

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 January 2023

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information from the Ministry of Justice ('the public authority'). The Commissioner's decision is that the public authority is entitled to rely on section 40(2) of FOIA to withhold all of the requested information.
2. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 14 December 2021, the complainant made the following request for information to the public authority:

"I would like to make a freedom of information request about prisoner [information redacted] who presently resides in HMP Belmarsh Prison.

What offences has he committed that he has been incarcerated in prison for over two years with no sentence and no intimation date of his release"
4. The public authority refused to provide all of the requested information citing section 40(2) (personal information) of FOIA as its basis for doing so. Later, during the course of the Commissioner's investigation, it also sought to apply section 32(1)(c) to the request.

Reasons for decision

Section 40 - personal information

5. This reasoning covers whether the public authority was correct to apply section 40(2) of FOIA to the request.¹
6. Section 40(2) says that information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles.
7. Information relating to criminal convictions and offences is given special status in the UK GDPR. Article 10 of UK GDPR defines 'criminal offence data' as being personal data relating to criminal convictions and offences. Under section 11(2) of the DPA 2018 personal data relating to criminal convictions and offences includes personal data relating to:
 - (a) The alleged commission of offences by the data subject; or
 - (b) Proceedings for an offence committed or alleged to have been committed by the data subject or the disposal of such proceedings including sentencing.
8. Having viewed the information request the Commissioner is satisfied that the complainant was seeking criminal offence data of a third party. This is because the requested information concerns offences and criminal proceedings connected to a named individual.
9. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed (which includes disclosure in response to an information request) if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA can be met.
10. The Commissioner considers that the only Schedule 1 conditions that could be relevant to a disclosure under FOIA are the conditions at Part 3 paragraph 29 (consent from the data subject), or Part 3 paragraph 32 (data made manifestly public by the data subject).
11. The Commissioner has seen no evidence or indication that the individual concerned has specifically consented to this data being disclosed to the

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

world in response to the request or that they have deliberately made this data public.

12. As none of the conditions required for processing criminal offence data are satisfied there is no legal basis for its disclosure. Processing this criminal offence data would therefore contravene one of the data protection principles. Namely, that set out at Article 5(1)(a) of UK GDPR (lawfulness, fairness, transparency). The Commissioner has determined that the information is exempt under section 40(2) of FOIA.
13. Having found that the public authority is entitled to rely on section 40(2) of FOIA to withhold all of the requested information, the Commissioner has not gone on to consider the application of section 32(1)(c).

Right of appeal

14. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

15. 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.
16. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF