

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 January 2015

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

#### Decision (including any steps ordered)

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1. The complainant requested information relating to claims. The Ministry of Justice (the 'MOJ') provided some information, but refused the remainder on the basis of sections 40(2) and 40(5)(b)(i) (personal information) and section 12(2) (cost of compliance).
2. The Commissioner's decision is that the MOJ has properly relied on these exemptions to withhold the remaining requested information, although he also finds that 40(5)(a) applies. He does not require the MOJ to take any remedial steps to ensure compliance with the legislation.

#### Background

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3. The Commissioner understands that the complainant has submitted a number of requests to the MOJ over a period of four years relating to similar issues, as is clear from the wording of this request.

#### Request and response

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4. On 29 January 2014 the complainant wrote to the MOJ and requested information (which he had previously requested on 29 November 2010) as follows:

"1. As "Deputy Head of Team" and "Litigation Manager" you will be well placed to **answer the questions disclosed** within this email.

2. Please do so **without delay, misdirection or evasion** as I can confirm that I find these frequent Hmcs "Customer Service" and "Complaints Handling" tactics to be wholly offensive and wholly aggravating.

3. I can also confirm that **many others find Hmcs Customer Service and Complaints Handling** etc tactics to be **equally offensive, oppressive, unconstitutional and arbitrary.**

4. I can confirm that you and many of your colleagues have **brought Hmcs Into Disrepute** and there is a strong perception amongst those who have become aware of your dealings in regard to the complaints and requests I have made to you and your colleagues that **important sections of Hmcs are inclined towards dishonest, disreputable, discreditable and fraudulent misconduct.**

Accordingly:-

5. Kindly confirm the Claim numbers and Claim details for all Claims issued against Hmcs and/or Hmcs staff to include all Claims where the Claimant or the Court were obliged to name the MoJ as a Defendant or Co-Defendant etc.

6. Kindly confirm how many Claims issued against Hmcs or Hmcs staff were:-

(a) Won by the Claimants at Trial

(b) Successfully defended at Trial by Hmcs/MoJ/Hmcs Employee(s).

(c) Won by the Claimants pursuant to an application for Judgement in Default, Summary Judgement or Strike Out

(d) Successfully defended by Hmcs etc prior to Trial by the same or similar means as paragraph 5(c) herein.

(e) Won by the Claimants on a technicality such as a de-minimus purported breach of an Unless Order by a matter of minutes.

(f) Successfully defended by the Defendants on a technicality such as a de-minimus purported breach of an Unless Order by a matter of minutes.

**Further, kindly also provide the following information:-**

7. *The number of Claims and Claims details in regard to claims brought against, involving in any way or referring in any way to:-*

*[Names redacted], the yet as Unnamed Officer of the Court who threatened me with GBH and Serious and Violent Assault at Barnet County Court (kindly now confirm his identity), Barnet County Court, [name redacted], The London Civil and Family Area Director's Office, [names redacted], yourself i.e. [name redacted], the Hmcs Bulk Centre and Tec, [names redacted]."*

8. *Please note the inclusion of the names of individual Hmcs Officers in this email is not to be taken as evidence of any specific allegations of Fraud or other misconduct unless otherwise specifically stated herein.*

9. *I trust you will deal with these requests in a more professional, adequate and honest manner than you generally have with previous requests.*

10. *Kindly acknowledge this email on receipt and confirm when your FULL reply to include the provision of the information requested is to be provided if it is not to be provided immediately."*

5. The MOJ requested clarification on 26 February 2014, which was provided by the complainant on 12 May 2014. In this clarification the complainant stated:

*"1. I do not consider your explanation for the delay is acceptable. Please either admit it is an excuse or supply a more detailed and credible explanation. Please also supply all the information held on and around the subject.*

*2. I do not understand why in a period of around 3.5 years none of the information has yet been supplied - including the information requested in relation to which you do not appear to have raised any queries. Please inform providing all the information held on and around the subject.*

*3. For the avoidance of doubt please can you supply a copy of the email from [name redacted] you refer to as you have not provided the date of the same and for some reason I am having difficulty identifying the same.*

- 4. Claim details can include the parties names and the nature of the claim i.e. what it is about etc.*
- 5. The main technicality is as listed. However if costs considerations do not prevent then any additional technicality may include anything other than a trial on the merits.*
- 6. As far as the date range I have asked for all Claims. If this means the request exceeds the costs limitations then please work backwards from the date of the original request as far as possible without exceeding the limit and then backwards from the present and/or the date of your acknowledgement."*
6. Following the complainant's clarification on 12 May 2014, the MOJ said it would not consider questions 1 and 2 under the FOIA. In relation to question 3 of the request, the MOJ said it considered that sections 40(1) and 40(2) (personal information) applied but it provided the complainant with a copy of the requested email outside FOIA on a discretionary basis.
7. For question 5, the MOJ provided details of the volumes of claims against HMCTS (Her Majesty's Courts and Tribunals Service) and HMCS (Her Majesty's Courts Service) and confirmed that there are 572 claims recorded since 2003. The MOJ refused to provide any claim details on the basis of section 40(2).
8. In relation to question 6(a) to (d), the MOJ advised that it had provided information for the period January 2009 to December 2010, choosing these dates based on the date of the complainant's original request, which it considered to be 29 November 2010, rather than this current request. It confirmed it had received 127 claims in that period, of which 56 were ongoing at the time of its response and 71 had been completed. The MOJ provided the breakdown of the successful numbers of claimants and defendants, together with those settled pre-court and those proceeding to trial.
9. For question 6(e) and (f) the MOJ refused to provide the claim details on the basis of section 40(2), personal information.
10. Turning to question 7, the MOJ applied section 40(5) of FOIA and refused to confirm or deny whether the requested information is held about the named individuals. However, the MOJ gave the complainant statistics relating to Barnet County Court, the London Civil and Family Area Directors Office and HMCTS Bulk Centre. It did so because it considered these to be departments as opposed to named individuals. The MOJ refused to provide any claims details and applied section 40(2)

