

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 17 May 2022

**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 details relating to a specified court case. The Ministry of Justice (the 'MOJ') refused to provide the requested information, citing section 32 (court records) and section 40 (personal information) of FOIA, but provided details as to how the complainant might be able to obtain the information via the Criminal Procedure Rules on payment of a fee. During the course of the Commissioner's investigation the MOJ provided some information outside the scope of FOIA on a discretionary basis, but maintained that both sections 32 and 40 applied to the remainder of the request.
2. The Commissioner's decision is that the MOJ was entitled to rely on section 32(1)(c)(i) and (ii) to refuse the remainder of this request. As he has found section 32 to be engaged, he has not deemed it necessary to consider the MOJ's reliance on section 40(2) of FOIA.
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 15 April 2021, the complainant wrote to the MOJ via the WhatDoTheyKnow.com website and requested information in the following terms:

"FOI Q1. Reference the case completed on 19th February 2021 at Birmingham Youth Court before District Judge Bristow, please advise who comprised the prosecution team. End of FOIQ1.

FOI Q2. Reference the case completed on 19th February 2021, please confirm the totality of penalties imposed by District Judge Bristow upon the unnamed teenager. End of FOI Q2.

FOI Q3. If it is correct that a compensation order of £100 was imposed upon the youth, who was 16 at the time of the offence, please advise of the procedure trail as to how the compensation order is issued by the Court and who, in this case, would it be issued to. Who would be the intermediary recipient of the compensation money and how, in this case, would it be forwarded to the police officer and his injured dog. Is a parent responsible for fines issued to a juvenile at the time of the offence and, if so, is it the mother or father who is held responsible for payment? End of FOI Q3."

5. The MOJ responded on 14 May 2021 and refused to provide the requested information. It said that the following exemptions applied:
  - Section 32(1)(c)(i) and (ii) – 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.
  - Section 40(2) – personal information.
6. In addition, the MOJ advised the complainant that access to court records is available under the Criminal Procedure Rules via payment of a fee and provided further details.
7. The complainant requested an internal review on 17 May 2021. The MOJ provided its internal review on 15 June 2021. It maintained its original position and reminded the complainant that he could apply for the information via the Criminal Procedure Rules Part 5. The MOJ also suggested that the complainant might wish to contact the Crown Prosecution Service in relation to their team and provided contact details.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 17 June 2021 to complain about the way his request for information had been handled. His original complaint centred on the MOJ's application of section 40(2):

"I would appreciate your judgement on what I consider to be an unreasonable refusal by the HMCTS [Her Majesty's Courts and Tribunals Service] to officially confirm the names of CPS prosecutors in a case, despite the names being published in the printed media, on the grounds that these senior people have an

expectation of privacy regarding their names. I do not consider it reasonable that senior people in a public facing role can have any real expectation of having their identities withheld using DPA, because as legal professionals they should be demonstrating the integrity and the transparency of the justice system.”

9. Through further correspondence with the Commissioner, the complainant confirmed that he was also concerned about the MOJ’s reliance on section 32(1)(c) of FOIA.
10. Having received the MOJ’s investigation response, in which it maintained that sections 32(1)(c) and 40(2) applied, the Commissioner asked the MOJ to reconsider whether any of part 3 of the request could be answered.
11. On 4 May 2022, the MOJ responded as follows:

“In response to your query below, the request was interpreted as being solely related to the particular case. Q3 frequently refers to ‘in this case’. Therefore, this would be caught by section 40(personal data) and section 32(court records) exemptions.

However, in general (and this can be disclosed to the requester/complainant, outside of the FOIA, on a discretionary basis), the answer is that it would be usual for the responsible adult who attended court with the youth to be responsible for the payment to the injured party. The Defendant/responsible adult would make the compensation payment to the court and then the court would forward to the injured party.”

12. The Commissioner updated the complainant accordingly on 9 May 2022.
13. On 11 May 2022, the complainant submitted further correspondence in response in which he reiterated his view that the MOJ should respond to all three parts of his request. He said that names of senior officials should not be withheld, that the “totality of penalties imposed should be a matter of public record unless the MOJ can provide good reason otherwise” and that the public is entitled to know that the punishment imposed “was a legitimate way of punishing the family of young offenders”.
14. With the complainant’s agreement, the Commissioner relayed the complainant’s view to the MOJ for any further comment before finalising his decision in this case.
15. The MOJ replied the same day as follows:

“We can confirm the response was provided under the FOIA so there is nothing further to be added to that response.

Outside the scope of the FOIA, it is open to the requester to make his enquiries to the court. He would need to comply with CPR 5.9 in relation to the supply of documents and CPR5.12 in relation to certificates of conviction.

[https://www.gov.uk/guidance/rules-and-practice-directions-2020.](https://www.gov.uk/guidance/rules-and-practice-directions-2020)"

16. The Commissioner updated the complainant and advised that he would now proceed to a decision notice. In this case, the Commissioner set out to consider whether the MOJ was entitled to rely on sections 32(1)(c) and 40(2) of FOIA for the remainder of the request.

## Reasons for decision

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### Section 32 – court records, etc

17. Section 32(1) of FOIA states:

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

18. The MOJ has applied subsections 32(1)(c)(i) and (ii) to the requested information in this case.
19. 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 it is 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.

20. 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. The purpose of the exemption at section 32 of 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.
21. There are two main tests in considering whether information falls within this exemption:
  - Is the requested information contained within a relevant document, for example, one created by a court or a member of the court's administrative staff for the purposes of proceedings in a particular cause or matter?
  - Is this information held by the public authority only by virtue of being held in such a document?
22. In the Commissioner's view, the phrase 'only by virtue of' implies that if the public authority also holds the information elsewhere it may not rely upon the exemption.

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

23. In its response to the request, the MOJ told the complainant that the information he is seeking is contained in the court files. It explained that:

"Under section 32(1)(c)(i) information is exempt if it is a document created by a court and section 32(1)(c)(ii) exempts information 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 information you are seeking is contained in the case file but is only held for the purpose of the court proceedings. Therefore, as the information contained in any electronic and manual records requested by you would be held by, or created by a court, or member of the administrative staff of a court, for the purpose of proceeding in the particular cause or matter, I have determined that it would not be a public record, and thus would be exempt under Section 32.

The reason for section 32 is to preserve the courts control over court records. Even if a document may have been made public at the hearing it ceases to be a public record after the hearing and then becomes protected by virtue of section 32. Section 32 can apply even if that same information is later used for another purpose, (i.e. HMCTS statistical purposes). The greater public

interest was considered to lie in the preservation of the courts' own procedures for considering disclosure."

24. The MOJ also advised the complainant as follows about how he could obtain the requested information via other means:

"You may wish to contact the court directly to apply for access to court documents under the Criminal Procedure Rules. These are separate and specific regimes for access to information held by courts, designed to give those bodies themselves a measure of control over that information. Rules of court already provide a comprehensive code governing the disclosure of court records and documents served in the course of proceedings. Please note that you will be required to pay a fee as advised by the court.

Outside the scope of the FOIA and on a discretionary basis I can tell you that the provision for the supply of documents from a criminal file is set out in Part 5 of the Criminal Procedure Rules (CPR). CPR 5.8 sets out the requirements in relation to the supply to the public, including reporters, of information about cases. Further information regarding the provision of documents can be found here<sup>1</sup>."

25. In correspondence with the Commissioner, the MOJ confirmed its reasons for applying section 32 to the requested information. In that respect it told the Commissioner:

"The MOJ is relying on subsections c(i) - a document created by a court and c(ii) - a document created by a member of the administrative staff of a court for the purposes of proceedings in a particular cause or matter. This is because any information relating to the parties' and representatives' attendance at hearings and the outcome of that hearing would be held in the court records for the purposes of proceedings in the case. As the information contained in any electronic and manual records requested by [the complainant] would be held by, or created by a court, or member of the administrative staff of a court, for the purpose of proceeding in the particular cause or matter, it was determined the requested information is would not be a public record, and thus would be exempt under Section 32."

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<sup>1</sup> <https://www.justice.gov.uk/courts/procedure-rules/criminal/docs/2015/crim-proc-rules-2015-part-05.pdf>

26. The MOJ said that the information had been created "to maintain a record of the names of the representatives attending on the case and a record of the proceedings and outcome of the case."
27. Having considered the matter, the Commissioner is satisfied that the requested information, including the names of the CPS prosecutors in the case, 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?**

28. In order for the exemption at section 32 to be engaged, the second test is that the information is held "only by virtue of...".
29. 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.
30. In this case, having considered the MOJ's submissions, and in the absence of any evidence that the MOJ held the information for any other purpose, the Commissioner is satisfied that the requested information is only held by virtue of being contained in a document created by a court, or a member of the administrative staff of a court, for the purpose of proceedings.

**Is the exemption engaged?**

31. What is important in the context of a case such as this is whether the information fits the description in 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.
32. From the evidence he has seen, the Commissioner is satisfied that the MOJ was entitled to rely on section 32(1)(c) in this case. It follows that he finds the remaining information exempt from disclosure.
33. As section 32 of FOIA is an absolute exemption, there is no requirement to consider whether there is a public interest in disclosure.
34. The Commissioner notes that part 1 of the request asks for the names of the prosecution team. His view is that these are also caught by section 32 because they form part of the court record. However, he also considers that, if section 32 were deemed not to apply to this part of the request, that the names would be exempt under section 40(2). It may also be useful to note that these staff would not be MOJ employees.

## **Conclusion**

35. Therefore, the Commissioner's decision is that the requested information falls within the scope of section 32(1) of FOIA and the MOJ was entitled to rely on subsections 32(1)(c)(i) and (ii) of FOIA to withhold it.
36. As the Commissioner has found that the MOJ correctly applied section 32(1)(c) to the request, he has not found it necessary to consider the MOJ's additional reliance on section 40(2) of FOIA.



## **Right of appeal**

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37. 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)

38. 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.

39. 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** .....

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
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