

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 September 2015

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested a list of convicted corporations from the Ministry of Justice (the 'MOJ') held on a specified database. The MOJ refused to provide the information in its entirety, relying on section 32 (court records), section 40(2) (personal information), and section 43(2) (commercial interests).
2. The Commissioner's decision is that sections 32(1)(c) and 32(2)(b) of FOIA are engaged. He has therefore not considered the MOJ's reliance on the other exemptions. He does not require the MOJ to take any steps.

Background

3. The Commissioner has previously considered a request for information from the same database, reference *FS50546586*. In that case the MOJ did not apply the exemption in section 32 but instead relied upon section 40(2) as a basis for refusal.

Request and response

4. On 23 October 2014 the complainant wrote to the MOJ and requested information in the following terms:

"I would like to make the following FOI requests to the Ministry of Justice (MOJ): 1. Please can you provide me with a list of the all the

convicted corporations held on the Ministry of Justice Court Proceedings Database, including the legislation they have been convicted under? 2. Please can you provide me with a list of the all the convicted corporations held on the Ministry of Justice Court Proceedings Database, including the legislation they have been convicted under, their offences and their sentences/fines, where possible? I would refer you to the recent decision of the Information Commissioner's Office (ICO ref FS50546586). The ICO ordered the MOJ to disclose non-personal data on the MOJ Court Proceedings Database. The MOJ has now disclosed the names of corporations found guilty of offences under the Housing Act 2004. I would also point out that Section 40(2) of FOIA (personal information) does not apply as I am requesting the names of companies not people and there is a legitimate public interest in knowing the names of criminal corporations."

5. On 12 November 2014 the MOJ responded. It refused to provide the requested information citing the exemption for personal information, section 40(2) of FOIA. It said that under section 40(2) it is not obliged to provide information that is the personal information of another person if releasing that information would contravene any of the provisions of the Data Protection Act 1998 ('the DPA'). The MOJ stated that on this occasion, it had not provided the breakdown because to break down the figures in this way would mean that individuals may be identified from this information.
6. The complainant requested an internal review on 24 November 2014. The MOJ sent him the outcome on 30 January 2015. It revised its position in that, in addition to maintaining its reliance on section 40(2), the MOJ also cited sections 32(1) and 32(2) (court records) and 43(2) (commercial interests) to withhold the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 2 March 2015 to complain about the way his request for information had been handled. Specifically he challenged the exemptions that the MOJ had cited as a basis for refusing access to the information.
8. The Commissioner has considered whether the MOJ was correct to withhold the requested information on the basis that it was exempt.

Reasons for decision

Section 32 – court records

9. 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.*
10. Section 32(2) 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 placed in the custody of a person conducting an inquiry or arbitration, for the purposes of arbitration, or*
 - (b) *any document created by a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration.*
11. Sections 32(1) and (2) are class based exemptions. This means that any information falling within the category described is not subject to a prejudice test and is automatically exempt from disclosure. Sections 32(1) and (2) are also absolute exemptions and are therefore not subject to any public interest considerations.
12. The Court Proceedings Database contains information about prosecutions, convictions and sentences given in the Magistrates' and Crown Courts of England and Wales. The MOJ argued that the information was created by the court using information filed with the court and therefore cited sections 32(1) and (2).
13. In addition, the MOJ said that the database consists of a limited number of variables including the name and date of birth of the defendant, their gender and ethnicity, the court at which the hearing or trial was conducted, whether they were convicted, the offences for which they were convicted, and the sentence(s) which they were given.
14. It said that the database is owned by the MOJ and that it collates the information filed with it from the Magistrates' Court and Crown Court

databases in England and Wales. The information is collated for statistical purposes, to release aggregate information into the public domain about prosecution, conviction and sentencing trends and to assist with the management of the court system; however it originates from the court record and in the MOJ's view remains within that class of information even when compiled in the new format.

15. The complainant has asserted that the MOJ was incorrect to rely upon the exemptions in section 32 because the information in the database relates to completed cases. Therefore he argues that it is not created for the purpose of a statutory inquiry or arbitration and it does not relate to any ongoing prosecutions.
16. The Commissioner has first considered the MOJ's reliance on the section 32(1) and 32(2) exemptions. When doing so he has considered the Information Tribunal decision in the case of *DBERR vs Peninsula Business Services Limited*¹ which involved the application of this exemption. In that case a request had been made to the Department for Business Enterprise and Regulatory Reform ('DBERR') for the names and addresses of respondents to employment tribunal claims. DBERR refused disclosure under section 32(1)(a).
17. The names and addresses of respondents were extracted from hard copy or online forms and recorded in DBERR's computer case handling system, ETHOS. This system was also used to produce ad hoc reports for management, policy and monitoring purposes which may not have been directly related to proceedings in a particular cause or matter.
18. In that case the requester disputed that such extracted information could be subject to section 32(1)(a). His Counsel argued that this exemption could not apply because the information was no longer held only by virtue of being contained in a court document. In other words, if a public authority extracts information from a court document (i.e. information that would be exempt under section 32(1)) and puts it into a database or another document, section 32(1) ceases to apply as that information is no longer held by virtue of only being contained in a court document (paragraph 34 of the appeal decision).
19. The Tribunal, however, disagreed and recognised that "*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' (ie a document falling*

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[http://www.informationtribunal.gov.uk/DBFiles/Decision/i965/20130226%20Decision%20\(inc%20PTA\)%20EA20120122.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i965/20130226%20Decision%20(inc%20PTA)%20EA20120122.pdf)

within section 32(1)(a), (b) or (c)). Therefore if information, once acquired is used for [other] matters, it is still covered by the exemption.” (Paragraph 53).

20. In the case under consideration here, the Commissioner is satisfied that whilst the requested information was taken from the Magistrate' Court and Crown Court databases in England and Wales by the MOJ and stored within its Court Proceedings database it nevertheless originated as a 'court record' created by the courts. Specifically, he is satisfied that the information was obtained only by virtue of it having been contained in a document created either by a court, or a member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter, or by a person conducting an inquiry or arbitration for those purposes. In this case the details of the prosecutions or inquiries and associated sentencing of the specified corporations are held only by virtue of having been obtained via the aforementioned records. Although it is now being used for a different purpose, the Commissioner finds, following the reasoning set out in the DBERR decision above, that the requested information is captured by section 32(1)(c) and section 32(2)(b).

Conclusion

21. The Commissioner has concluded that the MOJ is entitled to rely on sections 32(1)(c) and 32(2)(b) to withhold the information. As the Commissioner has determined that the requested information can be withheld in accordance with section 32(1)(c) and 32(2)(b) he has not gone on to consider its reliance on sections 40(2) and 43(2).

Right of appeal

22. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. 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

Jo Pedder
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