

The Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 November 2022

Public Authority: The National Archives
Kew
Richmond
Surrey
TW9 4DU

Decision

1. The complainant requested, from The National Archives (TNA), access to information relating to the murder (committed in the 1940s) of a relative of the complainant. Although some information was made available by TNA, other information was withheld under section 38(1)(a) of FOIA (the exemption for 'health and safety').
2. The Commissioner's decision is that TNA was entitled to rely on section 38(1)(a).
3. The Commissioner does not require any steps to be taken following this decision notice.

Request and response

4. On 7 January 2022 the complainant asked TNA for "a review of the files" under FOIA. Prior to that, the complainant had contacted TNA with reference numbers relating to murder files and details of the person who was convicted.
5. The final position of TNA, as expressed in its internal review response of 28 June 2022, was that some information in the relevant file was exempt under sections 38(1)(a) and 40(2) – the exemptions for 'health

and safety' and 'personal information' respectively. TNA also said that some other information would be made available in response to the request because it did not engage these exemptions, or was already in the public domain.

Scope of the case

6. The complainant contacted the Commissioner on 30 June 2022 to complain about the way their request for information had been handled.
7. The complainant has said that they "would like to challenge the Reasoning for Upholding the Exemptions under Section 38: Health & Safety", and made some comments that can be summarised as follows:
 - Information is already in the public domain (newspaper reports).
 - None of the surviving relatives ever knew the victim of the crime.
 - Endangerment to the physical or mental health of surviving relatives is not likely, in the complainant's view. The complainant said "the passage of time does not appear to have been a factor considered in favour of release".
8. Based on the complainant's comments, the Commissioner considers that the scope of the case is to consider whether TNA was correct to rely on section 38(1)(a) in respect of the information that is still being withheld.
9. The Commissioner has not seen the withheld information, nor asked TNA for any further submissions. He considers that he is able to make his decision without seeing it or them, based on the request itself, the information from the complainant, TNA's responses to the request and the Commissioner's handling of similar previous requests made to TNA.

Reasons for decision

10. Section 38(1)(a) of FOIA provides that information is exempt if its disclosure would or would be likely to endanger any individual's physical or mental health. This exemption is qualified by the public interest test.
11. The Commissioner highlights his [guidance](#) on section 38 of FOIA.
12. The Commissioner also highlights a fairly recent decision notice in [IC-97448-Z5S3](#). That case involved a similar request to TNA for access to closed files relating to a historic murder (in the early 1960s – not much

later than the murder in the file(s) being requested in the present case), and the same exemption was cited by TNA (section 38(1)(a)).

13. In IC-97448-Z5S3 the Commissioner determined that section 38 was engaged and that the public interest lay in maintaining the exemption. The Commissioner reaches the same conclusion here and he considers that it is appropriate and proportionate simply to direct the complainant to his website guidance and the reasoning in IC-97448-Z5S3 rather than repeat the same points here.
14. On the comments made by the complainant in their complaint email of 30 June 2022, the Commissioner has some additional observations:
 - In the internal review response, TNA noted what the complainant had said about information already in the public domain and TNA expressed its intent to make information available on that basis.
 - The complainant's comments indicate that in this instance, there are surviving relatives beyond the complainant themselves.
 - While the complainant said that the victim's children and children's children are deceased, it does not appear to the Commissioner that the complainant provided any evidence (like copies of death certificates) or explanation to TNA in support of that. The Commissioner did ask the complainant (11 July 2022) for a copy of their original request but the complainant has not provided one, so the Commissioner has not been able to see exactly what the complainant said to TNA when they first made the request.
 - The decision notice cited above (IC-97448-Z5S3) contains some relevant comments, including on the subject of the passage of time.

Right of appeal

15. 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

16. 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.
17. 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

Daniel Kennedy
Senior Case Officer
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Water Lane
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SK9 5AF