

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 November 2016

**Public Authority:** Ministry of Justice

**Address:** 102 Petty France  
London  
SW1H 9AJ

### Decision (including any steps ordered)

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1. The complainant requested information relating to repossession claims begun by a named mortgage company. 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 the MoJ was entitled to rely on section 32(1)(c)(i) and (ii) to withhold the requested information. She does not require the MoJ to take any steps as a result of this decision.

### Request and response

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3. On 21 March 2016, the complainant wrote to the MoJ and requested information in the following terms:

*"Could you please supply me with a list of all repossession claims begun by the mortgage company, Mortgage Express, over the past five years (2011, 2012, 2013, 2014, 2015).*

*I would like the information supplied with a date of the claim, a case number, the court the claim was heard in, the outcome of the claim and the name of the individual signing the claim form on behalf of Mortgage Express".*

4. The MoJ responded on 5 April 2016. It confirmed that it held the requested information but refused to provide it citing section 32(1)(c)(i) and (ii) of the FOIA (court records).

5. The complainant requested a review of that decision on 12 April 2016. In his correspondence, he argued that some of the information within the scope of his request:

*"...was not only included in the court documents created for the purposes of the proceedings, but also in public listings that appear in the courts on the day of the hearings".*

6. The MoJ provided an internal review on 29 April 2016 in which it maintained its position. In its correspondence, the MoJ also addressed the point that the complainant had made about court listings.

### **Scope of the case**

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7. The complainant provided the Commissioner with the relevant documentation on 14 June 2016 to complain about the way his request for information had been handled.

8. The complainant disputed the MoJ's application of section 32 in this case. He told the Commissioner:

*"... I have requested ... a list of the cases, rather than any detail within the court record pertaining to the case".*

9. The Commissioner acknowledges that, when the complainant asked the MoJ to conduct an internal review, he made reference to aspects of the requested information - specifically the date of each claim, the case number relating to each claim and the court each claim was heard in - appearing in listings that appear in the courts on the day of the hearing. However, she does not consider that the terms in which he requested an internal review constituted a refined, or fresh, request.
10. The analysis below considers the MoJ's application of section 32 of the FOIA to the information requested on 21 March 2016.

### **Reasons for decision**

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#### **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. In correspondence with the Commissioner the MoJ confirmed that it considers that subsections 32(1)(c)(i) and (ii) apply in this case.
13. 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.
14. 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 created by a court or a member of the court's administrative staff for the purposes of proceedings in a particular cause or matter?
15. Secondly, is this information held by the public authority only by virtue of being held in such a document?

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

16. The MoJ told the complainant that the information he is seeking is contained in the court files for each claim. It explained that:

*"The name of claimants and respondents in civil cases form part of the court record and can only be provided by reference to court records. Therefore, as the information contained in any electronic and manual court records requested by you would be held by, or created by a court, or member of the administrative staff of a court, for the purpose of proceeding in the particular cause or matter, I have determined that it would not be a public record, and thus would be exempt under section 32(1) (c)(i)&(ii) of the FOIA".*

17. In correspondence with the Commissioner, the MoJ confirmed its reasons for applying section 32 to the requested information. In that respect it told the Commissioner:

*"[Signature] information, and the date of the claim, is held in order that the claim can be administered. A case number is raised by court administrative staff for the purpose of identifying and tracking individual claims and the location of the hearing is supplementary to that. The outcome of the claim may be recorded as resulting from a court hearing or judgement or, if the case does not go to court, another outcome. Again, this would be recorded for the purpose of administering that individual claim".*

18. Having considered the matter, the Commissioner is satisfied that the requested information is contained in documents that were created for the purpose of proceedings in particular matters.

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

19. In order for the exemption at section 32 to be engaged, the second test is that the information is held 'only by virtue of...'.  
20. 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.  
21. In correspondence with the complainant, the MoJ told him:

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

22. In support of his request for the information to be disclosed, the complainant pointed out that at least some of the information he is seeking would have been in public listings that appear in the courts on the day of the hearings. In his view:

*"The court listing is produced, not for the purposes of the proceedings, but in accordance with the principles of open justice to inform the public about the proceedings, which they are free to attend".*

23. Responding to that point, the MoJ explained that:

*".. public listings that appear in court on the day of the hearings are only deemed in the public domain on the date of the hearing ...*

*Once the hearing date has passed, these are considered to be data recorded and processed by the administrative team for HMCTS, and subsequently held as part of the court record, and as such this information is exempt from disclosure under subsections (i) & (ii)".*

24. In this case, having considered the MoJ's submissions, and in the absence of any evidence that the MoJ held the information for any other purpose, the Commissioner is satisfied that the requested information is only held by virtue of being contained in a document created by a court or a member of the administrative staff of a court, for the purpose of proceedings.

*Is the exemption engaged?*

25. What is important in the context of a case such as this is whether the information fits the description in section 32(1)(c). 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.
26. From the evidence she has seen, the Commissioner is satisfied that the MoJ was entitled to rely on section 32(1)(c) in this case. It follows that she finds the information exempt from disclosure.
27. 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

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28. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. 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.
30. 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**