

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 August 2016

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

Decision (including any steps ordered)

1. The complainant requested information from the Ministry of Justice (MoJ), namely samples of a named judge's handwriting.
2. The MoJ confirmed it holds information within the scope of the request but refused to provide it relying on section 32(1)(c)(i) (court records) and section 40(2) (personal information) of the FOIA. The Commissioner has investigated the MoJ's application of section 32(1)(c)(i).
3. The Commissioner has concluded that the MoJ is entitled to rely on section 32(1)(c)(i) to withhold the information. She requires no steps to be taken.

Request and response

4. On 25 January 2016, the complainant wrote to the MoJ and requested information in the following terms:

"I wish to make a request under the Freedom of Information Act 2005, to obtain samples of handwriting, written on Court-related documents, by His Honour Judge [name redacted] QC."

5. The MoJ responded on 24 February 2016. It confirmed that, despite the judge named in the request having retired in 2013, it still holds some of his notebooks. It therefore confirmed that it holds information within the scope of the request. However, it refused to provide the requested information citing the following exemptions of the FOIA:

- section 32(1)(c)(i) court records; and
 - section 40(2) personal information.
6. The complainant wrote to the MoJ on 4 March 2016, clarifying that her request was for samples of handwriting **ON** court related documents as opposed to **IN** any court related documents.
 7. The MoJ provided an internal review on 31 March 2016 in which it maintained its original position. For reasons that are unclear, the complainant does not appear to have received the response. Following the Commissioner's intervention, the MoJ provided the complainant with a copy of the internal review outcome correspondence on 9 June 2016.

Scope of the case

8. The complainant provided the Commissioner with the relevant documentation on 14 June 2016 to complain about the way her request for information had been handled.
9. During the course of the Commissioner's investigation, the MoJ confirmed its view that both sections 32 and 40 of the FOIA apply. It told the Commissioner:

"the information engages both exemptions in their entirety".
10. The analysis below considers the MoJ's application of section 32(1)(c)(i) of the FOIA to the withheld information.

Reasons for decision

Section 32 court records

11. 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".

12. 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 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.

13. In this case, the MoJ considers that section 32(1)(c)(i) applies. In correspondence with the complainant, the MoJ told her:

"We are not obliged to provide information contained in a court record. In this case, the information you are seeking is contained in any document created by a court (section 32(1)(c)(i) of the FOIA)".

14. When requesting an internal review of its handling of her request, the complainant clarified the nature of the information she was seeking. Accordingly she told the MoJ that her request should read:

"I wish to make a request under the Freedom of Information Act, to obtain samples of some random handwritten words and numbers, such as those written in any "margin notes", which have been written ON any document, by HHJ [name redacted] QC."

15. In response, the MoJ acknowledged that the complainant was only interested in samples of the judge's handwriting. Nevertheless, it confirmed that section 32(1)(c)(i) also applies in the case of the amended request.

16. There are two main steps to considering whether information falls within this exemption: first, it is necessary to consider whether the information is contained within a document created by 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.

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

17. As the wording of the request 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.

18. In this case, the MoJ acknowledges that the complainant clarified that the information she is requesting comprises random samples of the judge's handwriting. However, the MoJ told the complainant that any documents the judge wrote on that are retained by the court will be a matter of court record, *"even notes made by the judge"*.
19. During the course of her investigation, the MoJ provided the Commissioner with a sample of the withheld information.
20. Having considered the matter, and having viewed the sample of the withheld information, the Commissioner is satisfied that the disputed information is contained in documents that were created for the purpose of proceedings in particular matters. She has reached this conclusion on the basis that the withheld information comprises notebooks containing notes made when the judge was presiding over cases and hearings in a judicial capacity at Crown Court.

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

21. In order for the exemption at section 32 to be engaged, the second test is that the information is held 'only by virtue of...'
22. In the Commissioner's view, that phrase implies that if the public authority also holds the information elsewhere it may not rely upon the exemption.
23. In this case, having considered the MoJ's submissions, and in the absence of any evidence that the MoJ holds the information for any other purpose, the Commissioner is satisfied that the withheld information is only held by virtue of being contained in a document created by the judge, and therefore a court, for the purpose of proceedings.

Is the exemption engaged?

24. From the evidence she has seen, the Commissioner is satisfied that the MoJ was entitled to rely on section 32(1)(c)(i) in this case. It follows that she finds the information exempt from disclosure.
25. As section 32 of the FOIA is an absolute exemption, there is no requirement to consider whether there is a public interest in disclosure.

Other exemptions

26. As the Commissioner is satisfied that section 32 applies in this case, she has not gone on to consider the MoJ's citing of section 40 in relation to the same information.

Right of appeal

27. 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

28. 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.
29. 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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