

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 February 2016

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information about 'his court case'. The Ministry of Justice (MoJ) refused to either confirm or deny holding information within the scope of the request citing sections 40(5) (personal information) and 32(3) (court records) of FOIA.
2. The Commissioner's decision is that the MoJ was correct to neither confirm nor deny holding information within the scope of the request.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 1 September 2015, the complainant made the following request for information to MoJ via the 'whatdotheyknow' website:
"I would like all recorded information on my case heard at Newport Crown Court on [date redacted]...."
5. MoJ responded on 1 September 2015 and told him that his request had been handled in line with the Data Protection Act (DPA) as a Subject Access Request (SAR) for his personal information.
6. The complainant expressed dissatisfaction with that response in further correspondence with MoJ. On 28 October 2015 he wrote to MoJ about this matter saying:

"This is not a subject access data request as this information was

heard in open court. A public arena. Please now supply the information as is required under FOI law".

7. MoJ responded on 17 November 2015, treating it as a fresh request. It refused to confirm or deny whether the requested information is held, citing the FOIA exemptions in sections 40(5) (personal information) and 32(3) (court records). MoJ explained to the complainant how to make a subject access request.
8. The complainant requested an internal review on 17 November 2015. MoJ provided its internal review response on 9 December 2015 upholding its position.

Scope of the case

9. The complainant contacted the Commissioner on 10 December 2015 to complain about the way his request for information had been handled.
10. The analysis below considers MoJ's application of section 40(5) FOIA to the requested information.

Reasons for decision

Section 40 - personal information

11. Section 40(5)(a) of FOIA excludes a public authority from complying with the duty imposed by section 1(1)(a) of 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). In other words, if someone requests their own personal data, there is an exemption from the duty to confirm or deny under FOIA.
12. Section 40(1) of 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".
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. In correspondence with the complainant, MoJ said:

"We are not obliged to confirm or deny whether we hold the information you have requested as if held, this would be personal information of which you would be the data subject".
16. 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.
17. It follows that the Commissioner considers that the complainant is the data subject within the meaning of the section 40(1) exemption.
18. In relation to such information, the provisions of section 40(5) 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).
19. The Commissioner is satisfied that even confirming whether it holds any information under the terms of the FOIA means that the MoJ would be confirming, to the world at large, whether or not it holds relevant information involving this complainant. He therefore considers that the section 40(5) exemption was relied upon correctly by the MoJ in this case.
20. In light of that conclusion, the Commissioner has not investigated MoJ's application of section 32(3) to the same information.

Other matters

21. In the Commissioner's view, this decision will not disadvantage the applicant. He considers that an applicant wishing to access their own personal data will still be able to pursue this right under the DPA. Furthermore, he 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.
22. In this respect, he is satisfied that the MoJ advised the complainant – for example, on 1 September 2015, 23 September 2015 and 17 November 2015 – that he may wish to have his request considered as a SAR. The MoJ explained to the complainant what information it required from him in order to proceed with a subject access request.

Right of appeal

23. 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

24. 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.
25. 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

Jon Manners
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SK9 5AF