

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 June 2020

Public Authority: Ministry of Housing Communities and Local Government

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested a telephone number for the Head of the FOI Team at the Ministry of Housing Communities and Local Government (the MHCLG). The MHCLG refused the request on the basis that section 40(2) of the Act applies (personal data).
2. The Commissioner's decision is that the MHCLG was correct to apply section 40(2) to withhold the information from disclosure.
3. The Commissioner does not require the MHCLG to take any steps.

Request and response

4. On 15 November 2019, the complainant wrote to the MHCLG and requested information in the following terms:

"Please provide a telephone number for the head of your Freedom of Information Act team. Please note that I am not asking for any other information (name, email address etc), just the telephone number."
5. The MHCLG responded on 3 December 2019. It refused to provide the information on the basis that section 40(2) of the Act applied.
6. Following an internal review, the MHCLG wrote to the complainant on 20 December 2019. It upheld its previous decision.

Scope of the case

7. The complainant contacted the Commissioner on 23 December 2019 to complain about the way his request for information had been handled. He considers that the MHCLG is not correct to apply section 40(2) to withhold the information he requested.
8. The Commissioner therefore considers that the complaint is whether the MHCLG was correct to apply section 40(2) to withhold the information from disclosure.

Reasons for decision

Section 40 personal information

9. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
10. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').

11. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data, then section 40 of the FOIA cannot apply.
12. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

13. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living 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.
15. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
16. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
17. The Commissioner drew the complainant's attention to the fact that his request for information is ambiguous. His specific request was for "a telephone number for the head of your Freedom of Information Act team." This could either be read as a request for 'the' telephone number of the Head of the FOI Team, or simply 'a' telephone number which would allow the Head of the FOI team to be contacted (i.e. not necessarily his direct personal work number). She highlighted that the MHCLG does provide a telephone number for the public to make inquiries on its website. It could therefore be argued that the direct number is not necessary as the general number would suffice to contact the Head if it was appropriate for a caller to speak to the Head of the Team due to the nature of the call. The request was therefore met by the publication of this number.
18. Nevertheless, she notes that in his request for review, the complainant stated specifically that:

*"In this case, there is no public register or reverse directory. You never disclose the names of FOI staff to the general public. So a telephone number (especially a departmental telephone number, ie one that relates wholly to government business and which will be answered by any available team member **if its primary user is not at their desk**) by itself does not constitute personal data."* (relevant section highlighted by the Commissioner).

19. The Commissioner therefore considers that the request was clarified in the complainant's request for review, and that the complainant was specifically seeking the direct work telephone number for the MHCLG's Head of Knowledge & Information Access team.
20. The complainant argues that the individual will not be identifiable as the MHCLG does not publish names of its officers to the public. However, correspondence from the Head of the Team to various organisations, apologies to specific individuals who have made complaints by the Head, etc *are* likely to include the name of the individual, and so some members of the public, and some organisations, will be able to identify who the head of the FOI unit is. The employees of the FOI team at the MHCLG will also be able to identify who the individual concerned is. The individual is therefore identifiable, and a disclosure of their telephone number would therefore provide information about an identifiable individual. As requests under the FOI Act are considered to be to the whole world, it would therefore effectively put this information into the public domain.
21. To put this into context, a telephone number relating specifically to the 'Head of the FOI team at the MHCLG' is information relating to a specific individual. It distinguishes one specific individual working at the MHCLG from any of the others. That individual is identifiable to other individuals, albeit that not all members of the public could identify them.
22. The telephone number specifically relating to the Head of the FOI team is therefore personal data relating to the Head of Knowledge & Information Access team. This individual is an identifiable individual, and their personal work telephone number will therefore be information relating to them as an individual.
23. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
24. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

25. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

26. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

27. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

28. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that *"processing shall be lawful only if and to the extent that at least one of the"* lawful bases for processing listed in the Article applies.

29. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"².

² Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

30. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-
- i. **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii. **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii. **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
31. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.
- i. *Legitimate interests*
32. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.
33. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
34. The complainant argues that the public has a legitimate interest in being able to have access to the telephone number of the Head of Knowledge & Information Access team in order to be able to request updates and/or to seek assistance under section 16 of FOIA. The MHCLG argues that there is a set process for requesting information under the FOI Act, and it does not require the requestor to have a telephone number to contact the Head of the FOI Team within that process.
35. The Commissioner notes this argument but accepts that it is important to be able to contact the MHCLG to request information and to be able to seek advice. Requests for environmental information can be made verbally, the public has a legitimate interest in having access to a telephone number which it can use for that purpose. However, neither of these two legitimate interests requires the specific number for the Head of the FOI Team.

36. A means of contact which will allow information to be requested is all that is required. The MHCLG does provide a general telephone number on its website, however the complainant argues that he was informed that he could not make requests for information via this number, and could not have his call transferred to members of the FOI Team via this number.

ii. Is disclosure necessary?

37. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

38. The question which concerns the Commissioner is whether it is necessary to have a direct telephone number for the Head of Knowledge & Information Access team given that the MHCLG publishes a general enquiries number which can direct callers to a relevant member of the team should it prove necessary to do so. The complainant argues that when he called the MHCLG general number, he was told that his call would not be passed on to the FOI team, nor the head of the FOI team. He argues that he was also told that he could not make a request by telephone - that he needed to make his request in writing.

