



Ministry of Justice

Mr R Taylor

request-309620-92eae763@whatdotheyknow.com

Our Ref: 102903

Dear Mr Taylor,

Freedom of Information Act 2000 (FOIA) – Outcome of Internal Review

Thank you for your Internal Review request dated 27 January 2016 in which you asked for the following from the Ministry of Justice (MoJ):

‘...I would like to request an internal review in to the handling of my request for information reference: 102488. I would like the review to consider:

1. If the information ought to have been released irrespective of any exemptions within the Freedom of Information Act allowing the ministry to withhold it...

...2. If the information ought to have been released under other access to information legislation or procedures...

...3. If the ministry has fulfilled its duty under section 16 of the Freedom of Information Act to provide advice and assistance...’

This was with regard to the response to your FOI request, reference 102488, in which you asked for the following information from the MoJ under the FOIA:

‘...Could you please let me know where and when those charged with the murder of Jeff Henry in Cambridge, following a reported attack (or attacks) on Sunday, June 7 2015, are scheduled to appear in court...’

The purpose of an Internal Review is to assess how your FOI request was handled in the first instance and to determine whether the original decision given to you was correct. This is an independent review: I was not involved in the original decision.

I have reassessed your case and after careful consideration I have concluded that the initial response that was sent to you was partially compliant with the requirements of the FOIA. An explanation of my decision follows.

- Your request was received on 8 January 2016 and a full response was sent to you on 26 January 2016, within the statutory 20 day deadline.
- Your original request was refused under sections 32(3) Court records and 40(5) Personal Information of the FOIA, our response neither confirming nor denying whether the information was held by MoJ.

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Date: 22 March 2016

- The response explained that, as exemptions 32 and 40 had been engaged, there was no requirement to confirm whether or not the information is held. The terms of these exemptions also provide that we are not obliged to consider whether or not it would be in the public interest to supply the information.
- Section 16 of the FOIA, to provide advice and assistance, was fulfilled by providing you with further explanation and guidance on sections 32 and 40 of the FOIA, as well as links to the full text of the act and to the disclosure log.

As part of my review, and in the interests of fairness, I have re-examined the findings and exemptions used in the response of 26 January 2016 and these are my findings:

I believe that information is exempt from disclosure under sections 32 and 40(2) of the FOIA, however, the wrong subsections had been applied for each exemption.

I can therefore confirm that the department holds information that you have asked for, but we will not be providing it to you as it is exempt from disclosure under section 40(2) and 32(1) of the FOIA.

The information that you have asked for is held on record as part of a court file and we are not obliged to provide information contained in a court record under section 32 of the FOIA.

The reason for section 32 is not to do with the issue of whether information is a public record or not, it is to preserve the courts control over court records. Even if a document may have been made public at the hearing it does not alter the fact that section 32 (court records) applies after the hearing date. Information ceases to be a public record after the hearing and then becomes protected by virtue of section 32. It was not the intention that the FOIA should provide indirect access to court records; the greater public interest was considered to lie in the preservation of the courts' own procedures for considering disclosure and so court records were made exempt from the FOIA. The rules of court already provide a comprehensive code governing the disclosure of court records and documents served in the course of proceedings.

Additionally the information that you have asked for is the personal data of the individuals concerned and we are not obliged, under section 40(2) of the FOIA, to provide information that is the personal information of another person if releasing would contravene any of the provisions in the Data Protection Act 1998 (DPA). In this instance we believe that the release of this information would contravene the first data protection principle and therefore section 40 (2) is engaged.

The relevant principle here is the first principle, which states (among other things) that personal data shall be processed fairly and lawfully.

The first data protection principle also states that sensitive personal data shall not be processed unless at least one condition in schedule 2 and one condition in schedule 3 of the DPA can be satisfied. It is considered that none of the conditions in these schedules can be met, therefore to disclose the information would contravene the first data protection principle and as such engages the exemption provided by section 40(2) of the FOIA 2000.

Disclosures that are required as part of court proceedings are, in practise, only disclosures to a limited audience. The fact that the defendants' names may have

been on a court list and then heard in 'open court,' cannot be relied on to assume that future disclosure under FOI is fair.

The information gathered for trial is used for that specific purpose and in the interests of justice; it is only processed by the justice system for that purpose. There is an expectation of those involved that their personal data will only be used for that purpose and they would not reasonably expect that it may be subsequently released in its entirety to the public at large.

You can find out more about the data protection principles of the DPA here <http://www.legislation.gov.uk/ukpga/1998/29/schedule/1>

The terms of these exemptions in the FOIA mean that we do not have to consider whether or not it would be in the public interest for you to have the information.

You can find out more about sections 32 and 40(2) by reading the extracts from the FOIA and some guidance points we consider when applying this exemption, attached at the end of this letter.

You can also find more information by reading the full text of the FOIA available at <http://www.legislation.gov.uk/ukpga/2000/36/section/32>
<http://www.legislation.gov.uk/ukpga/2000/36/section/40>

As the incorrect subsections of the exemptions were applied your initial response did not contain any further advice and assistance as this would have confirmed information was held. I believe that additional advice can now be given on how to make a request for information under the Criminal Procedure Rules (CPR).

You can make an application in writing to the relevant court, with specific details of the case concerned, also stating the specific section of the CPR rules under which you are applying, which would be section 5.8. The individual court will consider any request in accordance with the CPR rules and will be able to advise you of any relevant forms to be completed and fees which may apply. Please be advised that should you make this request under section 5.8 of the CPR rules, it would be necessary to put it before a Judge to decide whether or not the information could be released, as a Judicial rather than an administrative decision.

