

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 May 2013

Public Authority: The Serious Fraud Office
Address: 2-4 Cockspur Street
London
SW1Y 5BS

Decision (including any steps ordered)

1. The complainant requested information relating to an application for a voluntary bill of indictment. The SFO refused to provide the requested information, citing section 32 (court records).
2. The Commissioner's decision is that the court records exemption at section 32 of FOIA has been correctly applied to the request. He requires no action to be taken.

Request and response

3. On 12 October 2012 the complainant made the following request for information under FOIA:

"I request that you provide me with a copy of the Application for a Volunteer Bill of Indictment – Case Number T20040074 (Chester Crown Court) Neutral Citation Number: (2005) EWHC 2828 (QB) Court Order given on the 8 December 2005 before Mr Justice Pitchers".

4. Section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933 allows the preferment of a bill of indictment by the direction or with the consent of a judge of the High Court. Bills so preferred are known as "voluntary bills".
5. The SFO responded on 15 October 2012. It told the complainant that all court records are exempt from release by section 32 of FOIA – court

records. The SFO told the complainant, therefore, that it had not undertaken a search for the requested information.

6. The SFO provided an internal review on 31 October 2012 in which it maintained its original position.

Scope of the case

7. The complainant provided the Commissioner with the relevant documentation on 22 January 2013 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of his investigation is the SFO's application of the section 32 exemption (court records).

Reasons for decision

Section 32 court records

9. During the course of the Commissioner's investigation, the SFO confirmed that it is citing section 32(1)(a) to withhold the requested information in this case. However, it also told the Commissioner:

"By virtue of section 32(3), section 1(1)(a) FOIA does not apply and therefore the SFO was not required to confirm or deny whether it held the requested information. We do of course recognise that we should have stated that fact at the outset and explained our reasoning to [the complainant]"

10. 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..."

11. Section 32(3) provides that:

"The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of this section"

12. In its correspondence, the SFO told the complainant:

"All court records are exempt from release by section 32 the Freedom of Information Act". [sic]

13. The Commissioner understands that the requested information is an application for consent to prefer a voluntary bill of indictment made in the course of a specific case.
14. The Commissioner has considered the SFO's argument and is satisfied that the complainant has requested a document which is filed with a court for the purposes of court proceedings.
15. The Commissioner is also satisfied that the SFO does not hold the application for its own purposes. The requested information is held only by virtue of it being contained in a document as described in section 32(1)(a).
16. Consequently the Commissioner's decision is that the information is exempt from disclosure under section 32 of the Act.
17. Section 32 of the Act is an absolute exemption. Therefore, the Commissioner does not need to carry out a public interest test to decide whether the information should be disclosed where the exemption is applicable.

Section 17 refusal

18. The Commissioner has issued guidance¹ on writing a valid refusal notice in accordance with section 17 of FOIA. That guidance states that when a public authority receives a request made under FOIA it must either:
 - provide the information to the requester;
 - write back to the requester to inform them that the information is not held;
 - refuse to confirm or deny whether information is held; or
 - confirm that information is held but refuse to provide it.

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[http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/refusing_a_request_writing_a_refusal_notice_foi.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/refusing_a_request_writing_a_refusal_notice_foi.ashx)

19. In the Commissioner's view, the SFO failed to issue a valid refusal notice in this case. However, he considers that no further action needs to be taken.

Right of appeal

20. 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

21. 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.
22. 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