

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 October 2013

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

Decision (including any steps ordered)

1. The complainant requested information about cases scheduled to be heard in Cambridge Magistrates Court. HM Courts and Tribunals Service (HMCTS), an agency of the Ministry of Justice (MoJ), refused to provide the requested information, citing section 32 of the FOIA (court records)
2. The Commissioner's decision is that HMCTS was entitled to withhold the requested information. He requires no steps to be taken.

Background

3. The requests in this case were made to HM Courts and Tribunals Service (HMCTS), an agency of the Ministry of Justice (MOJ). Therefore the MOJ is the public authority under the FOIA. However, for ease of reference, this decision notice refers to HMCTS throughout.
4. Prior to making the complaint that is the subject of this decision notice, the complainant had previously contacted the Commissioner about HMCTS's handling of these requests. His complaint in that the case was resolved informally - without recourse to a decision notice - following the Commissioner's intervention.

Request and response

5. On 22 January 2013, using the '*whatdotheyknow*' website, the complainant wrote to HMCTS making two requests for information as follows:

"Could you please release the register of decisions for Cambridge Magistrates' Courts on Monday the 21st of January 2013"

and

"Could you please release the information which would be expected to appear on the full copy of the court list in relation to appearances, hearings, trials etc. currently scheduled to be held in Cambridge Magistrate's Court in the week commencing Monday the 25th of February 2013".

6. Having initially considered his requests under a different access regime, HMCTS provided its substantive response under the FOIA on 20 June 2013, providing a single response to the two requests. It refused to provide the requested information, citing the following exemptions as its basis for doing so:
 - section 32(1)(c) (court records); and
 - section 40(2) (personal information).
7. The complainant requested an internal review on 1 July 2013. HMCTS sent him the outcome of its internal review on 26 July 2013. It revised its position, confirming its citing of sections 32(1)(c) and 40(2) but additionally citing section 40(1) (personal information – requester's own information).

Scope of the case

8. The complainant contacted the Commissioner on 26 July 2013 to complain about the way HMCTS handled his requests for information. He told the Commissioner:

"I would like the ICO to consider the same points I asked the internal review to consider namely:

1. If the material requested is in fact exempted under Section 32 (1) (c) of the Freedom of Information Act. I suggest the court list is not only held for the purposes of proceedings in a particular cause or matter but is held for other purposes including communicating with the public

2. The application of Section 40(2) to the material requested. I understand the material may contain information considered exempt under this section, for example information about victims of alleged crimes. I would expect the material considered exempt

under this section to be redacted, and not for its presence to be used as a reason for not disclosing the rest of the material.

3. If the duty which Section 16 of the Freedom of Information Act gives public bodies to provide advice and assistance satisfactorily discharged. The advice I have received in relation to this request to-date has been bizarre for example on the 3rd of April 2013 I was told that I have not specified the cases of interest; this is clearly not true as I asked for information relating to a specified day. I would suggest that under the terms of Section 16 of the Freedom of Information Act I should have been clearly advised if, and how, I can, or cannot, obtain the information I have sought (albeit perhaps in a redacted form, or perhaps by inspecting it)....

I can think of no reason for my personal information to be present on the court list. I would like the ICO to investigate the basis for this claim”.

9. In correspondence with the Commissioner, HMCTS explained that it considered that there are two types of Court list that fall within the scope of the requests, namely:
 - *“lists of cases placed on public display on a Court notice board (which are called public lists); and*
 - *lists of cases provided to the Magistrates containing more detailed information about the cases before them (which are called standard lists)”.*
10. HMCTS told the Commissioner that the complainant’s request:

“could mean either (or both) types of court list are requested”.
11. However, in bringing his complaint to the Commissioner’s attention, the complainant said:

“My request specifically states I am seeking the ‘full list’ ie. not the version which would be expected to be posted on the court noticeboard”.
12. During the course of the Commissioner’s investigation, the MoJ wrote to the complainant confirming that it no longer considered that section 40(1) applies in this case.
13. In light of the above clarification, the Commissioner considers the scope of his investigation to be HMCTS’s application of sections 32 and 40(2) of FOIA to the withheld information within the scope of the requests -

information comprising the register of decisions and 'the standard list' for the date specified.

14. He has also considered HMCTS's compliance with section 16 (advice and assistance).

Reasons for decision

Section 32 Court records

15. In correspondence with the Commissioner, HMCTS confirmed that it is citing section 32(1)(c)(ii) in this case.

16. Section 32 of the 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".

17. In other words, section 32(1)(c)(ii) provides an exemption for information which is only held by a public authority because it is contained in a document created by a member of the administrative staff of a court for the purposes of proceedings in a particular cause or matter.

18. As the wording of the exemption implies, the application of section 32 requires consideration of two related concepts – information and documents: 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.

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

19. By way of background to the requested information in this case, HMCTS told the Commissioner that Magistrates Courts use a computer system called LIBRA for the administration of Court cases.

20. LIBRA is described in the following way on the www.gov.uk¹ website:

"Brief description - Case management system for magistrates' court cases.

Collection - Data entered onto system by Her Majesty's Courts and Tribunals Service (HMCTS) staff in magistrates' courts".

21. HMCTS told the Commissioner:

"LIBRA holds recorded information about the cases before Courts, including, for example, the names and addresses of defendants, the charges brought and the case outcomes".

22. In refusing his request, HMCTS told the complainant that the register of decisions:

"is a document created by the court's administration and holds information about the decisions made by the court's magistrates".

23. Similarly, with respect to the requested register of decisions, HMCTS told the Commissioner:

"The 'register of decisions' mentioned by [the complainant] are 'Court registers' (to use HMCTS terminology). HMCTS's staff create the Court register documents using LIBRA, and they are a permanent record of the cases heard".

24. It also told him that the registers are not in the public domain and are produced "simply for the purposes of proceedings".

25. With respect to the standard list, HMCTS confirmed its view that the information is exempt from disclosure by virtue of section 32(1)(c). It told the Commissioner:

"The standard lists are printed from the LIBRA computer system by HMCTS' staff, and are provided to Magistrates' hearing those cases.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/182361/statement-administrative-sources.pdf

Unlike the public lists ... the standard lists are not placed on public display and, or, released to the general public".

26. HMCTS told the Commissioner that the standard lists are produced:

"so that the magistrates' have a summary of the court cases listed before them".

27. The Commissioner is satisfied, in respect of both the register of decisions and the standard list, that the first test of section 32(1)(c)(ii) is met. Having considered HMCTS's submissions, the Commissioner is satisfied that the withheld information is contained in a document created by a member of the administrative staff of the court for the purposes of proceedings.

28. Furthermore, with respect to the nature of the information necessary to compile the documents required to respond to the complainant's request (the register of decisions and the court list) the Commissioner is satisfied that the source of that information is the LIBRA case management system. He is satisfied that the information on that system is created by a member of the administrative staff of the court for the purposes of proceedings.

Is the information held only by virtue of being contained in such a document?

29. In order for the exemption at section 32 to be engaged, the second test is that the information is held 'only by virtue of...'.

30. 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.

31. In that respect, the Commissioner understands that information relevant to the request is only held on LIBRA.

Is the exemption engaged?

32. The Commissioner is satisfied that both the first and second tests of section 32(1)(c)(ii) are met as the withheld information is only held by HMCTS by virtue of being contained within a document created by the administrative staff of a court.

33. The Commissioner is therefore satisfied that the exemption at section 32(1)(c)(ii) applies to the withheld information in this case.

34. As section 32 of the FOIA is an absolute exemption, no public interest test applies.

35. As the Commissioner is satisfied that the withheld information is exempt under section 32(1)(c)(ii) he is not required to consider the application of the exemption at section 40(2) also cited by HMCTS.

Section 16 advice and assistance

36. Section 16 of the FOIA states that it shall be the duty of a public authority to provide advice and assistance to requesters, so far as is reasonable. Where a public authority conforms with the code of practice under section 45 in relation to the provision of advice and assistance, it will be taken to have complied with the duty imposed.

37. Referring to earlier correspondence, HMCTS told the complainant in its refusal notice:

"The Criminal Procedures Rules determine what can, or cannot, be disclosed. The court was therefore asked to provide you with a response, outside of the Freedom of Information Act".

38. In the Commissioner's view, it is important for public authorities to draw a distinction between requests for information and routine correspondence. He realises that public authorities may fail to recognise some questions as requests and instead will deal with them as part of their course of business.

39. In this case, in its internal review correspondence, HMCTS told the complainant:

"Your original request was received on 22 January 2013. It was judged that this information was held by the court and that there was a possibility that the information could be disclosed through the normal business of the court taking into account the criminal procedure rules..."

I note your comments regarding section 16 and the access to the court records, however the Freedom of Information Act does not allow for the release of court records. The correct procedure is to request the documents from the court and the request can be considered by them using the Criminal Procedure Rules".

40. In the circumstances of this case, the Commissioner is satisfied that, having turned down his request on the basis of an exemption, HMCTS attempted to assist the complainant. He does not consider there to have been a breach of section 16.

Right of appeal

41. 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

42. 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.
43. 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

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