

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 January 2024

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

Decision (including any steps ordered)

1. The Commissioner's decision is that information the applicant has requested in a file associated with the 'Battle of Orgreave' during the 1984 UK miners' strike is exempt information under section 40(2) of FOIA. The information is other people's personal data, and it would be unlawful to disclose it. It's not necessary for the National Archives to take any corrective steps.

Request and response

2. On 26 April 2023, the applicant wrote to the National Archives (TNA) and requested information in the following terms:

"I would please like to make a request for information under FOIA, and for this request to also be treated as a Subject Access Request. My name is [redacted], I'm one of the defendants named in this file DPP 2/12384, and I would please like to request access to this information about myself. I do not understand why this file is closed until January 2071. As you may be aware, next year will mark the 40th anniversary of Orgreave; I would like to get to the bottom of this miscarriage of justice in the time I have remaining. As my date of birth is [redacted],

in order to see this information about myself I would have to live until I would be over 120 years old. Therefore, I would please request that you make available this file available to me now”

3. TNA responded on 13 June 2023. It said that all of the requested information was exempt from disclosure under section 40(2) of FOIA.
4. Following an internal review TNA wrote to the applicant on 8 September 2023. It advised that the majority of the information that was about the applicant themselves had been provided to them separately under the data protection legislation. However, it had identified one page of additional information about the applicant which it provided to them.
5. TNA confirmed that the remaining information is exempt under section 40(2) of FOIA as it's other people's personal data.

Scope of the case

6. Acting on behalf of the applicant, the complainant contacted the Commissioner on 26 September 2023 to complain about the way the request for information had been handled.
7. The Commissioner considers that the scope of his investigation is to consider whether TNA is entitled to withhold information within scope of the request under section 40(2) of FOIA. He's considering a data protection complaint about the applicant's subject access request separately.

Reasons for decision

Section 40 personal information

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

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

public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').

10. 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's not personal data, then section 40 of FOIA cannot apply.
11. Second, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

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

"any information relating to an identified or identifiable living individual".

13. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
14. 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.
15. 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.
16. A number of individuals are named in the title of the requested file and they and others will be named and discussed in the file.
17. In the circumstances of this case, the Commissioner is satisfied that the information relates to people other than the applicant who are discussed in the file – the 'data subjects.' These are the individuals named in the file's title, and the "21 others" referred to. He's satisfied that this information both relates to and identifies the individuals concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
18. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

19. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

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

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

21. In the case of a FOIA request, the personal data is processed when it's 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.

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

23. In addition, if the requested data is criminal offence data, in order for disclosure to be lawful and compliant with principle (a), it must also meet the requirements of Article 10 of the UK GDPR.

Is the information criminal offence data?

24. Information relating to criminal convictions and offences is given special status in the UK GDPR.

25. Article 10 of the UK GDPR defines 'criminal offence data' as being personal data relating to criminal convictions and offences. Under section 11(2) of the DPA 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.

26. The Commissioner has reviewed the wording of the request, the title of the file that's been requested, which includes the wording "... unlawful assembly on 18 June 1984 in Rotherham. Not guilty", and the matter to which the file relates. He considers that the requested information will include criminal offence data. He's reached this conclusion on the basis that the file is associated with the 'Battle of Orgreave'. The 'Battle of Orgreave' was an event in the UK miners' strike in 1984. Violent clashes broke out between the pickets and the police, resulting in 93 arrests, while 51 pickets and 72 police officers were injured. In their request the applicant also referred to there having been a "miscarriage of justice" associated with this event.

27. 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.
28. 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).
29. The Commissioner has seen no evidence or indication that the individuals concerned have specifically consented to this data being disclosed to the world in response to FOIA request or that they have deliberately made this data public.
30. 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 breach principle (a) and so this information is exempt under section 40(2) of FOIA.

The Commissioner's view

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

Right of appeal

32. 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

33. 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.
34. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF