

Freedom of Information Act 2000 (Section 50)

Decision Notice

11 December 2008

Public Authority: Hastings Borough Council
Address: Apulia House
Breeds Place
Hastings
East Sussex
TN34 3UY

Summary Decision

The complainant requested the Council provide a list of civil cases where the Council is either the claimant or respondent/defendant in a claim lodged at the county court. Specifically, the complainant requested the Council release the case number supplied by court, the court in which the claim has been lodged, the identity of the other party if not an individual and a brief description of the claim for each case. The Council responded to the request refusing to disclose the requested information, as it considered it was exempt from disclosure under section 32(1)(b) of the Act. The Commissioner has reviewed the requested information. In respect of part 3 of the request it became clear during the Commissioner's investigation that this information was not held by the Council. In failing to inform the complainant that this information was not held the Council breached section 1(1)(a) of the Act. The Commissioner also concluded that in failing to specify which subsection(s) under section 32(1) it was seeking to reply on the Council breached its obligations under section 17(1)(b) of the Act. In respect of parts 2 and 3 of the request the Commissioner concluded that sections 32(1)(a) and (b) applied. However in respect of part 4 of the request the Commissioner concluded that section 32(1)(b) of the Act does not apply, and as such that the Council breached section 1(1)(b) of the Act by withholding this information from the complainant. The Commissioner has therefore ordered the Council to release the information set out at part 4 of the request.

The Commissioner's Role

1. The Commissioner's role is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1

of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

2. The complainant contacted the Council on 3 October 2006 to make the following information request in accordance with section 1(1) (the full text of this section of the Act and any other exemptions or sections of the Act referred to later in this Notice can be found in the Legal Annex section at the end of this Notice) of the Act:

“Please could you provide me with a list of civil cases where your authority is either the claimant or the respondent/defendant in a claim that has been lodged at the county court.

Please do not include any cases where the respondent/defendant has not lodged a defence statement with the court. Also exclude any cases where the claim is for damages sustained in a motor vehicle collision and the claim is for simple non-personal injury damages (ie just damage to cars).

For those cases that remain please provide:

- 1) The case number as supplied by the court
- 2) The court where the case is lodged
- 3) The other party if it is not an individual
- 4) A brief description of the nature of the claim.”

3. The complainant wrote to the Council the following day, 4 October 2006, to amend his information request slightly. He stated that:

“...I do not want historic cases. I only require a list of those cases that are currently outstanding and have been lodged with the county court where the respondent/defendant has filed a defence to the claim.

“I also wish to exclude any cases that involve claims for the reclaiming of local authority benefits, relate to unpaid rent or mortgage or other debt collection below £2,000.”

4. The Council responded issuing a refusal notice on 24 October 2006. It stated that it does hold the requested information but considered that it was exempt from disclosure under section 32(1) of the Act.
5. As the complainant remained dissatisfied, he appealed the Council's decision on 2 November 2006. The complainant stated that he did not agree the requested information was exempt from disclosure under section 32 of the Act and urged the Council to release the information.

6. The Council responded further on 17 November 2006 informing the complainant of the outcome of the internal review process. It advised the complainant that it remained of the view that the requested information was exempt from disclosure under section 32 of the Act.
7. The complainant approached the Commissioner on 11 December 2006 to request that his complaint be given formal consideration.

The Investigation

Scope of the case

8. The Commissioner's investigation has sought to establish whether the Council complied with the requirements of section 1(1) of the Act and, in particular, whether it acted appropriately by withholding the requested information on the basis that it was exempt under section 32 of the Act.

Chronology of the case

9. The Commissioner wrote to the Council on 16 August 2007 to request a copy of the withheld information.
10. The Council responded on 28 August 2007 providing a copy of the requested information for those current civil cases relevant to the complainant's request.
11. The Commissioner wrote to the Council on 19 September 2007 to request some additional information concerning its application of section 32(1)(b) of the Act.
12. The Council responded on 25 September 2007 explaining in a little more detail why it considered the requested information was exempt from disclosure under section 32 of the Act.
13. Based on the submissions received from the Council, the Commissioner wrote to the complainant on 25 September 2007 to outline his preliminary assessment of the complaint.
14. The complainant responded on 2 October 2007 to express his dissatisfaction with the Commissioner's assessment. He stated that there were four elements to his request and the assessment did not appear to differentiate between the four different types of information requested.
15. The Commissioner decided to make some further enquiries of the Council. He contacted the Council on 25 January 2008 to request that it explain in more detail why it considered section 32(1)(b) of the Act applied to each element of the complainant's request.
16. The Council responded further on 5 March 2008 providing the additional information requested.

