

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 30 November 2021

**Public Authority:** Ministry of Justice

**Address:** 102 Petty France  
London  
SW1H 9AJ

### Decision (including any steps ordered)

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1. The complainant requested information about a particular freeholder. He asked how many times and how many different flat owners the freeholder had sued. The Ministry of Justice (the 'MOJ') neither confirmed nor denied holding the requested information, citing sections 32(3) (court records etc) and 40(5) (personal information) of FOIA. Following an internal review, the MOJ said it was now only relying on section 32(3) of FOIA.
2. The Commissioner's decision is that the MOJ has was entitled to rely on section 32(3) of FOIA to neither confirm nor deny holding any information falling within the scope of the request.
3. The Commissioner does not require the MOJ to take any steps as a result of this notice.

### Request and response

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4. On 13 December 2020, the complainant wrote to the MOJ and requested information in the following terms:

*"The freeholder of the building where I own a leasehold flat is [building name redacted] (Freehold) Ltd. They purchased the freehold on 28 February 2014.*

*Since the freehold was transferred, the new freeholder has sued at least seven different flat owners in the building for alleged*

*service charge violations (including me). There are only 28 unique flat owners in the building (owning all of the building's 33 flats between them). This means the freeholder has sued at least 25% of the leaseholders, with some being sued multiple times.*

*Would you be able to tell me precisely how many different flat owners the freeholder has sued and how many times in total all flat owners have been sued by the freeholder since 1 March 2014?..."*

5. The MOJ said it had received the request on 17 December 2020 and wrote to the complainant on 19 January 2021 asking him to clarify his request in terms of which court he wished the MOJ to search for the requested information. That same day, the complainant clarified that the court in question was the County Court Money Centre in Salford.
6. The MOJ provided its substantive response on 29 January 2021. It refused to confirm or deny that it held the requested information citing the following exemptions as its basis for doing so:
  - section 32(3), the 'neither confirm nor deny provision' for court records; and
  - section 40(5), the 'neither confirm nor deny provision' for personal information.
7. The complainant requested an internal review on 1 February 2021. The MOJ provided its internal review on 3 March 2021. It partly revised its original position in that it said it no longer wished to rely on section 40(5) of FOIA. It maintained that section 32(3) applied by virtue of section 32(1)(c).

## **Scope of the case**

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8. The complainant contacted the Commissioner on 4 March 2021 to complain about the way his request for information had been handled. His complaint centres on his view that he is not seeking personal information; however following the internal review, the MOJ ceased to rely on section 40(5) but maintained that section 32(3) applied to the request.
9. The Commissioner has, therefore, examined whether the MOJ was entitled to 'neither confirm nor deny' ('NCND') holding the requested information by virtue of section 32(3) of FOIA.

## Reasons for decision

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### Section 32 court records etc

10. Section 32(3) of FOIA provides that if a public authority receives a request for information which, if held, would be exempt under section 32(1) or 32(2), it can rely on section 32(3) to neither confirm nor deny whether or not it holds the requested information.
11. In this case, the MOJ considered that, if held, the requested information would be exempt by virtue of section 32(1).
12. Sections 32(1) and (3) of FOIA state:

*"(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) member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter.*

...

*(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."*
13. Section 32 is an absolute exemption and is therefore not subject to any public interest considerations.
14. The Commissioner has published guidance on section 32<sup>1</sup> of FOIA which sets out the ICO interpretation of the section 32 exemption:

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/2021/2619028/s32-court-inquiry-and-arbitration-records.pdf>

*"We believe that section 32 was drafted to allow the courts to maintain judicial control over access to information about court proceedings. This includes giving courts control to decide what information can be disclosed without prejudicing those proceedings.*

*In effect, section 32 ensures that FOIA can't be used to circumvent existing court access and discovery regimes. Also, public authorities won't be obligated to disclose any information in connection with court, inquiry or arbitration proceedings outside those proceedings."*

15. In this case, the MOJ told the complainant:

*"Section 32(3) of FOIA provides that it is not necessary to confirm or deny whether the information requested is held in circumstances where any such information would fall within any of the types of information specified in section 32(1). If the information requested would be covered by section 32(1), section 32(3) will apply..."*

16. At internal review, the MOJ also explained:

*"The type of information requested, if held, would be created by the administrative staff of a court as it would require entries in a HMCTS [Her Majesty's Courts and Tribunals Service] database recording any cases. The information requested is thus exempt under section 32(1)(c) from disclosure because if held it would be contained in a court record created by a member of staff.*

*The fact sections 32(3) and section 40(5) have been reviewed should not be taken as an indication that the information you have requested is, or is not held by the MOJ. These are absolute exemptions and they are therefore not subject to any public interest considerations".*

17. In its submission to the Commissioner, the MOJ said:

*"The County Court Money Claims Centre issue most of the part 7 civil money claims for England and Wales. Each time a claim is issued, a member of administrative staff creates a physical case file, with the assigned case number, to hold the claim form and supporting documents as well as creating and saving an electronic record of the claim (containing the claim/party details) in a HMCTS database. The court file and the electronic record are created by administrative staff solely for the purposes of the court proceedings - the electronic record is used to log activity on*

*the claim, and the physical court file is used to store any documents relating to the claim.*

*Under section 32(1)(c), information is exempt if it is a document created by a member of the administrative staff of a court for the purposes of proceedings in a particular cause or matter. The only reason the requested information would be held by HMCTS (if it were), would be because administrative staff created a record of a claim being issued that was received from the party in question ([building name redacted] (Freehold) Ltd). However, any record of the claim would only have been created for the purposes of those court proceedings. This is why we believe that section 32(1) and by extension, section 32(3), can rightfully be applied to the request."*

18. In support of its position in this case, the MOJ drew the Commissioner's attention to two published decision notices<sup>2</sup> where section 32(3) had been cited and the Commissioner had upheld the MOJ's reliance on this exemption. Whilst the Commissioner must consider each case on its merits, she has reviewed the previously issued decisions and agrees that this case is very similar.
19. Under section 32(1)(c)(ii) of FOIA, information is exempt if it is a document created by a member of the administrative staff of a court for the purposes of proceedings in a particular cause or matter.
20. The MOJ has confirmed that, if held, the information that fell within the scope of the request in this case would only be held in court records and would therefore be exempt by virtue of section 32.

#### *The Commissioner's view*

21. FOIA is a public disclosure regime, not a private regime. This means that any information disclosed under FOIA by definition becomes available to the wider public. If any information were held, confirming this would reveal to the world at large that the specified company (and potentially some of the flat owners) were involved in the justice system.
22. In this case, the Commissioner is satisfied that the requested information, if held, would be held in relation to court proceedings. She also considers that the information within the scope of the request, if

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<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2258197/fs50699530.pdf> and <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618449/ic-46045-h0r9.pdf>

held, would be created by a court and she is further satisfied that there would be no other reason for the MOJ to hold it other than for the purposes of those proceedings.

23. The Commissioner has therefore concluded that the MOJ was entitled to rely on section 32(3) in response to the complainant's request and was not, therefore, obliged to confirm or deny whether it held information within the scope of the request.

## Right of appeal

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24. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

25. 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.
26. 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 .....**

**Laura Tomkinson**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**