



HM Courts & Tribunals Service

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South East Regional Support Unit

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Richard Taylor

By e-mail only: request-309620-92eae763@whatdotheyknow.com

www.justice.gov.uk

Our reference: FOI - 102488

26 January 2016

Freedom of Information Request

Dear Mr Taylor

Thank you for your e-mail of 8 January 2016, in which you asked for the following information from the Ministry of Justice (MoJ):

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.

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

I can neither confirm nor deny whether the Ministry of Justice (MoJ) holds the information that you have requested.

We are not obliged to confirm or deny whether we hold the information you have requested as if held, this would relate to court records. Section 32(3) of the Act provides that there is no duty to confirm or deny whether we hold the information.

We are also not obliged to confirm or deny whether we hold the information you have requested as if held, this would be information relating to personal information. Section 40(5) of the Act provides that there is no duty to confirm or deny whether we hold the information.

The fact sections 32(3) and 40(5) of the Act has been cited, should not be taken as an indication that the information you requested is or is not held by the department.

The terms of these exemptions 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 us to reveal whether or not the information is held.

You can find out more about Sections 32 and 40 by reading the extract from the Act and some guidance points we consider when applying these exemptions, 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/contents>) and further guidance <http://www.justice.gov.uk/guidance/freedom-of-information.htm>.

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/foi-requests/latest-moj-disclosure-log>

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

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 to the Data Access and Compliance Unit within two months of the date of this letter, 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.gov.uk/Global/contact_us.aspx

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.

(3) The duty to confirm or deny 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 this section.

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.

A 'neither confirm nor deny' response may be required in circumstances where to confirm or deny the existence of information would itself communicate sensitive and potentially damaging information, to the detriment of the public good. Its use is particularly relevant in the areas of law enforcement, intelligence and national security. The work of the security and intelligence agencies being necessarily secret, it is a well-established matter of public policy that they do not normally disclose their operational capabilities or limits, what they are investigating, or what information they hold (or do not hold).

EXPLANATION OF FOIA - SECTION 40 – PERSONAL INFORMATION

We have provided below additional information about Section 40 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 Data Protection Act 1998 the information is exempt from section 7(1)c of that Act (data subject’s right of access to personal information).

(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 Data 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 Data 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).

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.

A 'neither confirm nor deny' response may be required in circumstances where to confirm or deny the existence of information would itself communicate sensitive and potentially damaging information, to the detriment of the public good. Its use is particularly relevant in the areas of law enforcement, intelligence and national security. The work of the security and intelligence agencies being necessarily secret, it is a well-established matter of public policy that they do not normally disclose their operational capabilities or limits, what they are investigating, or what information they hold (or do not hold).