

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 March 2016

Public Authority: Department for International Development
Address: 22 Whitehall
London
SW1A 2EG

Decision (including any steps ordered)

1. The complainant has requested information on his father's Crown Service.
2. The Commissioner's decision is that the Department for International Development ('DfID') is not required to confirm whether it holds the requested information in accordance with section 40(5) of the FOIA.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 11 April 2015, the complainant wrote to DfID and requested information about his father in the following terms:

"I request for Crown service letter as he was British and his salary was deducted for pension and provident fund."
5. DfID responded on 21 April 2015. It stated that it had carried out a full search of its records and confirmed that it did not hold any information relevant to the request.
6. Following an internal review DfID wrote to the complainant on 14 May 2015. It stated that it had considered the responses provided to the complainant by the Information Rights Team and Overseas Pensions Department. It concluded that DFID had carried out a thorough search of its information holdings and found no records at all relating to the

complainant's father. It stated that there is no reason that DFID would ever have had such information and that the information the complainant provided did not allow DfID to confirm that he was in Crown Service.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. During his investigation the Commissioner understood that the complainant's request was for information which could prove his father's Crown Service. He understands that this has been an on-going concern for a number of years culminating in DfID's handling of his request under the FOIA.
9. Although DfID did not cite section 40(5)(b) the Commissioner considers – for reasons set out later in this notice – that the scope of his investigation must consider the application of this exemption as the request relates to the personal data of a third party.

Reasons for decision

Background

10. DfID explained to the Commissioner that the complainant first contacted it seeking information which would confirm that his father was employed in British Crown Service during the period 1956 to 1963 when he was employed by the African Wharfage Company Ltd. On receipt of the initial enquiry from the complainant in April 2012, DFID's Overseas Pensions Department's (OPD) first step was to search for information regarding the complainant's father on its overseas pension payment system (Principal Integrated Payments System (PIPS)). Although this is a payroll system rather than a records database, it is the first step when dealing with general enquiries from members of the public relating to overseas pensions. This showed no record at all of any information relating to the complainant's father. OPD staff then searched a range of paper based filing systems, including file transit sheets and indexes for personal and pensions files. Again, no information was located.
11. Further searches of a range of documents called 'Staff Lists' relating to the East African governmental authorities (ie East African Railways and Harbours, East African Posts and Telecommunications Administration, East African High Commission and East Africa Common Services

Organisation) were undertaken for any mention of the complainant's father's name. DfID explained that inclusion in these lists is a useful indicator of at least the possibility of service being regarded as Crown Service. Staff Lists are historical documents which were produced by the relevant governmental organisations. DfID holds only a selection of the lists covering the period 1948 to 1969. No information on the complainant's father was located nor was there any reference to any of the organisations in which he worked.

12. DfID explained that these types of enquiries are quite common in OPD where staff have built significant understanding of the issues and expertise in searching information holdings. DfID searched the overseas pensions records in an attempt to respond to the request notwithstanding that, based on the information the complainant provided (particularly evidence of his father's employment by a private commercial company during the period in question), it was unlikely that information was held.
13. The complainant's FOIA request followed the responses from OPD which had been conducted in the normal course of business.

Section 1

14. Under section 1(1)(a) of the FOIA, a public authority is obliged to advise an applicant whether or not it holds the requested information. This is known as the "duty to confirm or deny". However, the duty to confirm or deny does not always apply and authorities may refuse to confirm or deny through reliance on certain exemptions under the FOIA.

Section 40 - Personal information

15. Section 40(2) provides that information is exempt if it is the personal data of someone other than the applicant and disclosure would contravene one of the data protection principles.
16. Section 40(5)(b)(i) provides that the duty to confirm or deny does not arise if doing so would in itself contravene any of the data protection principles.
17. In determining whether the exemption is engaged the first step is to consider whether the requested information is personal data, or would be personal data if it were held. Personal data is defined in the Data Protection Act 1998 (DPA) as:

"...data which relate to a living individual who can be identified—

(a) from those data, or

(b) from those data and other information which is in the possession of,

or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;”

18. The Commissioner considers it clear that confirmation or denial in response to this request would disclose information that both identifies and relates to the individual referenced in the request - who is a living individual. That information would, therefore, constitute personal data according to the definition given in section 1(1) of the DPA.
19. The next step is to consider whether disclosure of that personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on the first data protection principle.
20. The first data protection principle requires that the processing of personal data be fair and lawful and,
 - a. at least one of the conditions in schedule 2 is met, and
 - b. in the case of sensitive personal data, at least one of the conditions in schedule 3 is met.
21. In his consideration of whether confirming or denying that DfID holds relevant information would be fair, the Commissioner has taken the following factors into account:
 - a. The reasonable expectations of the data subject;
 - b. Consequences of disclosure; and
 - c. The legitimate interests of the public
22. The Commissioner's guidance makes it clear that where the information relates to the individual's private life (i.e. their home, family, social life or finances) it will attract more protection than information about them acting in an official or work capacity (i.e. their public life).
23. In this case the information relates to the individual's working life but in a personal capacity in respect of his career history and pension status.
24. The Commissioner considers that an individual would reasonably expect that information confirming such matters would not be disclosed to the wider public. The Commissioner notes that the complainant states that he is the named individual's son. However, while the Commissioner has sympathy with the complainant's position and motive, disclosure under the FOIA represents a disclosure to the world at large. Therefore in the circumstances of this case, this does not have a bearing on the