17. As the Council's response raised some additional issues, the Commissioner wrote to the Council again on 19 March 2008. In respect of the third element of the complainant's request to know the party if not an individual, the Commissioner queried the Council's interpretation of this aspect of the complainant's request. The Commissioner stated that the complainant appeared to only be interested in the identity of the other party if this was not an individual. He therefore felt that this aspect of the complainant's request could possibly be answered by confirming whether it holds the requested information.
18. The Council replied on 30 April 2008. In respect of elements one, two and four of the complainant's request, the Council explained in more detail case by case why it considered the requested information should be withheld. Concerning the third element of the complainant's request, it agreed to inform the complainant that there were two civil cases at the time of his request and both cases related to individuals and therefore this information does not fall within the scope of his request. The Council communicated this additional information to the complainant on 9 April 2008.
19. The Commissioner considered the additional information provided by the Council. He noted that the specific circumstances surrounding the second civil case referred to by the Council suggested that this case was, in fact, outside the scope of the complainant's request. As outlined in paragraph 3 above, the complainant specifically requested the Council to exclude the cases where the respondent/defendant had not lodged a defence statement with the court. The Commissioner wrote to the Council on 13 May 2008 to ask it to reconsider this case and particularly whether a defence statement would have been lodged in the court for this case by the time of the complainant's request.
20. The Council responded on 13 May 2008 outlining in more detail the chronology of this particular civil case. It stated that it agreed that this case was outside the scope of the complainant's request because a defence statement had not been lodged with the court at the time of the complainant's request and apologised for not identifying this sooner. The Council confirmed that it would now write to the complainant to inform him of this and to apologise for the confusion caused.
21. The Council forwarded a copy of its letter to the complainant to the Commissioner on 14 May 2008.
22. For the one remaining civil case the Commissioner considered the Council's further submissions. As the Commissioner was not satisfied based on the evidence provided to him that section 32(1)(b) of the Act applied, he wrote to the Council on 9 July 2008 to request further information. The Commissioner requested the Council provide some additional clarification and copies of the court documents it received, together with all recorded information held by the Council relating to the claim, including all information created following the receipt of the claim and any background information held relating to this case.
23. The Council responded in part on 21 July 2008. It provided copies of the court documents it received and suggested to the Commissioner that the one

remaining civil case may not, actually, be within the scope of the complainant's request. It stated that the case was dealt with in a judgement made by the court on 12 July 2006. As the complainant requested details of current cases, it argued that this case may not be the information the complainant required, nor in fact fall within the scope of his request.

24. The Commissioner reviewed a copy of the judgement the Council received. The judgement advised the Council that the claim had been stayed. The judgement also set out that the claim could be restored up to nine days following the date of the complainant's information request. In light of this the Commissioner has decided that this particular case was pending at the time of the complainant's request and therefore informed the Council that the remaining civil case did fall within the scope of the request. At the time of the complainant's request the case was stayed and as such unresolved during that period pending the conclusion of the period set out in the judgement. The Commissioner therefore wrote to the Council on 4 August 2008 to request that all outstanding information, as detailed in his previous letter dated 9 July 2008, be supplied as a matter of urgency.
25. The Council responded further on 5 August 2008. It provided copies of all information held by the Council concerning the claim and the further explanations the Commissioner required.
26. The Council had now addressed element three of the complainant's information request and identified that one of the civil cases previously referred to was not relevant to the complainant's request as detailed in paragraphs 18 and 19 above. This is addressed below at paragraph 27. The remainder of this Notice will focus on the Council's decision to withhold the following information which pertains to the only case that is within the scope of the complainant's request under section 32(1)(b) of the Act:
 - The case number as supplied by the court.
 - The court where the case was lodged.
 - A brief description of the nature of the claim.

Analysis

Procedural matters

Section 1(1)(a)- Duty to confirm or deny

27. As stated in paragraphs 17 and 18 above, it was established during the Commissioner's investigation that the Council does not hold any recorded information relevant to part 3 of the complainant's request. The complainant stated in part 3 of his request that he only wished to know the identity of the other party if this was not an individual. As the two civil cases identified at the time of the complainant's request related to individuals, the Council should have informed the complainant in its refusal notice dated 24 October 2006 that it does not hold any recorded information relevant to the third element of the complainant's request. As the Council failed to do so, the Commissioner has concluded that the Council was in breach of section 1(1)(a) of the Act in this case.

Section 17(1)(b)- Refusal Notice

28. The Council issued its refusal notice on 24 October 2006. In this notice it set out that some of the information requested was exempt from disclosure under section 32(1) of the Act. In failing to specify which subsection(s) under section 32(1) it was seeking to reply on the Council breached its obligations under section 17(1)(b) of the Act.

