

Freedom of Information Act 2000

Decision notice

Date: 16 March 2015

Public Authority: Treasury Solicitor's Department
Address: One Kemble Street
London
WC2B 4TS

Decision (including any steps ordered)

1. The complainant requested the number of times an employee of the Treasury Solicitor's Department (TSol) accused people of making fraudulent claims for money. TSol confirmed that some relevant information was held.
2. The Commissioner's decision is that TSol should have instead refused the request under section 40(5)(b)(i) of the Freedom of Information Act 2000 (the Act) and neither confirmed or denied whether any relevant information was held. The Commissioner does not require any steps to be taken.

Request and response

3. On 9 September 2013, the complainant wrote to TSol and requested information in the following terms:
"How many times in the last six months has [Employee A] accused claimants of submitting fraudulent claims?"
4. TSol responded on 26 September 2013 and denied holding any information relevant to the complainant's request.
5. This position was amended by TSol in its internal review of 10 January 2014 based on further correspondence from the complainant. It stated that it had assumed the request referred to accusations other than those made to the complainant by Employee A on 9 & 10 September 2013.

TSol confirmed that other than the accusations made against the complainant there was no relevant information held.

Case background

6. The complainant was previously employed by the Foreign and Commonwealth Office (FCO) on a secondment. When this secondment came to an end the FCO failed to remove the complainant from its payroll and paid him monies he was not due.
7. The FCO instigated proceedings to reclaim this money and for a period the complainant was compliant in paying money to TSol. However, there were then complications and the complainant refused to pay. The FCO eventually issued a new agreement to re-establish payment, but this agreement had a typographical error which put the terms 'Claimant' and 'Defendant' the wrong way round.
8. The complainant stated that he approved of this agreement and alleged that the FCO now owed him money. In correspondence with TSol about this matter one of TSol's solicitors [Employee A] stated in two separate emails that the complainant's claim was fraudulent.

Scope of the case

9. On 18 November 2014, the Commissioner accepted for investigation the complainant's appeal against TSol.
10. Whilst the complainant's appeal was based on his belief that further information is held the Commissioner is mindful of his obligations as the regulator of the Data Protection Act 1998 (DPA). The Commissioner therefore considers that, in the first instance, he is obliged to consider whether TSol should have refused the request under section 40(5)(b)(i) of the Act. If the Commissioner considers that exemption to apply, there is no obligation for him to assess TSol's position about the extent of information held.

Reasons for decision

11. The basis for the Commissioner's decision is that the Act is intended to be applicant blind, and that responses to requests made under it constitute disclosures to the public at large and not just the individual making the request. Whilst the Commissioner is aware that the complainant has prior knowledge about the named employee this cannot

alter the Commissioner's position that disclosure should be considered with the wider public in mind.

12. Section 40(5)(b)(i) of the Act states that:

(5) The duty to confirm or deny –

...

(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

13. Section 1 of the Act gives individuals the right to request recorded information from a public authority (such as TSO). Under section 1 the authority has a duty to confirm whether the information is held and disclose the information should it not be exempt as per Part II of the Act.

14. However, there are instances within Part II of the Act that permit a public authority to refuse to confirm or deny whether information is held. Section 40(5)(b)(i) of the Act allows public authorities to do this where a request relates to third party personal data, and where either confirming or denying whether that personal data is held would contravene any of the data protection principles.

15. Consideration of section 40(5) involves two steps: first, whether providing the confirmation or denial would involve the disclosure of personal data, and secondly, whether disclosure of that personal data would be in breach of any of the data protection principles.

Would confirmation or denial involve the disclosure of personal data?

16. The definition of personal data is given in section 1(1) of the DPA:

"personal data" means data which relate to a living individual who can be identified:

(a) from those data, or

(b) from those data and any other information which is in the possession of, or is likely to come into the possession of, the data controller".

17. Any information relevant to the complainant's request would relate to Employee A, who could clearly be identified by that information. The Commissioner is satisfied that any held information relevant to the request would be Employee A's personal data.
18. If TSol was to state that the requested information was or was not held, it would be confirming whether or not Employee A had accused individuals of making fraudulent claims. Therefore the Commissioner considers that to either confirm or deny whether relevant information is held would disclose personal data.

Would disclosure of that personal data breach any of the data protection principles?

19. In making his decision, the Commissioner has considered whether confirming or denying that information was held would contravene the first data protection principle, which states that personal data must be processed fairly and lawfully. To reach this decision the Commissioner has taken the following factors into account:
 - The reasonable expectations of Employee A;
 - The consequences of disclosure; and
 - The balance between the rights and freedoms of the named Employee A and the legitimate interests of the public in having the requested information disclosed.
20. The Commissioner considers that the employee would have a reasonable expectation that the information would be withheld. The nature of the information relates to serious accusations of what could amount to potentially illegal activity. It is understandable that a public authority would wish to withhold information of this nature about one of its employees and the Commissioner sees this as a valid argument.
21. The Commissioner has also given consideration to the role of Employee A. She works as a solicitor for TSol and so any accusation she has made would likely relate to her professional role and not her private life. However, against this is the fact that the solicitor is not senior to the point where it would create a sufficient legitimate interest in disclosing the information. Neither is she in a prominent or public facing role, which would have created a justification that she might have a reasonable expectation the information would be disclosed.
22. The Commissioner's view is that whilst the accusations would likely relate to Employee A's professional role and not her private life there is not sufficient justification to create a reasonable expectation that the information would be disclosed. Instead, the Commissioner finds that

given the nature of the request there is a reasonable expectation that Employee A would expect the information to be withheld.

23. The consequences of disclosing this information would be to interfere with Employee A's data protection rights. Unless there is a strong justification for doing so it would be an unwarranted intrusion into Employee A's privacy. In order to assess whether there is a justification for doing so the Commissioner will consider whether there is a legitimate interest in having the requested information disclosed.
24. The Commissioner considers that the interest in having this information disclosed is a private one, and does not serve a wider public interest. The motive behind the request comes from the complainant's own involvement with TSol and accusations made against him of fraudulent claims. As disclosure under the Act is disclosure to the wider world it is important for there to be a public interest in releasing the information and that is not present in this request.
25. The Commissioner's decision is that it would be unfair to disclose the relevant information, and thus it would be a breach of the first data protection principle. There is a reasonable expectation that the information would be withheld, the disclosure itself would intrude on Employee A's privacy rights, and there is only a private interest to justify this intrusion which falls far short of what would be required to legitimise disclosure. It follows that the request can be refused under section 40(5)(b)(i). No further action is required.

Right of appeal

26. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

27. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Alexander Ganotis
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