Commissioner's consideration of whether the section 40(5)(b) exemption applies.

25. The Commissioner has therefore gone on to consider the consequences of such confirmation or denial. He believes that such a disclosure has the potential to cause damage or distress to the data subject, given that disclosure would constitute the public dissemination of the individual's personal affairs.
26. Notwithstanding the data subject's reasonable expectations, or any damage or distress caused to them by confirmation that the information is held, it may still be fair to confirm or deny the existence of relevant information if it can be argued that there is a more compelling legitimate interest in disclosure.
27. The Commissioner notes that the complainant has a personal interest in obtaining this information in assisting his father. However he does not consider that there is a more general public interest in the confirmation or denial of the existence of this information, and would reiterate that disclosure under the FOIA is to the world at large, rather than to any one individual. Moreover, the legitimate interest in individuals obtaining their own personal information can be met through the subject access provisions under the DPA.
28. In weighing the balance between the reasonable expectations of the data subject and the consequences of such confirmation or denial, against any legitimate interest in disclosure, the Commissioner has concluded that confirmation or denial would be unfair and therefore in breach of the DPA. Consequently the Commissioner finds that DfID should have relied on section 40(5)(b)(i) in response to the complainant's request. It is not required to take any further steps.

Other matters

29. Although the Commissioner has concluded that DfID ought to have relied upon the exemption under section 40(5)(b), the Commissioner wishes to note the following points for the benefit of the parties.
30. The Commissioner understands that in the particular circumstances of this case DfID had responded to the complainant in order to assist both the complainant and his father. However, as the requested information clearly comprised the complainant's father's personal information DfID should have considered applying the section 40(5)(b)(i) exemption in its refusal notice.

31. The Commissioner asked DfID if consent had been sought from the complainant's father for his son to contact DfID on his behalf. DfID explained that between April 2012 and April 2015, the case was handled as a routine enquiry by DFID's Overseas Pensions Department. In such cases, had there been any information to release this would have been sent to the complainant's father directly or to his son provided DfID had the father's consent to do so.
32. DfID explained to the Commissioner that when the complainant wrote to DfID's Freedom of Information Team in April 2015, it considered how best to handle the request, bearing in mind the provisions of the DPA. The Team was aware of the strong possibility (given the previous detailed searches carried out by OPD staff) that DfID may not hold any relevant information. Following its searches, as there was no information to be disclosed, the Team considered that the most helpful option was to simply confirm this to the complainant. DfID explained to the Commissioner that if there had been any information to be disclosed it would have ensured it had the complainant's father's consent before doing so to ensure compliance with the legislation.
33. The complainant provided the Commissioner with paperwork which he considers to demonstrate that his father's service from 1956 to 1963 with the African Wharfage Company Limited should be regarded as Crown Service. He provided a range of documents showing that his father was employed by this company and its successors until 1978 and was a member of their pension schemes.
34. These pension schemes were managed by the Crown Agents for Overseas Governments and Administrations (known as the Crown Agents). The Crown Agents acted as pension fund managers for a wide range of colonial and overseas governments. DfID explained that the Crown Agents is not and was not a UK government department. There is no direct link between Crown Agents as pension fund or scheme managers and Crown Service; the fact that Crown Agents manage a pension scheme does not mean that the service from which the pension is derived is Crown Service.
35. DfID had previously suggested to the complainant that he contact the relevant former employers or pension providers and, for clarity, it explained that the Crown Agents (who the complainant indicated was responsible for managing the provident fund from which his father's pension is paid) is not a UK government department. DFID also advised that it does not hold any information regarding anyone's service with the East African Cargo Handling Service Ltd.
36. The Commissioner wishes to particularly acknowledge the time and effort applied by DfID in considering the request in this case, and he

recognises that it has sought to be helpful to the applicant. However, as is clear from the analysis in the Commissioner's substantive decision above, DfID should have relied on section 40(5) to refuse to confirm or deny whether it holds the requested information in order to avoid an inappropriate disclosure of third party personal data under FOIA.

Right of appeal

37. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

38. 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.
39. 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

Alexander Ganotis
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