Section 32(1) – Court records

29. The Council claimed that the remaining information as outlined in paragraph 22 above is exempt from disclosure under section 32(1)(b) of the Act. This section of the Act provides an exemption from the right to know if the requested information is held only by virtue of it being contained in any document served upon, or by, the Council for the purposes of proceedings in a particular cause or matter. Therefore, for the Commissioner to agree that this exemption is engaged, the Council will need to clearly demonstrate that the requested information is only held by virtue of it being contained in a document(s) served upon or by it for the purposes of proceedings.
30. Section 32(1)(b) of the Act is also an absolute exemption. There is therefore no requirement to consider the public interest test set out at section 2(2) of the Act. If the Council can demonstrate that section 32(1)(b) of the Act is engaged, then it would not be required to release this information to the complainant under section 1(1)(b) of the Act.
31. However, during the Commissioner investigation he became aware that some of the documents held by the Council containing the case number and name of the court where the claim was lodged did in fact pertain to the documents described at sections 32(1)(a) and (b) of the Act. The Commissioner will now consider each remaining element of the complainant's request in turn as outlined in paragraph 26, setting out the Council's submissions and the Commissioner's view as to the application of sections 32(1)(a) and/or (b).

The case number as supplied by court

32. The Council argued that the case number was first received by the Council in court documents served upon it two days after the date which appears on those court documents. It stated that this was when it first became aware of the case number and that this information is not held in any further recorded information held elsewhere in the Council.
33. The Commissioner reviewed the relevant court documents and all recorded information the Council holds relating to this claim. He accepts that the Council was first made aware of the case number on receipt of the court documents and that up to the date that these were received this information was not held in any other recorded information held by the Council. However, the Commissioner notes that other recorded information is held that contains the case number, which was created following the receipt of the court documents and held at the time of the complainant's request. This information is more general correspondence between the Council and the court relating to the proceedings.
34. In the Information Tribunal hearing of *Mitchell v The Information Commissioner (EA/2005/0002)* the Tribunal considered which documents would be covered by each paragraph of subsection 32(1) of the Act. The subsections of relevance here are 32(1)(a) and 32(1)(b) of the Act; those documents filed with a court or served on or by a public authority for the purpose of proceedings in a particular cause or matter. The Tribunal outlined that the following type of documents would be included in these subsections:
- pleadings
 - witness statements
 - exhibits served as part of a litigant's or the prosecution's case
 - list of documents
 - material served under an obligation to disclose and skeleton arguments prepared by advocates.
35. The Tribunal made no judgement on more generalized correspondence between the public authority and a court and whether this was caught by sections 32(1)(a) or 32(1)(b) of the Act. In the Commissioner's view the issue in this case is whether one can conclude that the case number is only held by virtue of being contained in any document as described at sections 32(1)(a) or (b). Whereby under section 32(1)(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* would be caught by the exemption. Under section 32(1)(b) *any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter* would be caught by the exemption.
36. In this case, the Commissioner has found that the case number is only held by the Council by virtue of it being contained in documents as described at sections 32(1)(a) or (b) of the Act. As set out above, the exemption at section 32 of the Act is an absolute exemption and therefore the Commissioner has not gone on to consider the public interest test.

The court where the case was lodged

37. The Council submitted the same arguments it presented in relation to the first element of the complainant's request. It stated that this information is only held by virtue of being contained in the court records it received from the court. It explained that it had no prior knowledge that the claimant had any intention of issuing proceedings in a particular court and it argued that it holds no further recorded information elsewhere in the Council which contains this information.
38. As stated above, the Commissioner reviewed the court records together with all recorded information held by the Council relating to the claim, including background correspondence with the claimant and any information created following the receipt of the court records which was held at the time of the complainant's request.
39. The general correspondence between the Council and the court which contains the case number, as explained above, also contains the name of the court in which the case was lodged. As explained in detail in paragraph 34 above, in the Commissioner's view the issue in this case is whether one can conclude that the name of the court in which the case was lodged is only held by virtue of being contained in any document as described at sections 32(1)(a) or (b). Whereby under section 32(1)(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* would be caught by the exemption. Under section 32(1)(b) *any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter* would be caught by the exemption.
40. In this case, the Commissioner has found that the name of the court in which the case was lodged is only held by the Council by virtue of it being contained in documents as described at sections 32(1)(a) or (b) of the Act. Again as noted above, the exemption at section 32 of the Act is an absolute exemption and therefore the Commissioner has not gone on to consider the public interest test.

