



HM Courts & Tribunals Service

Richard Taylor
Request-146603-17533892@whatdotheyknow.com

Request-146602-c9ca5caf@whatdotheyknow.com

Knowledge and Information
Liaison Officer (KILO)
Regional Support Unit
Midlands Region
PO Box 11772
Birmingham
B4 6WF

MidlandsRSUKILO@hmcts.gsi.gov.uk

www.justice.gov.uk

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26 July 2013

Dear Mr Taylor,

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

Thank you for your Internal Review request dated 01 July 2013 regarding a Freedom of Information request you submitted on the 22 January 2013 in which you asked:

Could you please release the register of the decisions for Cambridge Magistrates' Courts on Monday the 21st of January 2013.

and

Could you please release the information which would be expected to appear on the full copy of the court list in relation to appearances, hearings, trials etc. Currently scheduled to be held in Cambridge Magistrate's Court in the week commencing Monday the 25th February 2013.

And also by your email of 1 July 2013, you sought an internal review as stated below:

I would like to request such a further internal review, and for it to consider, but not limit itself to the following points:

1. If the material requested is in fact exempted under Section 32 (1) (c) of the Freedom of Information Act. I suggest the court list is not only held for the purposes of proceedings in a particular cause or matter but is held for other purposes including communicating with the public.

2. The application of Section 40(2) to the material requested. I understand the material may contain information considered exempt under this section, for example information about victims of alleged crimes. I would expect the material considered exempt under this section to be redacted, and not for its presence to be used as a reason for not disclosing the rest of the material.

3. If the duty which Section 16 of the Freedom of Information Act gives public bodies to provide advice and assistance satisfactorily discharged. The advice I have received in relation to this request to-date has been bizarre for example on the 3rd of April 2013 I was told that I have not specified the cases of interest; this is clearly not true as I asked for information relating to a specified day. I would suggest that under the terms of Section 16 of the Freedom of Information Act I should be clearly advised if, and how, I can, or cannot, obtain the information I have sought (albeit perhaps in a redacted form, or perhaps by inspecting it).

The purpose of an Internal Review is to assess how your Freedom of Information 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. This is an independent review: I was not involved in the original decision.

Your original request was received on 22nd January 2013. It was judged that this information was held by the court and that there was a possibility that the information could be disclosed through the normal business of the court taking into account the criminal procedure rules. The Court was then asked to provide you with this information as normal court business and this was communicated to you.

However I understand that following a complaint to the Information Commissioners Office a response was sent to you on 20 June 2013 and dealt with under the Freedom of information Act. This response stated that the court did hold the information that was held, but that it is exempt under section 32 (1) (C) and section 40 (2) of the Act.

I have reconsidered the response that you have received and I must inform you that the response that you received on 22 June 2013 was not fully compliant with the Act.

As stated in the response that you received the FOIA was not designed to give indirect access to court records and documents. There are procedures already in place for the release of court documents, as in this case the criminal procedure rules. The terms of both exemptions under the Act are absolute and there is no public interest test for the release of court records.

I note your comments regarding court lists being held for the purpose of communication. Court lists are put on public display prior to the hearing date for a short window of time as part of court process and procedure to facilitate the smooth hearing of listed cases. This type of release is not intended to be used in a manner that circumvents the provisions of FOIA Section 32. Court lists for FOI purposes are considered as documents created by the Courts administration and are therefore exempt from disclosure in accordance with s32 (1) (c) of the Act despite them being made public prior to the hearing.

However, with regards to your comments about the use of section 40 exemption, I should explain that the Court list of 25 February 2013 which you have requested contain not just third party information but your own personal information. Therefore, in addition to Section 40(2) (third party information), I judge that Section 40(1) (requester's own information), should also have been engaged. Consequently, we would not have considered any redaction as the entire Court list would have engaged Section 40(1) & (2) of the Act. For this reason, I judge that the response you received was not fully compliant. I should emphasise however that, the fact that section 32 was invoked meant that all of the information was exempt by virtue of being contained in a court record and were therefore ineligible for a release through redaction.

I should explain furthermore that the terms of this Section 40(1) exemption in the Freedom of Information Act 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 are however, entitled to make a Subject Access Request (SAR) for your own personal information under the Data Protection Act. To do this, please contact the Data Access and Compliance Unit at the address below:

Data Access and Compliance Unit (10.34),
Information & Communications Directorate,
Ministry of Justice,
102 Petty France,
London
SW1H 9AJ

E-mail: data.access@justice.gsi.gov.uk

In order to process the request you will need to provide the following:

- Proof of your identity: This should include a photocopy of the identification pages of your current passport or of a current photo driving licence; and the original of a current utilities bill (for example, gas or electricity), or credit card or bank statement, which includes your name and current address. This can be returned to you if required.
- A £10 cheque made payable to 'Her Majesty's Paymaster General' or 'HMPG'

You can find out more about Section 40(1) by reading the extract from the Act and some guidance points we consider when applying the exemption, attached at the end of this letter.

I note your comments regarding section 16 and the access to the court records, however the Freedom of Information Act does not allow for the release of court records. The correct procedure is to request the documents from the court and the request can be considered by them using the Criminal Procedure Rules.

In conclusion, I am satisfied that the application of Sections 32(1) (c) and 40(2) in our response of 20 June 2013 was only partially compliant with the provisions of the Act as you should also have been advised that Section 40(1) applied to information within the scope of your request.

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 Ministry of Justice has disclosed in response to previous Freedom of Information requests. Responses are anonymised and published on our on-line disclosure log which can be found on the MoJ website:
<http://www.justice.gov.uk/information-access-rights/latest-disclosure-log>

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

Yours sincerely

Knowledge and Information Liaison Office

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.gov.uk/Global/contact_us.aspx

EXPLANATION OF FOIA - SECTION 40(1) – INFORMATION RELATING TO THE REQUESTER

We have provided below additional information about Section 40(1) 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 M1Data 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 M2Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the M3Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).

(5) The duty to confirm or deny—

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the M4Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the M5Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the M6Data Protection Act 1998 shall be disregarded.

(7) In this section—

“the data protection principles” means the principles set out in Part I of Schedule 1 to the M7Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

“data subject” has the same meaning as in section 1(1) of that Act;

“personal data” has the same meaning as in section 1(1) of that Act.

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)

When an individual asks for his or her own personal data under the Freedom of Information Act, this should be treated as a subject access request under the Data Protection Act 1998. This is because requests for one's own data are exempt under section 40(1) of the Freedom of Information Act. This is an absolute exemption. The applicant should be advised of the procedure for making a subject access request.

If it is unclear who is seeking the personal data, the public authority should consider taking further steps to confirm whether or not the applicant is the subject of the information (the 'data subject').

A public authority may often need to deal with requests for both the applicant's own personal data and that of a third party. They will need to ensure that the correct part of section 40 is applied to the data.

For example, if a person asks a public authority to disclose all the information that it holds in relation to their family, the information will include both the applicant's personal data and the personal data of other family members.

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.

The 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.