



Ministry of Justice

Mr M Clarke
31 Cherry Tree Road
Blackpool
FY4 4NS

Our Reference: DPA/114435/Clarke

North West Regional Support Unit
PO Box 4237
Manchester Civil Justice Centre
1 Bridge Street West
Manchester
M60 1TE

DX : 724780 Manchester 44

E : NWRegionalCorrespondence
@hmcts.gsi.gov.uk

Minicom VII 020 7210 2231
(Helpline for the deaf and hard of hearing)

www.gov.uk
30 October 2017

Subject Access Request – Data Protection Act

Dear Mr Clarke,

Thank you for your letter of 25 August 2017, in which you made a Subject Access Request (SAR) and asked for the following information from the Ministry of Justice (MoJ) relating to yourself:

Concerning cases 2MA90015 and 2MA91155 related to the dead legal fiction Michael Clarke. Please note that this DATA subject Access request is not limited to the case reference numbers attached but to any information in any form you have on your records including any other documents as letters, statements, handwritten or screen notes, emails sent and received internal external or alternative correspondence or other data provided with my legal name to the MOJ.

Please provide any document or correspondence used or archived by the MOJ with my legal name.

Please kindly prioritise over any data or information specifically the computerised court records {case management files} of the above cases reference numbers 2MA90015 & 2MA91155.

Attached formal notice

Regarding

A) case numbers; 2MA90015 & 2MA91155 Manchester Civil Justice

B) party names (abbreviated where appropriate); PANNONE HUGH JONES v CLARKE & CHARLES TATTUM PANNONE v CLARKE

C) hearing dates & times; the very beginning please All dates and ALL times concerning All Judges SHARP-FOSKITT-PELLING-JACKSON-SWIFT-HOVINGTON

D) Subject matter; both CASEMAN files computerized version inclusive of court fee proof of payment.

E) ALL judges notes for every JUDGE involved in the case from the beginning of both cases under the case precedent set of;

<https://www.theguardian.com/law/2017/jul/07/judge-handwritten-notes-released-uk-data-laws-first-timeand> attached SAR [PELLING+JACKSON reported to ICO]

Judges – 1 SHARP 2 FOSKITT 3 PELLING 4 JACKSON 5 HOVINGTON 6 SWIFT

Your request has been handled under the Data Protection Act 1998 (DPA).

I can confirm that MoJ holds some of the personal data within the scope of your request, and the personal data that you are entitled to under Section 7 of the DPA is enclosed.

The information is in no particular order. Please be aware that some information contained in specific documents has been removed because it does not constitute your personal data (for example, where information is instead the personal data of another third party).

Some information is exempt from disclosure under section [7] of the DPA and therefore has been removed from the documents disclosed to you.

With regard to point A above, I can confirm that the documents we hold relating to you are in connection to case numbers 2MA90015 and 2MA91155 and are held for the purpose of court proceedings at Manchester County Court.

With regard to point B above, I have provided all documentation containing the party names you mention, subject to section [7] of the DPA.

With regard to point C above, the Data Protection Act allows you to find out what data is held about you electronically and in some paper records. This is known as the 'right of subject access', and a request for your personal information is called a 'subject access request', (SAR). I am disclosing the documentation containing the information you have requested.

With regard to point D above, I am disclosing Data Protection Act Full Enquiry Caseman documents for case numbers 2MA90015 and 2MA91155. Please note that Caseman is a management information system for use by court staff, however for the purpose of DPA requests, there is a facility to produce a specific report that satisfies the requirements of the DPA, and therefore some information is redacted as required by DPA section 7, subsection 4. There is not a reference to 'court fee proof of payment' on the Caseman record, however as you were the defendant in both cases; an issue fee would not have been paid by you and therefore there would not be an entry on the Caseman record.

The source of the data is court documents which are used to produce court orders and to maintain a record of court proceedings, and the recipients/class of recipients to whom the data is or may be disclosed are HMCTS officials only.

With regard to your request for the notes of Mrs Justice Sharp, Mr Justice Foskett, HHJ Pelling QC, Mr Justice Jackson, District Judge Hovington and Mrs Justice Swift, the MoJ does not consider that the disclosure in the case mentioned in the Guardian is a precedent for other subject access requests, given that each request must be considered on its facts, and a blanket approach should not and is not to be taken. This is in line with the Information Commissioner's Office guidance on subject access requests.

Your personal data contained within the judges notes are the property of judges named above. Judges are separate Data Controllers from the MoJ, which means that, in this case, it is for the Judges named above to consider your request for

your personal data contained within their notes. I have passed your request on to the Judges named above and I have provided their responses below.

Judges Sharp, Foskett, Pelling, Jackson, and Hovington have considered your request under the DPA. Please note that Mrs Justice Swift retired from the High Court on 1 August 2015 and therefore I have been unable to contact her.

