaching this decision the Commissioner has not only considered the nature of the information itself but also what the reasonable expectations of the data subject (the individual to whom the information relates) would be as to how the information would be used by the LSC. Expectations as to how information will be processed will in part be shaped by the nature of the information itself, for example an individual would expect a degree of confidentiality to attach to information concerning the payment of a state benefit. Expectations will also be shaped by what an individual is told by the organisation holding the information concerning how that information will be used.
27. The complainant's opponent would have realised that information concerning his receipt of legal aid would have been disclosed in court. However disclosing this information to the general public, which in effect is what a disclosure under the Act is, would be a far wider disclosure than the claimant's opponent would have envisaged. It is understood from the LSC's letter to the Commissioner of the 20 July 2006 (see paragraph 13 above) that there is nothing in the information provided to someone applying for legal aid that the LSC would disclose the amount of legal aid they may receive to any member of the public on request. Indeed the LSC has advised the Commissioner that from the notices included on application forms an applicant is likely to conclude that information relating to their claim would be disclosed for a limited number of purposes only.
28. The Commissioner notes that when the LSC initially considered the request it sought the consent of both the complainant's opponent and his opponent's solicitor. The fact that the complainant's opponent refused his consent does not in itself mean that disclosing the information would necessarily breach the first data protection principle. However as explained the Commissioner's Awareness Guidance No. 1 – Personal Information, the explicit refusal of consent is a factor that should be considered when assessing whether the disclosure would be fair.
29. The Commissioner has not found it necessary to consider the relevance of the solicitor's refusal to consent to the disclosure of the information.
30. In light of the above the Commissioner finds that to disclose the information requested would breach the fairness element of the first data protection principle and so the exemption provided by section 40(2) of the Act is engaged.
31. The application of this provision is not subject to the public interest test. There is no requirement to consider whether even though the exemption is engaged there are nevertheless compelling public interest arguments in favour of disclosing the information. Therefore the argument introduced by the complainant concerning the use of public money to fund his opponent's legal action (see paragraph 11 above) will not override the application of this exemption.

32. It is true to say that when assessing compliance with the first data protection principle some public interest arguments may feed into the consideration of whether the processing is fair or may help shape the reasonable expectations of the data subject. However the Commissioner is satisfied that it would not be fair to the data subject in this case to disclose the precise outcome of a particular decision by the LSC at the cost of the privacy to an individual who sought to claim a benefit to which he was entitled.

Other issues

33. The complainant has advised the Commissioner that as a party to the proceedings he already knew that his opponent had received legal aid and that at least some information on his opponent's costs had been revealed during the court proceedings (see paragraph 10 above). Furthermore, although under the Civil Procedure Rules members of the general public may need the permission of the court to obtain copies of certain records, as a party to those proceedings, the complainant may have a greater right of access to court records. In broad terms, under rule 5.4(5) an individual who was not party to proceedings needs the permission of the court before accessing any records other than a claim form or a judgment. This contrasts with the position for some one who was a party to proceedings where the under rule 5.4(3) they can access additional records, including a statement of costs, unless the court orders otherwise.
34. The Commissioner has not found it necessary in this case to confirm with the complainant the exact extent of his knowledge of the costs his complainant incurred or whether he did in fact have an alternative means of accessing this information. However where the complainant does have another means of accessing the information he seeks or already has a copy of that information from an authoritative source and the public authority knows this, then the public authority may be entitled to claim that information was exempt under section 21 of the Act. Section 21 provides that information which is reasonably accessible to the applicant otherwise that under the right of access created by the Act is exempt.

The Decision

35. The Commissioner's decision is that under section 40(2) the information requested was exempt information and that therefore the public authority dealt with the request for information in accordance with the Act.

Steps Required

36. The Commissioner requires no steps to be taken.

Right of Appeal

37. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 23rd day of October 2006

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

Section 40 – Personal Information

40. - (1) 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.

(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

(3) The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

(5) 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), and
- (b) does not arise in relation to other information if or to the extent that either-
 - (i) he 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 or section 10 of the Data Protection Act

- 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
- (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

(7) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.