

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2013

Public Authority: United Kingdom Supreme Court (UKSC)
Address: The Supreme Court
Parliament Square
London
SW1P 3BD

Decision

1. The complainant requested documents and information in a specified Crown Prosecution Service case relating to: the petition for leave to appeal to the United Kingdom Supreme Court (UKSC), the permission to appeal, and a connected court order.
2. The Commissioner's decision is that the section 32(1) FOIA exemption is engaged. As section 32 FOIA is an absolute exemption, the Commissioner did not proceed to consider the public interest, and concluded that UKSC had acted correctly in withholding the information.
3. The Commissioner does not require UKSC to take any action.

Request and response

4. On 3 October 2012 the complainant made the following request for documents and information under the FOIA in relation to a specified Crown Prosecution Service case for:

R ([a named defendant]) versus the Crown Prosecution Service.

1. *We should be given copies of the Petition for Leave to Appeal in the Supreme Court of the United Kingdom*
2. *The Order granting Permission to Appeal in the Supreme Court of the United Kingdom*
3. *The Copy of the Court Order made in the Divisional Court.*

5. On 4 October 2012 at internal review, following an earlier refusal, UKSC told the complainant that relevant documents and information were held which related to a live UKSC court case that was being heard at that time. UKSC refused to disclose the information and documents, relying on the court records exemption in section 32(1) FOIA exemption.

Scope of the case

6. On 5 October 2012, and again on 4 December 2012 with fuller supporting material, the complainant contacted the Commissioner to complain about the way his request for information had been handled.
7. The Commissioner has considered the application by UKSC of the court records exemption at section 32 FOIA. In arriving at his decision, the Commissioner has considered evidence he received from the complainant and from UKSC. He has also reviewed the documents that UKSC are withholding.

Reasons for decision

8. Section 32(1) of FOIA 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."

9. Section 32(1)(a) states that information is exempt if it is held only by virtue of being contained in any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter. Section 32(1)(c)(ii) provides the same in relation to any document created by the administrative staff of a court for the

purposes of proceedings in a particular cause or matter. Information conforming to either of these descriptions is exempt from disclosure under FOIA.

10. There are two main steps to considering whether information falls within these exemptions. First, it is necessary to consider whether the information is contained within a document filed with a court, or that it was created by the administrative staff of a court, in relation to a particular cause or matter. The next step is to consider if this information is held by the relevant public authority only by virtue of being held in such a document.
11. On 27 February 2013 UKSC told the Commissioner that it held three documents containing information within the scope of the information request.
 - Document A was a copy of the application for permission to appeal to UKSC, dated May 2011, and had been exempted by UKSC relying on the section 32(1)(a) FOIA exemption.
 - Document B was a copy of the order granting permission to appeal in the UKSC, dated August 2011, and had been exempted by UKSC relying on the section 32(1)(c) exemption.
 - Document C was a copy of the relevant order made in the High Court of Justice Queen's Bench Division, dated March 2011, and had been exempted by UKSC relying on the section 32(1)(a) FOIA exemption.
12. UKSC told the Commissioner that documents A and C had been supplied to it by one of the parties for the purpose of bringing a case to the UKSC. Additionally UKSC confirmed for the Commissioner that it did not hold the relevant documents for any other purpose and that they were held only in the records associated with the relevant case.
13. UKSC also told the Commissioner that document B had been created by the High Court for the purpose of setting out a judicial decision in connection with a particular case. UKSC confirmed that the document was held only for the purpose of the legal proceedings in the relevant case and was held in the court record created for that case.
14. From his examination of the withheld documents and the evidence from UKSC, the Commissioner is satisfied that the information is held only by virtue of being contained in a document as described in sections 32(1)(a) and 32(1)(c).
15. Consequently the Commissioner's decision is that the section 32(1) FOIA exemption is engaged. Section 32 FOIA is an absolute exemption, so the Commissioner has not proceeded to consider the balance of the public

interest. The Commissioner has therefore decided that UKSC correctly exempted the information from disclosure.

Right of appeal

16. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

17. 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.
18. 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

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