

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 January 2015

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

Decision (including any steps ordered)

1. The complainant made a freedom of information request to The National Archives (TNA) for information contained within a file which related to the 1974 attempted kidnapping of Princess Anne. TNA refused the request under the section 40(2) (personal information) exemption.
2. The Commissioner's decision is that section 40(2) was correctly applied and he requires no steps to be taken.

Request and response

3. The complaint relates to a request for information the complainant made to The National Archives (TNA) on 10 April 2014 for two files related to the 1974 attempted kidnapping of Princess Anne. The files were MEPO 26/238 and MEPO 26/239 and described as:

HRH Princess ANNE: victim of attempted kidnapping by I BALL in The Mall, London on 20 March 1974. Ball was also charged with the attempted murder of Inspector J W BEATON, Police constable M J HILLS, A CALLENDER and J B McCONNELL. Orderable at item level. With plans

4. TNA responded to the request on 28 May 2014 when it explained that the information in the files was exempt from disclosure under section 40 of FOIA as it was the personal data of third parties and disclosure would contravene the first data protection principle which requires that personal data be processed fairly and lawfully. TNA also indicated that

the information was sensitive personal data because it included individuals' criminal and medical information. The complainant subsequently asked TNA to carry out an internal review and it presented its findings on 27 June. The internal review upheld the initial decision to refuse the request under section 40(2).

Scope of the case

5. On 1 July 2014 the complainant contacted the Commissioner to complain about the decision to refuse to disclose the requested information under section 40(2) of FOIA.
6. During the course of the Commissioner's investigation TNA disclosed a quantity of information contained within the requested files. The complainant also agreed not to challenge TNA's decision to withhold other information and that he would limit his complaint to only cover any statement or interview given by Princess Anne and Captain Phillips regarding the attempted kidnapping. This Decision Notice is concerned with this one piece of information only.
7. During the course of the Commissioner's investigation TNA also applied the section 41 (information provided in confidence) exemption to this information.

Reasons for decision

8. As explained above, the only remaining information which is in dispute is a record of an interview with Princess Anne and Captain Mark Phillips in relation to the 1974 attempted kidnapping. The Commissioner has first considered whether this information is exempt from disclosure under the section 40(2) exemption.

Section 40(2) – Personal information

9. Section 40(2) provides that information is exempt if it is the personal data of someone other than the applicant and one of two conditions is satisfied. In this case the first condition is relevant; disclosure would contravene one of the data protection principles. TNA has said that in its view disclosure would contravene the first data protection principle which requires that be processed fairly and lawfully.

10. The first thing to consider when applying the exemption is whether the information is personal data. Personal data is defined in the Data Protection Act 1998 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;"

11. The withheld information in this case identifies a number of individuals most notably Princess Anne and Captain Mark Phillips. The information is clearly personal data and so the Commissioner has gone on to consider whether disclosure would contravene the first data protection principle.
12. In considering whether disclosure of personal data would be unfair, and thus contravene the first data protection principle, the Commissioner takes into account a number of factors including:
- What reasonable expectations does the individual have about what will happen to their personal data?
 - Has the individual named been asked whether they are willing to consent to the disclosure of their personal data?
 - The content of the information and the possible consequences of disclosure.
 - Considering any legitimate interests in disclosure.
13. As regards the expectations of the individuals named in the requested information TNA argued that it was important to consider the context in which the requested information was obtained. It said that statements and interviews were provided for the purposes of a criminal investigation and so the reason why the information was collected is specific and clear to Princess Anne and Captain Phillips. Whilst they may have been content to provide information for this purpose, they may not wish it to be released for any other purpose. TNA argues that disclosure would be for a purpose which the witnesses had not given their consent and have no expectation of release.

14. As regards the possible consequences of disclosure, TNA said that this would be likely to cause damage or distress considering that this was a high profile criminal case involving a member of the Royal Family. It went on to say that the withheld information was particularly personal and private in nature and therefore there would be an expectation that the information would be protected within the individuals' lifetime. Disclosure in this context has the potential to cause damage or distress.
15. In contrast the complainant has argued that details of the incident are well known and therefore there can be no harm caused by disclosure. In particular he said that Princess Anne had discussed the incident on the *Parkinson* television programme.
16. The Commissioner has considered the competing arguments and is satisfied that disclosure of this information would be unfair. As TNA rightly points out the information discusses an incident of a very personal and distressing nature where there would be no reasonable expectation that it would be disclosed in this way. This was a very serious incident where a number of police officers and members of the public suffered serious injuries. Given the subject matter the Commissioner would accept that disclosure certainly has the potential to cause damage or distress.
17. The Commissioner is aware that details of the incident are in the public domain but is of the view that the information contained within the interview record is in fact more detailed than what has previously been discussed and is necessarily more personal in nature given that this is specifically Princess Anne's recollection of what happened. Whilst details of the incident may have been discussed publicly over the years, this does not mean that any information on this matter should automatically be disclosed upon request. Indeed the withheld information is a contemporaneous record of the incident and so is more likely to reflect personal feelings at the time which is different from comments made publicly on mature reflection. In the Commissioner's view this adds to the sensitivity of the information and the potential for disclosure to cause distress. .
18. The Commissioner has also taken into account any legitimate interests in disclosure because it is his approach that notwithstanding individuals' expectations of privacy or any harm that could be caused, there may be occasions when it is still fair to disclose personal data if there is a public interest in disclosure. However, the Commissioner's view is that disclosing the requested information would not have any real benefit and

would not significantly add to the historical record, especially considering the information that TNA has already released. Whilst the information might be of some interest to the public, the public interest does not lie in its disclosure.

19. Where there is an expectation of privacy and disclosure would be likely to be distressing to the individuals concerned there must be a compelling reason which would justify infringing someone's privacy rights. The Commissioner is not satisfied that this is the case here and therefore he has reached the view that disclosure would contravene the first data protection principle and as such the section 40(2) exemption is engaged.

Other exemptions

20. The Commissioner is satisfied that the withheld information is exempt on the basis of section 40(2). Therefore the Commissioner has not gone on to consider the application of the section 41 exemption.

Right of appeal

21. 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

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

22. 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.
23. 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

Graham Smith
Deputy Commissioner and Director of FOI
Information Commissioner's Office
Wycliffe House
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SK9 5AF