because it said that disclosure could lead to third parties being identified.

11. The complainant requested an internal review on 2 July 2014. The MOJ provided its internal review on 30 July 2014. It upheld its original position in relation to questions 3, 5, 6(a) to (d) and 7. It revised its position in response to question 6(e) and 6(f), and said that information may be held on the numbers of claims which were won by claimants or defendants because of a breach of an 'Unless Order', but stated that the cost of complying with the request would exceed the limit set by section 12(2) of FOIA (cost of compliance).

### **Scope of the case**

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12. The complainant initially contacted the Commissioner on 21 August 2014 to complain about the way his request for information had been handled. However, he did not provide all the documentation relevant to his complaint until 8 October 2014.
13. As a copy of the email referred to in part 3 of the complainant's clarification grounds has been provided to him on a discretionary basis, the Commissioner has not considered the MOJ's application of section 40(1) and 40(2) to it in this notice. Furthermore, he notes that this is not referred to in the original complaint which the complainant submitted for investigation. The Commissioner is, however, satisfied that as the email relates to the complainant it would engage section 40(1) of FOIA.
14. The Commissioner has reviewed the request of 29 November 2010, resubmitted on 29 January 2014, and has concluded that only questions 5, 6(a) to (f) and 7 constitute requests for recorded information under FOIA, the other elements all being either comments or questions. The Commissioner notes that the overall number of claims has been provided in relation to question 5 and that responses have been given to questions 6(a) to (d). The complainant has not expressly complained about these aspects, although invited to do so, therefore the Commissioner has not considered them further.
15. The complainant asked the Commissioner to investigate the MOJ's handling of his original request of 29 November 2010; however the complainant is significantly out of time in bringing this matter to the Commissioner's attention. The Commissioner has therefore disregarded this aspect of the complaint. Although he reiterated this in his request of 29 January 2014, the Commissioner agrees with the MOJ's view that this is not a request for recorded information under FOIA.

16. In this investigation, the Commissioner has therefore considered whether the MOJ correctly applied exemptions to the information it withheld from the complainant in parts 5, 6(e) and (f) and 7.

## **Reasons for decision**

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### **Section 40(2) – personal information**

17. The Commissioner has first considered the MOJ's reliance on section 40(2) of FOIA in relation to the claims details element of question 5.
18. Section 40(2) of the FOIA states that information is exempt if it is the personal data of any person other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. There are, therefore, two steps to considering whether this exemption is engaged.
  - a. Does the information constitute the personal data of any individual aside from the requester?
  - b. Would disclosure of that personal data be in breach of any of the data protection principles?
19. As to whether the information is the personal data of an individual aside from the requester, the definition of personal data is given in the Data Protection Act 1998. This states that for information to be personal data, it must relate to an individual and that individual must be identifiable from that information.
20. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
21. In the circumstances of this case, the Commissioner is satisfied that at least some of the requested information, if held by the MOJ, would be third party personal data. This is because living individuals would be identifiable from some of the information that has been requested, and the information would constitute the personal information of the individuals involved in civil claims.
22. The MOJ told the Commissioner that it considered the information constitutes sensitive personal data as defined by the DPA. Although the MOJ has not provided any arguments in support of its view that the data is sensitive, the Commissioner has reviewed the definitions in the DPA and concluded that the only one that the MOJ may be relying on is 2(g) which covers any proceedings for any offence committed or alleged to

have been committed by someone, the disposal of such proceedings or the sentence of any court in such proceedings.

23. The Commissioner's view is that civil claims do not constitute sensitive personal data as defined by the DPA and none of the other definitions appear to apply to the information requested. However, he is satisfied that the requested information is, nevertheless, third party personal data as it relates to individuals who could be identified from within the details of the claim data requested.
24. The MOJ said that disclosure of this information would breach the first data protection principle, namely that data should be processed fairly and lawfully. It said that personal data contained within civil claims against individuals is recorded for the purpose of the administration of justice and not for the purposes of disclosure via an FOIA response. It said it is satisfied that to disclose personal data for the purpose of an FOIA request would be unfair and cause unwarranted distress to the individuals concerned.

