

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 May 2014

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

Decision (including any steps ordered)

1. The complainant requested information from the Ministry of Justice (MoJ) relating to the contact details of staff employed in the Administrative Court Office. The MoJ confirmed that it holds the requested information but refused to provide it, citing section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that the MoJ correctly applied section 40(2). He requires no steps to be taken.

Request and response

3. On 26 November 2013 the complainant wrote to the MoJ and requested information in the following terms:

"Administrative Court Office

Would it be possible to get a list of Court Staff name, email address and telephone numbers, as we seem to have quite a lot of difficulty getting through to people and reluctance from court staff to provide them".

4. The MoJ responded on 10 December 2013. It confirmed that it holds the requested information but refused to provide it, citing section 40(2) of the FOIA personal information exemption as its basis for doing so.
5. The complainant requested an internal review on 11 December 2013. The MoJ sent him the outcome of its internal review on 9 January 2014

upholding its original position. Additionally, it provided him with a link to some general contact numbers - information it considered may be helpful - in accordance with its duty under section 16 of the FOIA to provide advice and assistance.

Scope of the case

6. The complainant contacted the Commissioner on 14 January 2014 to complain about the way his request for information had been handled.

7. During the course of his investigation, the complainant wrote to the Commissioner saying:

"Thank you for your response I confirm that whilst the initial request was for court staff name, appointments would be reasonable as well as their email address and telephone numbers".

8. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the FOIA).

9. The Commissioner considers the wording of the request of 26 November 2013 defines the scope of his investigation in this case. Accordingly, the Commissioner considers the scope of his investigation to be the MoJ's application of section 40(2) to the withheld information comprising contact details of staff at the Administrative Court Office.

10. The Commissioner understands from the MoJ that, organisationally, the Administrative Court Office sits within the Royal Courts of Justice.

Reasons for decision

11. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.

12. This exemption is intended to ensure that greater public openness does not compromise personal privacy.

13. The MoJ told the Commissioner:

"We interpreted this request as contact details for Her Majesty's Courts and Tribunal Services staff employed to work directly in the Administrative Court Office".

14. The Commissioner considers that is an acceptable interpretation of the request.

Is the requested information personal data?

15. In requesting an internal review, the complainant said:

"The professional email address of staff of the Her Majesties Court Staff would not appear to be personal to them, indeed [name redacted], in the course of his work as disclosed his email address [sic].

We can see no proper reasoning for the withholding of email address from the wider public".

16. The first step for the Commissioner to determine is whether the requested information constitutes personal data, as defined by the Data Protection Act 1998 (DPA). If it is not personal data, then section 40 cannot apply.
17. The definition of personal data is set out in section 1 of the DPA. This provides that, for information to be personal data, it must relate to an individual and that individual must be identifiable from that information.
18. 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, has them as its main focus or impacts on them in any way.
19. The Commissioner is satisfied that the data requested in this case relates to living individuals who may be identified from that data and that it constitutes their personal data.
20. Having accepted that the information requested constitutes the personal data of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles.
21. The Commissioner considers the first data protection principle is most relevant in this case.

Would disclosure contravene the first data protection principle?

22. The first data protection principle states:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless

- (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 also met."*

23. In the case of a 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 fair, lawful and meet one of the DPA Schedule 2 conditions (and Schedule 3 conditions if relevant). If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.
24. The Commissioner has issued guidance about requests for personal data about public authority employees¹. In that guidance, he states that the principal question is whether it is fair to release such information.

"When a request is for personal data about an authority's employees other than the requester, it is exempt under section 40(2) and section 40(3)(a)(i) if it would contravene any of the data protection principles to disclose it. The principle that is most likely to be relevant is the first principle; the processing (in this case the disclosure) must be fair".

25. Furthermore, in that guidance, the Commissioner acknowledges:

"An authority may receive a request for the names of employees, for example the names of all employees above a certain level or for a directory or organisation chart listing all the staff. The requester might also ask for job titles or direct contact details. The principal question is whether it is fair to release this information".

Would disclosure be fair?

26. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/section_40_requests_for_personal_data_about_employees.ashx

- the individual's reasonable expectations of what would happen to their information;
- the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
- the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

Reasonable expectations

27. In the Commissioner's view, a key issue to consider in assessing fairness is whether employees have a reasonable expectation that their information will not be disclosed.
28. Whether an employee might reasonably expect to have their personal data released depends on a number of factors. These include whether the information relates to the employee in their professional role or to them as individuals, the individual's seniority and whether they are in a public facing role.
29. The information in this case concerns individuals employed by the MoJ in the Administrative Court Office. While he considers that the requested contact details are personal to the staff at the Administrative Court Office, the Commissioner acknowledges that they are professional contact details.
30. The MoJ told the Commissioner that the withheld information relates to:

"... junior staff to middle management; all below the Senior Civil Service"
31. It also explained:

"These members of staff are not public-facing figures".
32. The MoJ told the Commissioner:

"The individuals concerned have a reasonable expectation that their names will not be released into the public domain".
33. In the Commissioner's view, it is reasonable to expect that a public authority would disclose more information relating to senior employees than to more junior ones. Senior employees should expect their posts to carry a greater level of accountability, since they are likely to be responsible for major policy decisions and the expenditure of public funds.

34. It may also be fair to release more information about employees who are not senior managers but who represent their authority to the outside world, as a spokesperson or at meetings with other bodies. This implies that the employee has some responsibility for explaining the policies or actions of their authority; it would not apply simply because an employee deals with enquiries from the public or sends out material produced by others.
35. On this occasion, the Commissioner is satisfied that the data subjects would reasonably expect their personal data would not be disclosed.

Consequences of disclosure

36. In correspondence with the complainant, the MoJ said:

"...I judge that supplying you with the information you asked for would have been unfair on the staff involved insofar as a Name, Email and Telephone Number would not have allowed you to ensure that you were contacting the correct person with any enquiry, concern, complaint etc that you had and could cause distress to individuals and wasted time or confusion on their behalf and yours".

37. In correspondence with the Commissioner, the MoJ explained:

"We believe that disclosing the names, telephone numbers and email addresses of non public-facing figures could potentially cause distress through targeted queries".

38. However, in the Commissioner's view, the MoJ failed to explain, and provided no evidence to support, its view that disclosure would result in targeted queries.
39. Nevertheless, the Commissioner acknowledges that there is the potential for contact details, if they were disclosed, to cause damage or distress to the individuals concerned. This is because, when information is disclosed under the FOIA, it is effectively disclosed to the world at large, not only to the requester.

The legitimate public interest

40. Assessing fairness also involves balancing the individuals' rights and freedoms against the legitimate interest in disclosure to the public. It may still be fair to disclose the information if there is an overriding legitimate interest in doing so.
41. The interest in disclosure must be a public interest, not the private interest of the individual requester. The requester's interests are only relevant in so far as they reflect a wider public interest.

42. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interest of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information.
43. The disclosure must not cause an unwarranted interference with the employees' rights. This means that the public authority should follow a proportionate approach; it may be possible to meet the legitimate public interest by disclosing some of the information, rather than all the detail that the requester has asked for.
44. In this case, the MoJ provided the complainant with some information. It told him:

"However, I also note that the following link, which would have given general contact numbers and useful information for the location in question, was not provided in the response and I judge that it should have been in order to provide advice and assistance to you. It contains a number of contact numbers such as general enquiries and listing enquiries rather than ringing an individual who may not be able to answer a specific query or may not be available when you call".

45. The Commissioner considers that this goes a considerable way to meeting the legitimate public interest in this case.
46. Taking this and all the factors of the case into account, the Commissioner considers that the legitimate public interest in the disclosure of the withheld information is limited.

Conclusion

47. With due regard to the reasonable expectations of the data subjects, and the potential impact on them if their personal data were to be disclosed, the Commissioner considers that it would be unfair to disclose the requested information. Whilst he accepts that there is a limited legitimate interest in the disclosure of this information, he does not consider that this outweighs these other factors. Therefore it is the Commissioner's decision that section 40(2) of the FOIA was applied correctly in this case.

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: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.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.

Signed

Jon Manners
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