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| Request for details of late husband’s criminal record |
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| Legislation Official Information Act 1982, s 9(2)(a)  Agency Department for Courts  Ombudsman Sir Brian Elwood  Case number(s) W41406  Date May 1999 |

*Request by widow for details of late husband’s criminal record—request declined to protect privacy of deceased person—balance between requester’s circumstances and knowledge of late husband’s criminal record and deceased person’s privacy interests—consultation with Privacy Commissioner—information released*

A widow requested details of her late husband’s criminal records held by the Department for Courts. The request was refused in reliance upon section 9(2)(a) of the OIA in order to protect the privacy of a deceased natural person. In seeking a review of this decision the requester noted that when her husband was alive details of his Court appearances had been a matter of public record and his privacy had not been respected either by the Court or the media. She also said that her late husband had been open about the nature of his life and his attitudes in early years and that he had wanted his son to have a better way of life. She wanted the information so she could give their son details of his father’s history.

The Department advised that in respect of requests for personal information about a third party it generally looked at whether any of the exceptions under Information Privacy Principle 11 applied. It used this as a guide in determining whether or not section 9(2)(a) should be relied on to withhold information. It then considered whether there were any countervailing public interest considerations favouring disclosure.

The key issue to determine when considering whether section 9(2)(a) is applicable, is whether or not it is *‘necessary’* to withhold the information in order to protect the individual’s privacy. In making this determination, factors to be taken into account are:

* the nature of the information that would be disclosed;
* the circumstances in which the information was obtained and held;
* the likelihood of the information being information that the person concerned would not wish to be disclosed without consent;
* the current relevance of the information; and
* the extent to which the information at issue has already been made public.

In this case the information related to basic details of the hearings in which the requester’s late husband had appeared, the last occasion being some 17 years earlier. The kind of information involved, namely, the charge and sentence details, was the kind of information which is a matter of public record. The identity of the offender, the charges brought and the sentence imposed are revealed through the open court process at the relevant time, the privacy interests of the offender being outweighed generally by the requirements of the justice system. In this case, the question was whether the privacy interest of the requester’s late husband had increased over the passage of time since the offences had occurred, and particularly on his death, to the point where it was *‘necessary’* to withhold the information to protect his privacy.

The requester already had a detailed knowledge of her late husband’s offending but wanted the information for family purposes. On this basis, it did not appear *‘necessary’* to withhold the information to protect the requester’s late husband’s privacy. As required by section 29B of the OIA, the Privacy Commissioner was consulted about the privacy issues. He considered that there was a privacy interest in the information. He noted that while the criminal justice system is open to the extent that members of the public may be present in criminal hearings and those proceedings may be published by the media, there has never been completely open access to historical criminal information such as was being sought by the requester. He commented that a conviction is a matter which is quickly forgotten unless there is some particular notoriety which keeps it fresh in the public consciousness and even if it has become known publicly to some people, there is still a privacy interest. Criminal convictions are potentially very damaging information and can affect the way in which people perceive the person concerned even after that person’s death. However, in this case, notwithstanding reservations he had about the extent of the requester’s knowledge of her late husband’s criminal record, he concluded that the privacy interest did not need protection. In reaching this view, he took account of the fact that the convictions were of a similar nature and the requester already knew about many of them. He also had regard to the reason she had requested the information.

In the circumstances, the view was formed that it was not necessary to withhold the information in order to protect the privacy interest. The Department accepted this view and released the information to the requester.

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