Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **15 October 2020**

Public Authority: **Ministry of Justice**

Address: **102 Petty France**

London

SW1H 9AJ

Decision (including any steps ordered)

1. The complainant has requested information from the MOJ regarding small claims cases against the ticket company Viagogo. The MOJ has refused to confirm or deny that it holds the requested information, citing section 32(3) of the FOIA as a basis for non-confirmation or denial.

2. The Commissioner's decision is that the MOJ has correctly applied section 32(3) to the requested information.

3. The Commissioner requires no steps to be taken.

Request and response

4. On 28 May 2019, the complainant wrote to the MOJ and requested information in the following terms:

> 'Please supply the data……that I am entitled to under data protection law relating to small claims against Viagogo.
>
> Please provide :
>
> • Copies of number of small claim cases against Viagogo
>
> • The amounts and total amounts

5. On 22 August 2019 the MOJ responded to the complainant stating that it could neither confirm or deny that it held the requested information, citing sections 32(3) and 40(5) of the FOIA as a basis for this.

6. On 22 August 2019 the complainant requested an internal review of the MOJ's handling of his request, the result of which was provided to him on 2019. The reviewer upheld the original application of the above exemptions to the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 20 September 2019 to complain about the way his request for information had been handled.

8. The Commissioner has considered the MOJ's handling of the complainant's request, in particular its application of the section 32(3) FOIA exemption to the requested information. Following correspondence from the Commissioner, the MOJ revised its position regarding section 40(5) and stated that it was no longer seeking to apply this to the requested information.

Reasons for decision

Section 32 – court records

9. 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.

10. Section 32(1) of FOIA states that information which is held only as part of a court record is exempt from disclosure where the information is held "only by virtue" of being contained in documents which have been:

- filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
- any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or
- any document created by a court, or a member of the administrative staff of a court for the purposes of proceedings in a particular cause or matter.

11. Section 32 is an absolute exemption and is therefore not subject to any public interest considerations.

12. The Commissioner has published guidance on section 321 of FOIA which sets out the ICO interpretation of the section 32 exemption:

"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 the 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".

13. In this case, the MOJ explained to the complainant that:-

"… the information requested is exempt from disclosure because if held it would be contained in a court record".

14. In its submission to the Commissioner, the MOJ stated that:

"The request for amounts of claims against a specific company signifies entries in a HMCTS database. This in turn mean that the information is created by the administrative staff of a court and is therefore exempt under section 32(1)(c).

15. Section 32 covers information held 'only by virtue' of being contained in documents that are created or held for the purpose of court proceedings. The MOJ 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

16. 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 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.

17. 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

18. 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

19. 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.

20. 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 ……

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF