

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 December 2019

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant has requested statistics about claims submitted to county courts. The Ministry of Justice ("MoJ") withheld the requested information, which it claimed was held by virtue of being contained within court records.
2. The Commissioner's decision is that the MoJ is entitled to rely on section 32 of the FOIA to withhold the requested information.
3. The Commissioner does not require any further steps.

Request and response

4. On 21 March 2019, the complainant wrote to the MoJ and requested information in the following terms by year from 2011 to 2019:
 - "1) How many claims were issued in England and Wales where the value stated on the claim form was up to £10,000;
 - 2) How many claims were issued in England and Wales where the value stated on the claim form was £10,000.01 to £100,000;
 - 3) How many claims were issued in England and Wales where the value stated on the claim form was £100,000.01 to £150,000;
 - 4) How many claims were issued in England and Wales where the value stated on the claim form was £150,000.01 to £200,000;

- 5) *How many claims were issued in England and Wales where the value stated on the claim form was £200,000.01 to £300,000;*
 - 6) *How many claims were issued in England and Wales where the value stated on the claim form was £300,000.01 to £500,000; and*
 - 7) *How many claims were issued in England and Wales where the value stated on the claim form exceeded £500,000.01."*
5. The MoJ responded on 2 April 2019. It stated that the information was exempt under section 32 because it was only held by virtue of being contained in documents either filed with, or created by the administrative staff of, a court for the purposes of proceedings in a particular cause or matter. The MoJ therefore relied on section 32(1)(a) and section 32(1)(c)(i) to withhold the information.
 6. The complainant sought an internal review on 31 May 2019. He argued that the MoJ had not understood the reasoning behind the section 32 exemption and had thus applied it incorrectly. He argued that, as the information he had requested was statistical it was not related to "a *particular cause or matter*" and could thus not be covered by the exemption.
 7. The MoJ completed its internal review on 28 June 2019. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 27 September 2019 to complain about the way his request for information had been handled.
9. Given that the MoJ has laid out its position clearly in both the responses it has issued to the complainant, the nature of the exemption in question and given the existence of clear, binding precedents in respect of information of this type, the Commissioner has decided to proceed straight to a decision notice. She has not sought further submissions from the MoJ.
10. The Commissioner has also not viewed the withheld information as she considers that doing so would not affect the matters under consideration.
11. The Commissioner considers that the scope of her investigation is to consider whether the MoJ is entitled to rely on section 32 to withhold the requested information.

Reasons for decision

Section 32 – Court Records

12. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

13. Section 32(1) 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 is a “class-based” exemption, meaning that there is no need for a public authority to demonstrate potential harm for the exemption to apply. Any information of a certain type or category will be covered. Section 32 is also an “absolute” exemption in that it is not subject to a public interest test. The exemption either applies or it does not.

15. Courts are responsible for a wide variety of information, much of it of sensitive nature, or which could prove harmful to the administration of justice if disclosed at the wrong time.

16. Nevertheless, courts already have a variety of rules which govern the acquisition and sharing of information between parties to particular proceedings. The recent ruling by the Supreme Court in *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38 also confirmed a

right of third parties to access court documents where it can be shown that such disclosure would "*advance the open justice principle.*"

17. However, the *Cape* decision confirmed that the decision on what information would or would not advance the principles of open justice is best determined by the relevant court. The purpose of the exemption at section 32 of the FOIA is not to protect the court system from scrutiny, but to prevent the legislation from being used to circumvent the supervision of the courts over the information they acquire and create.
18. Section 32 will apply where information is held by a public authority "only by virtue of" it being contained within a document provided to a court or one created by the administrative staff of a court in relation to a particular matter. The questions the Commissioner must consider in determining whether the exemption applies are thus:
 - a. How and why was the information created or acquired?
 - b. Is it still being used for that purpose?
19. In relation to (a), there appears to be no dispute that the only way that the MoJ could have acquired the "raw" information (ie. the value of each individual claim) would be from the individual claim forms which were submitted to HM Courts and Tribunals Service at the commencement of each action. The information would therefore have been acquired "by virtue of" being contained in a document filed with a court. Any information uploaded to HMCTS's "Libra" system for recording cases would have been acquired "by virtue of" it having been uploaded by a member of the administrative staff of a court.

