

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 05 May 2011

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

Summary

The complainant requested information relating to a particular type of judgement issued out of Northampton County Court during a specified period. The public authority refused the request, citing the exemptions provided by section 32(1) (court records). The Commissioner finds that the public authority applied the exemptions provided by sections 32(1)(a) and 32(1)(c)(ii) correctly and so it is not required to disclose the information requested by the complainant. However, the Commissioner also finds that the public authority breached sections 10(1) and 17(1) in that it failed to provide a timely response to the request.

The Commissioner's Role

1. The Commissioner's duty 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 made the following information request on 1 April 2010:

"Please supply the judgment details, i.e. claim number, amount of judgment and name and address of defendant for all judgments issued out of Northampton County Court for the period 12/08/04 to 12/10/09 which contain an XO (O as in letter, not number) in the claim number – as in 7XO85304."

3. After a lengthy delay, the response to this request was dated 8 September 2010. The request was refused, with the exemptions provided by sections 32(1) (court records) and 40(2) (personal information) cited.
4. The complainant responded to this on the same date and requested an internal review. The public authority responded with the outcome of the internal review by letter dated 4 October 2010. The conclusion of this was that the citing of the exemptions provided by sections 32(1) and 40(2) was upheld.

The Investigation

Scope of the case

5. The complainant contacted the Commissioner's office in connection with this case on 4 October 2010. The complainant indicated that he did not agree with the reasons given for the refusal of his request and in particular argued that the exemption provided by section 32(1) could not apply as the information he had requested was shared by the public authority with Registry Trust. The argument of the complainant was that this meant that this information did not meet the requirement of section 32 that the information be held "*only by virtue*" of being held in court documents.

Chronology

6. The Commissioner contacted the public authority in connection with this case on 5 January 2011. At this stage the public authority was asked to respond with further explanation for the citing of section 32(1) and with a representative sample of the information withheld from the complainant.
7. The public authority responded on 14 February 2011 with a sample of information. This information consisted of documents relating to a case heard at Exeter County Court, so was clearly not within the scope of the complainant's request for information relating to Northampton County Court. Whilst the public authority provided no explanation on this point, it appears to have been the case that the public authority intended this to be representative of the type of information it held that fell within the scope of the complainant's request, albeit not information that actually was within the scope of this request.
8. The public authority provided some further explanation for the citing of section 32(1) at this stage. A further exchange of correspondence between the public authority and the Commissioner's office followed

during which the public authority provided further explanation for the citing of this exemption. At this stage the public authority stated that the information in question was held on *“the court’s computer system”*.

Analysis

Exemptions

Section 32

9. The public authority has cited sections 32(1)(a), (b) and (c). These provide exemptions for information that is held only by virtue of being contained in: (a) any document filed with or placed in the custody of a court in relation to a particular case, (b) any document served upon or by a public authority in relation to a particular case, or (c) any document created by a court or a member of court staff in relation to a particular case. These sections are set out in full in the attached legal annex, as are all other sections of the Act referred to in this Notice.
10. Section 32(1) provides class-based and absolute exemptions. This means that if the information in question falls within any of the classes described in sections 32(1)(a) to (c), it is exempt. There is no requirement to consider what harm, if any, may result through the disclosure of this information, nor any requirement to consider the balance of the public interest. Consideration of this exemption requires addressing only whether the information in question falls within any of the classes described in sections 32(1)(a) to (c). The Commissioner’s analysis as to whether the information in question does fall within any of these classes is as follows.
11. Information can only be withheld under section 32 if it is solely held by the public authority by virtue of being in a court record and not elsewhere. The first question, therefore, is whether the public authority holds the information in question only by virtue of it being contained in a document to which section 32 applies.
 - *Is the information contained in a relevant document?*
12. As noted above in the chronology section, in response to a request for samples of information relevant to the request the public authority provided copies of documents that related to a court case. These were provided to the Commissioner as scanned electronic versions of the original paper documents. The public authority also later stated that the information was held on the *“the court’s computer system”*.

13. The public authority has not explained whether the documents it supplied are held in scanned form on the computer system it referred to, or whether these were examples of documents held in manual form that the public authority holds in addition to information held on an electronic database. For the purposes of this analysis the Commissioner has assumed that the public authority holds information relevant to the request in both electronic form on a database and in the form of manual files.
14. Covering manual court files first, the Commissioner considers it clear that the information contained within these would be held in a relevant document and does not believe that further analysis on this point is necessary.
15. As to the information held in electronic form on a database that the public authority has referred to as *"the court's computer system"*, the public authority has not described this in detail, but has stated the following about this:

"[this] is the electronic court file used to assist in court proceedings and which is accessed by both staff and the judiciary."