39. Amongst other things, section 8(1) of the FOI Act requires that requests under the Act need to be made in writing.

40. Section 2.3 – 2.5 of The Freedom of Information Code of Practice on, issued by the Secretary of State under section 45 of the Act states that:

"2.3 Public authorities should, as a matter of best practice, publish a postal address and email address (or appropriate online alternative) to which applicants can send requests for information or for assistance.

2.4 There is no requirement for a request for recorded information specifically to mention the Act in order to be a valid FOI request. Where an applicant asks a public authority to disclose recorded information but does not specifically mention the Act, and the request complies with section 8 (see paragraph 1.14 above), the public authority should consider the request under the Act in any case and let the applicant know that this is how the request is being handled. Where a person seeks to make a request orally they should be advised to put their application in writing in accordance with section 8(1)(a) of the Act.

2.5 There may be circumstances where a person is unable to frame their request in writing, for example owing to a disability. In these instances the public authority should make sure that assistance is given to enable them to make a request for information. For example, advising the person that another person or agency (such as a Citizens Advice Bureau) may be able to assist them with the application, or make the application on their behalf. Public authorities may also consider, in exceptional circumstances, offering to take a note of the application over the telephone and sending the note to the applicant for confirmation. Once verified by the applicant this would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received.”³

41. However, requests under the Environmental Information Regulations 2004 and the Data Protection Act 2018 can be made verbally. Therefore, a valid telephone number to make such requests should be available, and employees should know how to react when receiving such requests (i.e., how to record the request which has been made). The general enquiries line number which the MHCLG promotes on its website *should* therefore suffice to make such requests.
42. Whilst the complainant's request is an FOI request, he argues the wider issue is that some types of requests can be made verbally, and the MHCGL's response suggested that he could not make a verbal request for information.
43. The Commissioner's guidance on the Environmental Information Regulation 2004 states that:

The Regulations do not specify how a valid request must be made. Requests can be made verbally or in writing, so a request could be made by telephone, letter or email, or using social media sites such as Facebook or Twitter. It is good practice to have a policy for recording details of the requests you receive, particularly those made by telephone or in person.

44. Similarly, EIR Regulation 16 Code of Practice⁴ states, at paragraph 17, that:

"A request for information could be received anywhere in a public authority, for example in correspondence about other matters. Public authorities could also receive verbal requests for environmental

³ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

⁴ <https://ico.org.uk/media/for-organisations/documents/2013835/eir-regulation-16-code-of-practice.pdf>

information because, unlike FOIA, the EIR does not require requests to be in writing. This means someone could make an EIR request over the telephone or face to face."

45. The MHCLG should therefore have in place processes which allow a member of the public to make a valid verbal request via any telephone number on which it receives such a call. Staff should therefore have the necessary training to recognise, record and direct such requests to the appropriate team for consideration.
46. However, although the complainant argues that it is therefore necessary for the MHCLG to respond to his request and provide him with a number for the Head of the FOI Team, the Commissioner is not satisfied that that is the case. Any valid number for the MHCLG should be able to take and record EIR requests. It is not necessary for the Head of the FOI Team to have their personal work number disclosed in order to meet that need – any telephone number is sufficient. It is unlikely in any organisation that the head of an FOI Team would have responsibility for recording verbal requests within their job role, although they should do so if they do receive a valid verbal request in the course of carrying out their duties, as would any officer.
47. Additionally, it would not be likely that the Head of the FOI Team could personally respond to inquiries regarding specific cases being dealt with by members of their team. They would need to request an update from the relevant officer dealing with the request.
48. There is therefore no requirement for the Head of the FOI Teams personal work number to be disclosed, and doing so would not add any specific value to the public's ability to contact and question the organisation, or to make requests or ask for assistance from the MHCLG.
49. A refusal to accept a valid verbal request for information via the telephone is, on its own, a breach of compliance with the relevant legislation, noting again, however, that the FOI Act requires that requests are made in writing. The allegation that individuals are not able to make valid verbal requests to the MHCLG can be addressed by the Commissioner by means other than via a step within the decision notice relating specifically to this request for personal data.
50. The Commissioner is not therefore satisfied that it is necessary for the Head of the FOI's Team's personal work telephone number to be disclosed. By providing a general telephone number, calls can be routed through to the correct team member who can respond to the inquiry, or who is able to take forward a verbal request for information where it is necessary or appropriate to do so. The MHCLG's refusal to pass through the complainant's call to the team in this case does not necessarily mean it will not do so where it is appropriate to do so.

51. As the Commissioner considers that a disclosure would not be necessary to meet the legitimate interest in disclosure, she does not need to conduct the balancing test.
52. As disclosure is not necessary, there is no lawful basis for the processing, and it would be unlawful. It would not meet the requirements of principle (a).

The Commissioner's view

53. The Commissioner has therefore decided that the MHCLG was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

Other matters

54. Although this does not fall within the scope of the Commissioner's decision on this complaint, the Commissioner wishes the MHCLG to note the points outlined below.
 - (a) The Commissioner notes above that one of the complainant's points is that the MHCLG's procedures would not allow him to make a request for information verbally via the general number it publishes on its website. This is not a failure to comply of the FOI Act, and the MHCLG does follow best practice in this area in that the information it publishes on its website conforms with the provisions of paragraph 2.3 of the Code of Practice.
 - (b) However, the Commissioner also notes above that for requests under the Data Protection Act 2018, and the Environmental Information Regulations 2004, verbal requests can be made validly.
 - (c) The MHCLG should therefore ensure that its staff are fully aware of, and have appropriate processes to follow, if they receive a valid verbal request under this legislation.

Right of appeal

55. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

56. 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.
57. 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

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