

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 July 2016

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

Decision (including any steps ordered)

1. The complainant requested information relating to County Court hearings involving a named claimant. The Ministry of Justice (MoJ) refused to provide the requested information citing section 32 (court records) of the FOIA.
2. The Commissioner's decision is that the MoJ was entitled to rely on sections 32(1)(a) and (c) to withhold the requested information. She does not require the MoJ to take any steps as a result of this decision.

Background

3. The request in this case was made to a County Court. The Commissioner understands that the complainant made the same request to a number of regional courts as he was seeking information relating to all County Courts within a region.
4. HM Courts & Tribunals Service (HMCTS) is responsible for the administration of criminal, civil and family courts and tribunals in England and Wales.
5. HMCTS is an executive agency of the Ministry of Justice (MoJ) and falls within its remit for the purposes of the FOIA. The MoJ is therefore the appropriate public authority in this case.

Request and response

6. On 5 December 2015 the complainant requested information from the MoJ in the following terms:

"Please can you provide the following information, for the period 01/01/2014 to 31/12/2014:

- 1. Number of County Court hearings where the Claimant was [company name redacted] (or a variation thereof).*
- 2. Number of above where Judgment was given in favour of Claimant.*
- 3. Number of above where the Claim was dismissed or struck out."*

7. In the absence of a response, the complainant reminded the MoJ about his request on 14 January 2016.
8. The MoJ responded on 3 February 2016. It refused to confirm or deny whether it holds the requested information, citing section 32(3) of the FOIA (court records) as its basis for doing so.
9. Following an internal review, the MoJ wrote to the complainant on 31 March 2016. It revised its position, confirming that it holds the requested information but refusing to provide it, citing the exemption in section 32(1)(c) of the FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 4 April 2016 to complain about the way his request for information had been handled. He told the Commissioner:

"This request was refused on the grounds that it related to individual court records, even though I have only asked for summary information which would not identify any individual case and similar information has been provided in the recent past".

11. Although the Commissioner understands from this that such information may have been provided on other occasions, this does not set an automatic precedent for disclosure under the FOIA. Each case must be considered on its merits.
12. The analysis below considers the MoJ's application of section 32 of the FOIA to the requested information.

Reasons for decision

Section 32 court records

13. Section 32(1) of the 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."*
14. In correspondence with the Commissioner the MoJ confirmed that it considers that subsections 32(1)(a) and 32(1)(c)(i) and (ii) apply in this case.
15. Section 32(1) is a class based exemption. This means that any information falling within the category described is automatically exempt from disclosure regardless of whether or not there is a likelihood of harm or prejudice if it is disclosed. It is therefore conceivable that the exemption could apply to information which may otherwise be available to an applicant via other means or to information which is already widely available.
16. There are two main tests in considering whether information falls within this exemption. First, is the requested information contained within a relevant document – for example one filed with a court in relation to a particular cause or matter? Secondly, is this information held by the relevant public authority only by virtue of being held in such a document?
17. 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.

Is the information held only by virtue of being contained in a relevant document for the purposes of proceedings in a particular cause or matter?

18. In correspondence with the complainant, the MoJ told him:

"In this case, the information you are seeking would be contained in the court files for each claim but are only held for the purpose of the court proceedings....

... the information requested by you is held and is contained in electronic records within the HM Courts & Tribunals Service (HMCTS) County court case management system and/or hardcopy records retained locally".

19. The Commissioner has first considered the MoJ's application of section 32(1)(a).
20. 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.
21. In its submission to the Commissioner, the MoJ explained that the original information used to create the details on Caseman - the case management system for county court cases – is submitted to the court by the claimant:

"This is served on the court in the form of a summons which the court staff then inputs the details on to Caseman to create the case record. This information is considered exempt from disclosure under section 32(1)(a), as this information is contained in documents filed with the court for the purposes of proceedings in this particular matter".

22. The MoJ explained that the documents are filed with the court by the claimant to initiate proceedings and that:

"... these documents are then retained within the paper court file".

23. From the evidence she has seen, the Commissioner is satisfied that the information withheld by virtue of section 32(1)(a) was filed with the court for the purposes of proceedings and that there was no reason for the MoJ to hold it other than for the purposes of proceedings.
24. The Commissioner has next considered the MoJ's application of section 32(1)(c) to the information withheld by virtue of that exemption. As the wording of the exemption implies, 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.

25. The MoJ told the Commissioner:

"[The complainant] asked for the number of judgements given in favour of the claimant and the number where the claim was dismissed. This information is only recorded on Caseman from documents created by the court. Therefore this information would be exempt information under section 32(1)(c)(i).

Likewise, section 32(1)(c)(ii) was cited because the information that was requested is held only on Caseman because a member of the administrative staff of the court put it on there".

26. The MoJ confirmed that the case management system is used to produce court orders and to maintain a record of the proceedings.

27. The MoJ also told the Commissioner:

*"It is also important to note that the decision that section 32(1)(c) applies to statistical information was recently upheld by the Upper Tribunal in *Brown v The Information Commissioner and The Ministry of Justice - GIA/1934/2015*".*

28. Having considered the MoJ's submissions, the Commissioner is satisfied that the requested information relating to outcomes could only be obtained by interrogating the electronic record maintained by the Court in respect of each of the cases within the scope of the request. Accordingly she is satisfied that the information withheld by virtue of section 32(1)(c) is only held by virtue of being contained in a document created by the court or a member of the administrative staff of a court for the purpose of proceedings.

Is the exemption engaged?

29. From the evidence she has seen, the Commissioner is satisfied that the MoJ was entitled to rely on sections 32(1)(a) and (c) in this case. It follows that she finds the information exempt from disclosure.

30. As section 32 of the FOIA is an absolute exemption, there is no requirement to consider whether there is a public interest in disclosure.

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,
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

32. 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.
33. 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
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