A brief description of the claim

41. The Council confirmed that in this particular case it first became aware of the nature of the claim on receipt of documents served upon it by the court and it was therefore of the view that this information was exempt from disclosure under section 32(1)(b) of the Act.
42. The Commissioner queried this further, as it was his view that in many cases the Council would have been aware of the matter prior to any court action. For instance one might expect that there would be some background to such a case and possible protracted correspondence between the Council and the individual concerning the dispute prior to any legal proceedings, for example a formal complaint. The Council confirmed that the circumstances surrounding this case were unusual. It explained that there was some background to the civil case. However, this related to one issue and the claim against the Council was relating to a different matter. The Council therefore confirmed that although there was background correspondence with the individual concerned, it was not aware of the actual claim until it received documents from the court.

43. The Commissioner considered the Council's submissions further. As he felt that it seemed unlikely that this information would not be held elsewhere, either before the claim or following the receipt of the court documents in, for example, communications between departments in which the claim was discussed, he again requested further information from the Council.
44. As the Council argued that the description of the claim was different to information contained in background correspondence with the claimant prior to court action, the Commissioner first considered the contents of the court documents the Council received. It is the Commissioner's view that the description of the claim given not only raises the alleged new issue but also goes into some detail about the background to this claim, therefore confirming that both issues are so intrinsically linked it is not possible to separate one from the other.
45. The Commissioner does not accept that the description of the claim is different to the description of the dispute that is contained in recorded information held by the Council, prior to the proceedings being issued. He is therefore satisfied that there is a considerable amount of background correspondence between the Council and the claimant prior to the proceedings which contain the requested information.
46. As the requested information is not held only by virtue of documents served upon the Council by the court for the purposes of proceedings, the Commissioner has concluded the section 32(1)(b) of the Act is not engaged.
47. Even if the Commissioner were to accept the Council's argument that the claim lodged was different in description to the prior dispute with the claimant, he notes that an internal email between two departments on 23 March 2006 described and, in fact, quoted some of the wording used by the claimant in the claim form served upon the Council. As this information was held at the time of the complainant's request, it is held not only by virtue of being contained in the court documents but is held in other recorded information held by the Council. In such circumstances, it is the Commissioner's view that section 32(1)(b) of the Act is not engaged.

The Decision

48. The Commissioner found that the Council was in breach of section 1(1)(a) of the Act in that it failed to inform the complainant that it does not hold any recorded information relevant to part 3 of his request.
49. The Commissioner has also concluded that in failing to specify which subsection(s) under section 32(1) it was seeking to reply on the Council breached its obligations under section 17(1)(b) of the Act.
50. The Commissioner has concluded that the Council did not deal with the complainant's request in accordance with section 1(1)(b) of the Act, as it inappropriately relied on section 32(1)(b) of the Act by withholding a brief description of the claim.
51. However, the Commissioner has also concluded that the Council correctly relied on the exemption contained at section 32(1)(a) and (b) of the Act in respect of the case number and the name of the court in which the claim was lodged.

Steps Required

52. In view of the matters referred to above the Commissioner gives notice that in exercise of its powers under section 50 he requires the Council to disclose the following information to the complainant within 35 days of the receipt of this Notice:
 - a description of the claim for the only civil case which fell within the scope of the complainant's request.

Other matters

53. Although the Council responded promptly towards the end of the Commissioner's investigation, the Commissioner would like to draw the Council's attention to the unacceptable delays earlier in the investigation in providing additional information or further explanations. Although reasonable timeframes were given and often further extensions, the Council repeatedly failed to provide the additional information in a timely manner and to keep the Commissioner updated. The Commissioner would therefore like to remind the Council of its obligations under the Act and the level of co-operation required during such investigations. The Council should also familiarise itself with the Codes of Practice associated with the Act and the Commissioner's guidance available on his website at www.ico.gov.uk.
54. Whilst in this case the information is only held by the Council by virtue of being contained in documents as described at sections 32(1)(a) and (b) and is therefore exempt under the Act, the Commissioner wishes to highlight that for a small fee, having provided the name and address of the Council in question, both the case number and name of the court where a case was heard amongst other

Reference: FS50148575



Information Commissioner's Office

information can be obtained from the Registry Trust Ltd (<http://www.hmcourts-service.gov.uk/infoabout/judgment/registered/index.htm>).

Right of Appeal

55. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 11 day of December 2008

Signed

**Nicole Duncan
Head of FOI Complaints
Information Commissioner's Office
Wycliffe House
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Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act (2000)

Section 1(1)

Provides 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.”

Section 17(1)

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 32(1)

Provides 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.”