

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 October 2015

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information from the Ministry of Justice (MoJ) relating to proceedings in the County Courts involving named defendants.
2. The MOJ refused to provide the requested information relying on section 32(1)(a), (b) and (c) (court records) and section 40(2) (personal information) of FOIA. The Commissioner has investigated MoJ's application of section 32(1)(c).
3. The Commissioner has concluded that MoJ is entitled to rely on section 32(1)(c) to withhold the information. He requires no steps to be taken.

Request and response

4. On 1 February 2015, using the 'whatdotheyknow' website, the complainant wrote to MoJ and requested information in the following terms:

"I would like to know:

- a) how many proceedings have been issued; and*
- b) how many cases have been heard;*

in the County Courts, in which the Defendant was named as:

- 1 - The Joseph Rowntree Foundation*
- 2 - The Trustees of the Joseph Rowntree Foundation*

3 - The Joseph Rowntree Housing Trust.

Please provide information for the period 1/4/2007-31/1/2015.

Please state for each case if the Defendant won or lost and the amount of the judgement against the Defendant".

5. MoJ responded on 12 February 2015. It confirmed it holds the requested information. However, it refused to provide it citing the section 43(2) exemption of FOIA (commercial interests) as its basis for doing so.
6. Following an internal review, MoJ wrote to the complainant on 11 March 2015. It revised its position, saying that the exemption it had used in its original reply was incorrect. Instead, MoJ told her that it considers that section 32(1) of the FOIA (court records) is the correct exemption in this case. It explained that the requested information:

"is contained either on a court database or court file where the court file still exists".

Scope of the case

7. The complainant contacted the Commissioner on 30 March 2015 to complain about the way her request for information had been handled. She disputes MoJ's application of section 32 to the withheld information. In support of her complaint, she told the Commissioner that other FOI requests on *'whatdotheyknow'* asking for information from court records and the court database have been complied with. She provided the Commissioner with details of three such cases by way of example.
8. Although the Commissioner understands from this that MoJ would appear to have complied with similar requests, this does not set an automatic precedent for disclosure under the FOIA. Each case must be considered on its merits.
9. During the course of the Commissioner's investigation MoJ wrote to the complainant saying:

"On further analysis it has been decided that in addition to section 32(1) of the FOI Act, section 40(2) also applies to the information you have requested".
10. The Commissioner's view is that it is not good practice to introduce new reasons for refusing a request at this late stage. However, when dealing with a complaint to him under FOIA the Commissioner does not have discretion as to whether or not to consider a late claim.

11. In correspondence with the Commissioner MoJ confirmed that, with regard to section 32, it considers that subsections (1)(a), (b) and (c) apply in this case.
12. The Commissioner's duty is to decide, on a case-by-case basis, whether a request for information has been dealt with in accordance with the FOIA. Accordingly, he has focussed on the arguments put forward by MoJ in this case. The following analysis considers whether the MoJ was correct to withhold the requested information on the basis that it was exempt from disclosure.

Reasons for decision

Section 32 court records

13. Section 32(1) of FOIA states that 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.*
14. Section 32(1) is a class based exemption. This means that any information falling within the category described is automatically exempt from disclosure regardless of whether or not there is a likelihood of harm or prejudice if disclosed. It is therefore conceivable that the exemption could apply to information which may otherwise be available to an applicant via other means or to information which is already widely available.
15. There are two main steps to considering whether information falls within these exemptions: first, it is necessary to consider whether the information is contained within a document filed with a court, or that was created by the administrative staff of a court, in relation to a particular cause or matter. The next step is to consider if this information is held by the relevant public authority only by virtue of being held in such a document.
16. In correspondence with the complainant, MoJ told her:

"In this case the information sought was contained on a court database and/or court file where the court file still exists, (any file that has not been accessed since 31 December 2011 will have been destroyed in accordance with the County Court Record Retention and Destruction Schedule)".

17. In that respect, MoJ told the Commissioner:

"Where a file no longer exists and the only information available is on the court database HMCTS have applied section 32(1)(c).

Where the file is retained and the data is also available on the database HMCTS have applied exemption section 32(1)(a) (b) & (c)".

18. The Commissioner has first considered MoJ's application of section 32(1)(c). As the wording of the exemption implies, it is not only the reason for holding the information itself which is relevant, but also the type of document the information is contained in.

Is the information contained in a relevant document created for the purposes of proceedings in a particular cause or matter?

19. MoJ told the complainant:

"To find the information you require entails having to interrogate the central database "warehouse", the "warehouse" contains data from all the county courts".

20. It also told her:

"... the information provided to the court was for the purpose of proceedings, and the information is only held on the court database for the purpose of creating documents/orders in the case or matters where the paper file is no longer held".

21. In correspondence with the Commissioner, MoJ explained that the database record is created by Court staff from the papers provided by the claimants on issue of the proceedings. It also described how the resulting database records are subsequently used:

"The database is used as an electronic record of the case with basic details and facilitates the production of court orders and letters only".

22. During the course of his investigation, MoJ provided the Commissioner with a copy of the withheld information. It also provided him with a copy

of the retention and destruction schedule relevant to County Court records.

23. MoJ told the Commissioner:

"The County Court Record Retention and Destruction Schedule, ..., is followed by all County Courts and states "all other claim files" – destroy three years after the date of last paper. Where the last paper on the court file is in excess of three years since the last action was taken the file is destroyed".

24. In its correspondence with the Commissioner, MoJ advised whether the disputed information in this case relates to information held on paper file and/or database record.

25. Having considered the matter the Commissioner is satisfied that the disputed information is contained in documents that were created for the purpose of proceedings in particular matters.

Is the information held only by virtue of being contained in such a document?

26. In order for the exemption at section 32 to be engaged, the second test is that the information is held *'only by virtue of...'*.

27. In the Commissioner's view, that phrase implies that if the public authority also holds the information elsewhere it may not rely upon the exemption.

28. In this case, MoJ confirmed that the result of its search for information within the scope of the request had concluded that the information is only held by virtue of a court record.

29. Having considered MoJ's submissions, the Commissioner is satisfied that the withheld information is only held by virtue of being contained in a document created by the court or a member of the administrative staff of a court for the purpose of proceedings.

Is the exemption engaged?

30. From the evidence he has seen, the Commissioner is satisfied that MoJ was entitled to rely on section 32(1)(c) in this case. It follows that he finds the information exempt from disclosure.

31. As section 32 of FOIA is an absolute exemption, there is no requirement to consider whether there is a public interest in disclosure.

Other exemptions

32. As the Commissioner has determined that the requested information can be withheld in accordance with section 32(1)(c) he has not gone on to consider MoJ's reliance on sections 32(1)(a) and (b) or 40(2).

Right of appeal

33. 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 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

34. 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.
35. 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

Jon Manners
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