#### *Conclusion*

25. The Commissioner accepts that the information in question is the personal data of an individual aside from the requester and that the disclosure of this personal data would be in breach of the first data protection principle. His overall conclusion is, therefore, that section 40(2) is engaged and the MOJ is not required to disclose this information.

#### **Section 40(5) - neither confirm nor deny in relation to personal information**

26. The MOJ relied on section 40(5) in relation to part of question 7. Whilst it provided information about the numbers of claims brought against the named organisations, it refused to do so in respect of the named individuals.
27. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
  - a. the duty to inform the applicant whether or not requested information is held and, if so,
  - b. the duty to communicate that information to the applicant.
28. Section 40(5)(a) of FOIA excludes a public authority from complying with the duty imposed by section 1(1)(a) of FOIA - confirming whether or not the requested information is held - in relation to information

which, if held by the public authority, would be exempt information by virtue of subsection (1). In other words, if someone requests their own personal data, there is an exemption from the duty to confirm or deny under FOIA.

29. Although not cited by the MOJ, in the Commissioner's view the wording of part 7 of the request suggests that the complainant's own personal data may be held. However, the MOJ has no duty to confirm or deny this, by virtue of section 40(5)(a), as any information held would be exempt by virtue of section 40(1). This is an absolute exemption and the complainant would need to request this from the MOJ under the subject access provisions of the Data Protection Act 1998.

30. Section 40(5)(b)(i) of FOIA states that the duty to confirm or deny:

*"does not arise in relation to other information if or to the extent that either:*

*i) the giving to a member of the public of confirmation or denial that would have to be given to comply with section 1(1)(a) would (part from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or*

*ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."*

31. The Commissioner's view is that the MOJ correctly argued that confirming whether or not it held the requested information would breach the data protection rights of those named individuals, as it would reveal under FOIA whether or not they had been the subject of, or involved with, any claim. Such an argument is relevant to the exemption contained at section 40(5)(b)(i).

32. The consequence of section 40(5)(b)(i) is that if a public authority receives a request for information which, if it were held, would be the personal data of a third party (or parties), then it can rely on section 40(5)(b)(i), to refuse to confirm or deny whether or not it holds the requested information.

33. It is important to note that section 40(5)(b)(i) is a class based exemption. This means there is no need to demonstrate that disclosure (or confirmation) under FOIA would breach an individual's rights under the DPA when engaging this exemption.

34. The Commissioner accepts that parts of the requested information, if held, would be third party personal data and would be exempt from disclosure on the basis of section 40(2) of FOIA as it would be unfair to release details about any party's involvement in such matters. Accordingly, the MOJ is not required to confirm or deny whether it holds any of the requested information under FOIA by virtue of section 40(5)(b)(i).

### *Conclusion*

35. For the reasons set out above, the Commissioner has determined that the MOJ correctly relied on section 40(5)(b)(i) in refusing to provide the requested information in relation to the named individuals in question 7. Furthermore, it should have applied section 40(5)(a) in respect of the complainant himself.

### **Section 12(2) – cost of compliance**

36. Following an internal review, the MOJ engaged the cost exclusion in relation to questions 6(e) and (f) of the request.
37. Section 12(1) states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
38. Section 12(2) states that subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.
39. In this case, the public authority estimates that it would exceed the appropriate limit to confirm whether or not the requested information is held. In other words, it is citing section 12(2).
40. The appropriate limit in this case is £600, as laid out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
41. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time, providing an effective time limit of 24 hours' work.
- *determining whether the information is held;*
  - *locating the information, or a document which may contain the information;*
  - *retrieving the information, or a document which may contain the information; and*

- *extracting the information from a document containing it.*
42. When estimating whether confirming or denying whether it holds the requested information would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in determining whether it holds the information. The estimate must be reasonable in the circumstances of the case. It is not necessary to provide a precise calculation.
  43. The MOJ advised that it may hold information relevant to this part of the request as it could be contained in the relevant litigation files. It explained that in order to determine whether the requested information was in the files, it would need to manually review 127 litigation files. It confirmed that this is the only method of determining whether any information is held and it is therefore also the quickest.
  44. Following a sampling exercise, the MOJ estimated that it would take 15 minutes to review each file because the requested information would not be immediately identifiable from any order or judgment. It said that the litigation files are not uniform in the recording of successful claimants or defendants by a specific reason, such as an 'Unless Order', and therefore the information cannot be easily identified. As this equates to a total estimate of around 32 hours, which would result in a cost of around £800, it would exceed the cost limit.
  45. Section 16 of FOIA requires a public authority to provide advice and assistance to requesters with a view to them refining their request such that it may fall within the cost limit. In this case, the MOJ suggested that the complainant consider a shorter timeframe.

### *Conclusion*

46. Based on the above detailed submissions, the Commissioner accepts that to ascertain whether or not the information is held would in itself exceed the appropriate limit in this case. He is satisfied that the MOJ met its section 16 obligations in that it offered the complainant advice and assistance as to how he could refine his request so that it could be answered within the cost limit.

## Right of appeal

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47. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

48. 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.
49. 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 .....**

**Jon Manners**  
**Group Manager**  
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