Is statistical data covered by the exemption?

20. The complainant's main ground of complaint to the Commissioner was that, because the information he had requested was statistical in nature, it did not relate to "a particular cause or proceeding" and was thus not exempt. He argued that the statistics would be sufficiently removed from the underlying court records as to be outside the scope of the exemption.
21. In its initial review and internal review response, the MoJ stated that the "raw" information would only be recorded on its Libra database as part of the record of the court. It further noted that, because of the way information was submitted on individual claim forms, the actual value of claim would not always be captured in a searchable field and so it would literally need to consult the original record in some instances to extract all the information it held within the scope of the request.

22. Whilst the MoJ did point the complainant, in its internal review, to some statistics already in the public domain relating to the value of claims filed, it admitted that this information was not in the granular form which the complainant had sought. It reiterated its position that it could only extract all the requested information by consulting the court records.
23. The Upper Tribunal in *Peninsula Business Services v Information Commissioner and Secretary of State for Justice and Lord Chancellor* [2014] UKUT 284 (AAC), held that information contained within HMCTS's various internal databases can still be a "court record." Referring to information contained within the "ETHOS" database, Judge Williams ruled that:

"this is a concern with information recorded by or for a court. That recording can be achieved in any appropriate way. In my view the term "document" in section 32 means no more than the form or format (paper, electronic, audio, video or otherwise) in which the information is recorded. I agree with the submissions for the Information Commissioner that the fact that the "court record" in question is a local database rather than a form filled in a claimant or respondent makes no difference to the application of section 32 if the recorded information is the same.

"On that basis, the third step is largely a matter of fact. How and where did the recorded information come from? The answer, on the accepted factual basis on which this case came to the Upper Tribunal, is that the parties completed the relevant forms ET1 and ET3 (or their previous equivalent) as they were required to do. Did the tribunal hold the information only by virtue of that? The evidence is that these forms are the sources of the data migrated either automatically or by an individual officer of HMCTS staff to the relevant ETHOS. Why did HMCTS acquire that information? The answer is that the parties were required to provide that information by regulation so that they could start, or in the case of the respondent defend, an action.

"It has been accepted in argument for the purposes of this appeal that the information in the forms ET1 and ET3 is protected by section 31(1)(a) from disclosure by use of the FOIA procedures. Given that that is the source, and on the evidence before the tribunal the only source, of the information that is migrated to ETHOS, then it must follow that the information is also protected from disclosure by section 32(1)(c)." [paras 46-48]

24. Whereas the *Peninsula* case related to a list of names, the Upper Tribunal in *Brown v Information Commissioner & Ministry of Justice*

[2016] UKUT 0255 (AAC), having quoted *Peninsula*, ruled, in the case of a request for statistical data, that

"the statistics requested could only be obtained by interrogating the individual records of proceedings. Those individual records were exempt because they constituted information contained in a document created by court staff for the purposes of proceedings. Thus, these requested statistics would be built from or drawn from exempt content and, in this context, I find they would take on the character of the information from which they were derived." [para 37]

25. Section 32 is a broadly-drawn exemption and the Upper Tribunal rulings cited above have confirmed the wide range of information which will fall within the definition of a "court record." The Commissioner is legally bound by those rulings. In the circumstances of this case, the Commissioner is satisfied that the information which the complainant has requested would be information which the MoJ only holds "by virtue of" it being contained either within documents filed with a court, or in documents created by the administrative staff of a court.
26. The requested information is therefore covered by section 32 and the MoJ was thus entitled to withhold it.

Right of appeal

27. 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@justice.gov.uk

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

28. 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.
29. 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

**Phillip Angell
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