The Court contact details for Cambridge Magistrates' Court and Cambridge Crown Court can be found here

<https://courtribunalfinder.service.gov.uk/courts/cambridge-crown-court>
<https://courtribunalfinder.service.gov.uk/courts/cambridge-magistrates-court>

For further information on the CPR rules please see:
<http://www.justice.gov.uk/courts/procedure-rules/criminal/docs/2015/crim-proc-rules-2015-part-05.pdf>

It may also be worth considering whether there have been any reports published relating to your request by any local or national press.

I have concluded that the original response should have confirmed that information was held by MoJ in relation to your request, and that additional advice and assistance can now be offered under section 16 of the FOIA.

You have the right to appeal our decision if you think it is incorrect. Details can be found in the 'How to Appeal' section attached at the end of this letter.

Disclosure Log

You can also view information that the MoJ has disclosed in response to previous FOI requests. Responses are anonymised and published on our on-line disclosure log which can be found on the MoJ website:

<https://www.gov.uk/government/collections/freedom-of-information-disclosure-log>

The published information is categorised by subject area and in alphabetical order.

Yours sincerely

J Cunningham (Mrs)

Knowledge and Information Liaison Officer

Business Support, Regional Support Unit, SW Region, HMCTS

How to Appeal

Information Commissioner's Office

If you remain dissatisfied after an internal review decision, you have the right to apply to the Information Commissioner's Office. The Commissioner is an independent regulator who has the power to direct us to respond to your request differently, if he considers that we have handled it incorrectly.

You can contact the Information Commissioner's Office at the following address:

Information Commissioner's Office,
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire
SK9 5AF

Internet address: https://www.ico.org.uk/Global/contact_us

EXPLANATION OF FOIA - SECTION 32 –COURT RECORDS

We have provided below additional information about Section 32 of the Freedom of Information Act. We have included some extracts from the legislation, as well as some of the guidance we use when applying it. We hope you find this information useful.

The legislation

Section 1: Right of Access to information held by public authorities

- (1) Any person making a request for information to a public authority is entitled—
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.

Section 32: Information held by virtue of being contained within court records

- (1) Information held by a public authority is exempt information if it is held only by virtue of being contained in—
- (a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
 - (b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or
 - (c) any document created by—
 - (i) a court, or
 - (ii) a member of the administrative staff of a court,
- for the purposes of proceedings in a particular cause or matter.
- (2) Information held by a public authority is exempt information if it is held only by virtue of being contained in—
- (a) any document placed in the custody of a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration, or
 - (b) any document created by a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration.

Guidance

Section 32 exempts information contained in those litigation documents and court, tribunal and inquiry records to which it applies. It exempts information held by a public authority if it is held solely by virtue of its being contained in those categories of document.

The information must be included in a particular type of document and must be held by the public authority only by virtue of this. However, if the information is so held, it will be exempt regardless of its content and for the reasons set out below public authorities should refuse the request. This applies both to the document itself and to any copies of that document or copies of the information which it contains. There are separate and specific regimes for access to information held by courts and tribunals, designed to give those bodies themselves a measure of control over that information. For example, Rule 5.4 of the Civil Procedure Rules deals with access to court documents in civil proceedings in the county courts, the High Court and the

Court of Appeal. It allows any person, on payment of the prescribed fee, to inspect and take a copy of (a) a claim form which has been served, (b) a judgment or order given or made in public, and (c) any other document if the court gives permission. Where a person has the right to inspect a document without permission, a request can be made to the court staff. Where permission is required, an application must be made to a judge. The Civil Procedure Rules do not include any guidance on the court's exercise of its discretion but the court will take account of all the circumstances of the case and the competing principles of open justice and the right to privacy of persons who may be mentioned in court documents.

EXPLANATION OF FOIA - SECTION 40(2) – INFORMATION RELATING TO THIRD PARTIES

We have provided below additional information about Section 40(2) of the Freedom of Information Act. We have included some extracts from the legislation, as well as some of the guidance we use when applying it. We hope you find this information useful.

The legislation

Section 1: Right of Access to information held by public authorities

- (1) Any person making a request for information to a public authority is entitled—
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.

Section 40: Personal Information.

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

(3) The first condition is—

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

Guidance

Section 40 of the Freedom of Information Act applies to:

- requests for the personal data of the applicant him or herself
- requests for the personal data of someone else (a third party)

Personal data of a third party: Personal data of a third party is exempt under section 40(2) if its disclosure to a member of the public would contravene one or more of the data protection principles and a request must be refused.

The Data Protection Principles:

The data protection principles are a statutory code for the processing of personal data. They are set out in Part I of Schedule 1 to the Data Protection Act.

Three data protection principles require personal data to be:

- fairly and lawfully processed
- processed for specified and lawful purposes
- adequate, relevant and not excessive
- accurate, and kept up to date
- not kept longer than necessary
- processed in accordance with individuals' rights under the Data Protection Act
- kept secure
- not transferred to non-EEA (European Economic Area) countries without adequate protection

The principle most likely to be relevant to the disclosure of information under the Freedom of Information Act is the first principle. This requires personal information to be:

- processed 'fairly'
- processed 'lawfully'
- not processed at all unless one of the 'conditions' for fair processing is met

Processing in this context includes disclosure.

In most cases, personal data will be exempt if disclosure would be 'unfair'. Disclosure of personal data relating to a third party will often breach the fair processing principle if there was a legitimate expectation by a third party that this information would remain confidential.