



HM Courts & Tribunals Service

HM Courts & Tribunals Service South East Regional Support Unit

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Marina Prem

By e-mail only: request-304715-4e5af230@whatdotheyknow.com

www.justice.gov.uk

Our Reference: FOI - 101705

18 December 2015

Freedom of Information Request

Dear Ms Prem

Thank you for your e-mail of 26 November 2015, in which you asked for the following information from Her Majesty's Courts and Tribunals Service (HMCTS):

"...Please provide the name of the judge who transferred file 1829 of 2014 out of High Court into Hertford County Court on 15th June 2015"

Your request has been handled under the Freedom of Information Act 2000 (FOIA).

I can confirm that the department holds information that you have asked for, but in this case we will not be providing it to you as it is exempt from disclosure.

The information you are seeking constitutes your own personal information and we are not obliged to provide this to you under section 40(1) of FOIA. The terms of this exemption in the Freedom of Information Act means 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 (the address details can be found in the 'How to Appeal' section of this letter).

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.

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

The Data Protection Act can be found at the following link:

<http://www.legislation.gov.uk/ukpga/1998/29/contents>

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:

<https://www.gov.uk/government/organisations/ministry-of-justice/series/freedom-of-information-disclosure-log>

Yours sincerely

South East Regional Support Unit

How to Appeal

Internal Review

If you are not satisfied with this response, you have the right to an internal review. The handling of your request will be looked at by someone who was not responsible for the original case, and they will make a decision as to whether we answered your request correctly.

If you would like to request a review, please write or send an email **within two months of the date of this letter** to the Data Access and Compliance Unit at the following address:

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

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 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 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.

(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.