

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 April 2024

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

Decision (including any steps ordered)

1. The complainant has requested information regarding the staffing levels and absences, and names and positions of those employed at Bradford County Court between 17th of March 2022 until 6th of November 2023. The Ministry of Justice (the 'MOJ') refused the request citing section 40(2) of FOIA (third party personal information).
2. The Commissioner's decision is that the MOJ was entitled to rely on section 40(2) of FOIA to withhold the requested information.
3. No steps are required as a result of this notice.

Request and response

4. On 6 November 2023, the complainant wrote to MOJ and requested information in the following terms:

"In the context of the following published article:

<https://publications.parliament.uk/pa/cm...>

I would like to make the following FOI request restricted to the timeframe of 17th of March 2022 until 6th of November 2023 as the scope period of my enquires.

Q1. I would like the full name of all staff that work at Bradford County Court, including their position and the name of their respective managers during the scope period of my enquiries.

Q2. For each staff member in Q1. I would like to know the type of their employment as either full-time, part-time or agency worker.

Q3. For each staff member in Q1 I would also like the details of each staff member's attendance or absence from work, so I can independently calculate the staffing levels over the scope period of my enquires."

5. MOJ responded on 23 November 2023. It informed the complainant that it relied on section 40(2) of FOIA to withhold the information.
6. Following an internal review MOJ wrote to the complainant on 14 December 2023. It stated that:

"After careful consideration, I am satisfied that section 40(2) of the FOIA, was correctly applied. In reiterating the response to FOI 231106057, a person's name and employment details are their personal information and therefore their personal data. Personal data is defined as information that relates to an identifiable person. HMCTS has a responsibility to protect personal data and consider whether its disclosure is both lawful and upholds the safety of the individual(s)."

Scope of the case

7. The complainant contacted the Commissioner on 10 December 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to establish whether MOJ is entitled to withhold the requested information under section 40(2) of FOIA.

Reasons for decision

Section 40 - personal information

9. Section 40(2) of 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 processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK 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 FOIA cannot apply.
12. Secondly, 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?

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

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

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. 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 FOIA cannot apply. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA.

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

Is the information personal data?

17. The complainant has requested the full name of all staff employed at Bradford County Court (BCC), including their position (whether full time or part time), the names of their respective managers, and details of their attendance and absence between 17th of March 2022 until 6th of November 2023.
18. The Commissioner is therefore satisfied that the withheld information can be clearly categorised as personal data and that the individuals concerned (officers and employees of BCC) can be identified from the information.
19. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
20. 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.
21. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

22. Having established that the information requested is personal data, the Commissioner has focussed here on Article 5 (1)(a) of the UK General Data Protection Regulation, which states:
23. "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
24. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
25. 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.
26. 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

27. 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.

28. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under 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.
29. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

30. In considering any legitimate interest(s) in the disclosure of the requested information under 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.
31. 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.

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".

32. The complainant explained to MOJ in his request for a review that he required the information to “independently monitor the staffing levels at my local County Court as a private citizen investigator, auditor and journalist”.
33. The Commissioner appreciates that, for personal reasons, the complainant has a legitimate interest in this information that would be met through disclosing the information.
34. The Commissioner appreciates that there is a legitimate interest from the point of view of transparency and accountability. However, he does not consider that this legitimate interest extends to the very specific information requested by the complainant for the names, roles, work patterns and attendance records of all staff to satisfy their private concerns and interests.
35. The Commissioner considers that disclosing when named employees at BCC were in attendance or absent from work extends into the individuals’ private and personal lives and is their personal data.
36. But the Commissioner considers that there is a legitimate interest from the point of view of transparency and accountability as to how staffing levels may impact the general day to day workings of the courts and justice system.

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 FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
38. The MOJ advised the complainant in its internal review that the

“MOJ is not satisfied that the intrusive disclosure under FOIA, is necessary in the context of this specific case. There already exists court procedural rules, and mechanisms, via which members of public can contact the court for information about their court case, or to access any information they are entitled to access, without the necessity of disclosing staff personal data under the FOIA.”
39. Whilst the Commissioner appreciates that there is a legitimate interest in staffing levels at the local courts. However, he does not consider that this extends to the very specific information requested for the names, roles, work patterns and attendance records for each individual member of staff at BCC to satisfy the complainant’s concerns and interests. That

level of detail is not required to satisfy the general interest in staffing levels.

40. Additionally, the Commissioner considers that disclosing when named employees at BCC were in attendance or absent from work extends into the individuals' private and personal life and could reveal why they are away from work. It is not proportionate to disclose this level of detail into the public domain.
41. The Commissioner is satisfied in this case that there are less intrusive means of understanding the staffing levels at BCC such as requesting disclosure of the overall absence rates by roles or grade without requesting the information on an individual bases.
42. It is also not immediately apparent why staffing levels at the court need to be independently verified or whether the information within the scope of the request would provide the complainant with information to form a view that staffing is sufficient for the justice system to function effectively.
43. The Commissioner considers that the complainant may be pursuing a personal and legitimate interest as to the staffing levels at his local court, but the specific personal data requested for each individual member of staff at BCC are not required to achieve this aim.
44. Therefore, in the particular circumstances of this case, the Commissioner does not consider that disclosure under FOIA is **necessary** to meet the legitimate interests identified at paragraph 34 and therefore he has not gone on to conduct the balancing test.
45. As disclosure is not necessary, there is no lawful basis for this processing, and it is unlawful. It therefore does not meet the requirements of principle (a).
46. The Commissioner has therefore decided that MOJ was entitled to withhold the names, job titles, attendance records and contact details of the individuals, employed at BCC under section 40(2) of FOIA.
47. The Commissioner therefore considers that disclosing the requested information would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection.

Right of appeal

48. 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

49. 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.
50. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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