Judges Sharp, Foskett, Pelling, Jackson, and Hovington have directed me to inform you that they do not consider that the handwritten notes of evidence are 'data' within the meaning of the DPA. As a result, you do not have a right of access to the information under the Data Protection Act and I am afraid that, on this occasion, the Judges will therefore not be supplying the contents of the notes to you. The justification for the Judge's decision is as follows:

First, it may help if I explain why I am replying on behalf of the judges and not the MoJ. The DPA determines the way in which data controllers must process information. Data controllers are people or organisations who determine the purposes for which and the manner in which any personal data are, or are to be, processed. Judges and the MoJ are separate data controllers and, because the information you have requested is the responsibility of the Judges, it is therefore for them, and not the MoJ, to respond to your request.

The DPA defines 'data' as information which:

- "a) is being processed by means of equipment operating automatically in response to instructions given for that purpose;
- b) is recorded with the intention that it should be processed by means of such equipment;
- c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system;
- d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68; or
- e) is recorded information held by a public authority and does not fall within an paragraph a) to d)

Sections a) and b) do not apply to manual, handwritten notes such as these, as they are neither held in electronic form, nor intended to be. Similarly, section d) does not apply to the notes you have asked for - this section refers to different categories of information, such as social services records. And Judges are not public authorities for the purposes of the Data Protection Act, and therefore section e) also does not apply.

Turning to section c), a "relevant filing system" is defined in the DPA as "information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible."

Judges Sharp, Foskett, Pelling, Jackson, and Hovington are satisfied that the handwritten notes of evidence do not qualify as a relevant filing system because they are not held in a system which is sufficiently structured and, consequently, the notes do not constitute data under the Data Protection Act.

The above also applies to the lay members notes. Further details about your rights under the Data Protection Act are available from the Information Commissioner's website at: Internet: <http://www.ico.org.uk>

It may also be helpful if I explain that I am unable to consider your request under the Freedom of Information Act 2000 (FOIA), as the FOIA does not apply to lay members, Magistrates or members of the Judiciary.

You can find out more about the right of access to personal data under section 7, by reading the extract from the Act 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/1998/29/section/7>) and further guidance http://www.ico.gov.uk/for_organisations/data_protection/subject_access_requests.aspx

You have the right to appeal our decision if you think it is incorrect. Details of how you can do so are set out below.

Yours sincerely

North West Regional Support Unit
Knowledge Information Liaison Team

How to Appeal

Information Commissioner's Office

If you are dissatisfied with the handling of your Subject Access Request, 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 DPA - SECTION 7 – RIGHT OF ACCESS TO PERSONAL DATA

We have provided below an extract from the legislation; Section 7 of the Data Protection Act. We hope you find this information useful.

The legislation

Section: 7 Right of access to personal data

(1) Subject to the following provisions of this section, an individual is entitled—

(a) to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller,

(b) if that is the case, to be given by the data controller a description of—

(i) the personal data of which that individual is the data subject,

(ii) the purposes for which they are being or are to be processed, and

(iii) the recipients or classes of recipients to whom they are or may be disclosed,

(c) to have communicated to him in an intelligible form—

(i) the information constituting any personal data of which that individual is the data subject, and

(ii) any information available to the data controller as to the source of those data, and

(d) where the processing by automatic means of personal data of which that individual is the data subject for the purpose of evaluating matters relating to him such as, for example, his performance at work, his creditworthiness, his reliability or his conduct, has constituted or is likely to constitute the sole basis for any decision significantly affecting him, to be informed by the data controller of the logic involved in that decision-taking.

(2) A data controller is not obliged to supply any information under subsection (1) unless he has received—

(a) a request in writing, and

(b) except in prescribed cases, such fee (not exceeding the prescribed maximum) as he may require.

(3) Where a data controller—

(a) reasonably requires further information in order to satisfy himself as to the identity of the person making a request under this section and to locate the information which that person seeks, and

(b) has informed him of that requirement,

the data controller is not obliged to comply with the request unless he is supplied with that further information.]

(4) Where a data controller cannot comply with the request without disclosing information relating to another individual who can be identified from that information, he is not obliged to comply with the request unless—

(a) the other individual has consented to the disclosure of the information to the person making the request, or

(b) it is reasonable in all the circumstances to comply with the request without the consent of the other individual.

(5) In subsection (4) the reference to information relating to another individual includes a reference to information identifying that individual as the source of the information sought by the request; and that subsection is not to be construed as excusing a data controller from communicating so much of the information sought by the request as can be communicated without disclosing the identity of the other individual concerned, whether by the omission of names or other identifying particulars or otherwise.

(6) In determining for the purposes of subsection (4)(b) whether it is reasonable in all the circumstances to comply with the request without the consent of the other individual concerned, regard shall be had, in particular, to—

(a) any duty of confidentiality owed to the other individual,

(b) any steps taken by the data controller with a view to seeking the consent of the other individual,

(c) whether the other individual is capable of giving consent, and

(d) any express refusal of consent by the other individual.