16. The Commissioner is not aware if the database referred to is a system that covers the courts system overall, or whether Northampton County Court has its own system. In any event he does not regard this detail as critical to whether information held on this system could be described as a relevant document. Instead, whether this database is used only by Northampton County Court, or more widely by the courts system, the issue here is whether information held on this database is held only by virtue of being in a court record.
17. The Commissioner is of the view that information held on a database used only for the operation of either a single court, or by courts more widely, and that relates to a specific court case, would clearly be held only by virtue of being contained in a court record. On the issue of the word *'document'* as it is used in section 32 of the Act versus information being held in an electronic form, the Information Tribunal has previously been clear that this can be broadly defined and is not limited to information held in a manual form.
 - *Was the document filed with the Court?*
18. This question is relevant to section 32(1)(a). The view of the Commissioner is that some of the documents containing information relevant to the request were filed with the court, namely documents that have been completed by participants in court action, such as the claimant, and sent to the court for the purposes of this action.

- *Was the document created by a court or a member of the administrative staff of a court?*
19. This question is relevant to sections 32(1)(c)(i) and (ii). Section 32(1)(c)(i) refers to documents created by a court, and 32(1)(c)(ii) to documents created by the administrative staff of a court. The Information Tribunal has previously stated that 'court' as it is used in this section can only mean the judge. The Commissioner has focussed here on section 32(1)(c)(ii) and whether the information is held in documents created by the administrative staff of a court.
20. The sample of information provided to the Commissioner by the public authority includes documents that record the progress of the case to which that information relates. The Commissioner would accept that documents of this kind were created by the administrative staff of a court.
21. In terms of information held in electronic form on the aforementioned database, the Commissioner would accept that staff entering information about court cases onto this database would be the administrative staff of a court, at least in relation to that specific task, and that entering information onto this database would constitute the creation of a document.
- *Was the document created for the purposes of proceedings in a particular cause or matter?*
22. In the Commissioner's view, when considering this element of the test as to whether or not the exemption is engaged, what matters is the purpose for which the information was created. The complainant requested information concerning a specific type of case identified by the prefix to the reference number. The Commissioner considers it clear that documents created for the purposes of these cases were created for the purposes of proceedings in a particular matter.
- *Is the information held only by virtue of being contained in such a document?*
23. On this point the public authority referred to the following from the Information Tribunal case *DBERR v ICO and Peninsula Business Services Ltd* (EA/2008/0087):
- "There is nothing in the section which limits the way in which that information may be used or processed by the public authority provided it is, in effect, only acquired by virtue of being in a 'court record' (i.e. a document falling within s32(1)(a), (b) or (c)). Therefore if information, once acquired is used for [other] matters, it is still covered by the exemption" (paragraph 53).*

24. Whether the requested information is held only in manual court files, or has been extracted from these and recorded on a database, the complainant has requested information relating to specific court cases. That he has requested information recorded under specific reference numbers used in the organisation of information relating to court cases makes this particularly clear. The view of the Commissioner is, therefore, that the information in question was acquired by virtue of being in a court record.
25. The complainant has argued that the exemptions provided by section 32 cannot be engaged as the information he has requested is passed to Registry Trust. The suggestion of the complainant is, therefore, that the information in question is not held *only by virtue* of being in a court record.
26. In response to this argument, the public authority has stated that it is required by legislation to provide copies of court judgements to Registry Trust and has referred to the Tribunal case quoted above. The Commissioner also refers here to that Tribunal case and particularly the point that section 32 does not limit the subsequent use of information acquired only by virtue of being contained in a court record.
27. The Commissioner has found that the information requested by the complainant is held in a relevant document, and that this document was either filed with a court, or was created by a member of the administrative staff of a court. He has also found that these documents were created for the purposes of proceedings in a particular matter and that this information is held by the public authority only by virtue of being contained in a relevant document. The overall conclusion of the Commissioner is, therefore, that the information is exempt by virtue of engaging either section 32(1)(a) or 32(1)(c)(ii).

Section 40

28. As the above conclusion on section 32 relates to the entirety of the information falling within the scope of the complainant's request, it has not been necessary to also consider section 40(2).

Procedural Requirements

Sections 10 and 17

29. In failing to confirm or deny within 20 working days whether it held information falling within the scope of the request, the public authority breached section 10(1). In failing to provide a refusal notice within twenty working days of receipt, it did not comply with the requirement of section 17(1).

The Decision

30. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that it applied the exemptions provided by sections 32(1)(a) and 32(1)(c)(ii) correctly. However, the Commissioner has also found that the public authority breached sections 10(1) and 17(1) by failing to provide a timely response to the request.

Right of Appeal

31. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 5th day of May 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

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.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied."

Section 40(3) provides that –

"The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded."