



Disclosure Team
Ministry of Justice
102 Petty France
London
SW1H 9AJ

Mr David Smith
request-749276-3e35ed46@whatdotheyknow.com

data.access@justice.gov.uk

04 June 2021

Dear Mr Smith,

Freedom of Information Act (FOIA) Request – 210420019

I would like to apologise for the delay in our response to you. Thank you for your request dated 20 April 2021 in which you asked for the following information from the Ministry of Justice (MoJ):

“Dear Ministry of Justice,

With regards to KT and SH v Secretary of State for Work and Pensions (PIP) [2020] UKUT 252 (AAC) and that each judge decide cases solely on the evidence presented in court by the parties and in accordance with the law. And only relevant facts and law should form the basis of a judge’s decision.

At paragraph 75 UTJ stated “Ms Parker cited evidence that in 2017/2018 there were 263 in-dwelling fire fatalities²⁶, including 71 resulting from the Grenfell Tower fire. (I pause to note that “72 people were eventually confirmed to have lost their lives” according to the BBC²⁷.)

Could you please provide this evidence, the date it was submitted and by which party.

At paragraph 96 UTJ stated . I pause with a reminder that the “injury” caused by fire does not itself have to happen while the claimant is taking the shower or bath; the injury can happen after completion of the activity, according to the definition of “safely” in regulation 4(4)(a).

Could you please provide evidence presented by any of the parties, including the date it was submitted:

- that dressing after showering or bathing was considered

- aids or supervision was more appropriate for bathing activity than dressing and undressing activity

paragraph 105, bullet 5 UTJ stated "as Mr Fraser said, even a British Standard for detection and alarm devices for deaf and hard of hearing persons. The one he cited was entitled "Fire detection and fire alarm devices for dwellings. Specification for smoke alarm kits for deaf and hard of hearing people (BS 5446-3:2005). That appears to have been replaced on 28 February

2015 by BS 5446-3:2015, entitled "Detection and alarm devices for dwellings. Specification for fire alarm and carbon monoxide alarm systems for deaf and hard of hearing people"

Could you provide evidence presented any party that these smoke alarms can't be heard while showering or having a bath.

paragraph 149 UTJ stated I find that the claimants each have to remove their hearing aids to take a shower and to take a bath. I find that each claimant, while taking a shower and while taking a bath, is unable to hear a typical smoke alarm or typical fire alarm.

Could you provide the evidence presented by any party that someone with an average hearing of 65db without their hearing aids can't hear an average smoke alarm which is required to sound at 85 decibels from a distance of 3 metres - it will be much louder at close range. Hearing protection becomes necessary in an industrial environment at 85 decibels as sustained exposure could result in hearing loss.

Could you provide evidence that neither claimants after running the bath, then taking their hearing aids out whilst having bath could not hear the smoke alarm as there would be no running water."

Your request has been handled under the FOIA.

I can confirm that the MoJ holds the information that you have requested.

All of the information is exempt from disclosure under sections 32(1) and 40(2) of the FOIA because it is held only by virtue of being contained in a court record, and constitutes personal data.

Under section 32(1)(a) information is exempt from disclosure if it is held in the custody of the court for the purposes of proceedings in a particular cause or matter.

Under section 32(1)(b) information is exempt if it is a document served upon, or by, the court for the purposes of proceedings in a particular cause or matter.

The reason for section 32 is to preserve the courts control over court records. Even if a document may have been made public at the hearing it ceases to be a public record after the hearing and then becomes protected by virtue of section 32. Section 32 can apply even if that same information is later used for another purpose, (i.e. HMCTs statistical purposes). The greater public interest was considered to lie in the preservation of the courts' own procedures for considering disclosure.

In addition, personal data is exempt from disclosure under section 40(2) of the FOIA.

Section 40(2) and section 40(3A)a of the FOIA taken together mean that personal data can only be released if to do so would not contravene any of the principles set out in Article 5(1) of the General Data Protection Regulation (GDPR) and section 34(1) of the Data Protection Act 2018.

Individuals have a clear and strong expectation that their personal data will be held in confidence and not disclosed to the public under the FOIA. Also, although s40 is an absolute exemption, we have considered whether there is a wider public interest in disclosing this personal information, that would override the fundamental rights of those concerned. We have concluded there is no such public interest in this instance. We believe releasing the requested information into the public domain would be unlawful; the personal information is therefore exempt from disclosure under section 40(2).

Section 32 and 40 are absolute exemptions and do not require a public interest test under the FOIA.

You may wish to contact the Tribunal directly to apply for access to court documents. These are separate and specific regimes for access to information held by Tribunals, designed to give those bodies themselves a measure of control over that information. Please note that you may be required to pay a fee as advised by the Tribunal.

You can contact the Upper Tribunal (Administrative Appeals Chamber) at the following address:

Upper Tribunal (Administrative Appeals Chamber)

5th floor
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL
United Kingdom

Email: adminappeals@justice.gov.uk
Phone: 020 7071 5662

Appeal Rights

If you are not satisfied with this response you have the right to request an internal review by responding in writing to one of the addresses below within two months of the date of this response.

data.access@justice.gov.uk

Disclosure Team, Ministry of Justice

You do have the right to ask the Information Commissioner's Office (ICO) to investigate any aspect of your complaint. However, please note that the ICO is likely to expect internal complaints procedures to have been exhausted before beginning their investigation.

Yours sincerely

Knowledge and Information Liaison Officer

London Regional Support Unit | HMCTS