

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 January 2018

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

Decision (including any steps ordered)

1. The complainant asked the Ministry of Justice to confirm the existence of named court proceedings and its public records for those proceedings. The Ministry of Justice neither confirmed nor denied holding the requested information, relying on section 32(3) FOIA (court records, etc).
2. The Commissioner investigated the Ministry of Justice's application of section 32(3) FOIA and decided that the Ministry was entitled to rely on that exemption to neither confirm nor deny holding the information.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 16 May 2017, as clarified on 1 June 2017, the complainant wrote to the Ministry of Justice (MOJ) and requested information in the following terms:

This is a request under the Freedom of Information Act 2000 directed to the Ministry of Justice Technology directorate and also to the Information Asset Owner (IAO) holding the data relating to all civil court proceedings.

Any response not from any of the two departments about [sic] will not be accepted as any of you having discharged his/her duty under the law.

1) Confirm that you have all the recorded information stored and managed in your secure data centre system managed by the MoJ Technology directorate for the following case: [reference redacted] allegedly issued by the County Court Business Centre. allegedly issued by the County Court at Northampton.

2) Confirm that all the recorded information contained in the computerised court record for the County Court case as reference above was process in according to your internal procedure which requires for these to be directly transferred to the MoJ by the administration of the County Court of Northampton who allegedly created and input information into the CASEMAN system and it is now controlled by the MoJ Technology directorate.

3) Confirm that all the recorded information relevant to this alleged County Court case [reference redacted] is in possession of the Information Asset Owner (IAO) as a member of the Operational Directorate and as part of all the data held, relating to all civil court proceedings.

4) Provide all the recorded information including the direct mailing address and contact details for the MoJ Technology directorate and also for the Information Asset Owner (IAO) dealing with all the data stored for County Court, eg. [reference redacted] created by the County Court at Northampton.

This request relies on the requester's fundamental Human Rights and is presented to you to defend my Human Rights under Article 6 granting Right to a fair trial and Article 8 granting me the Right to have respect for my private and family life.

5. MOJ responded on 28 June 2017. It stated that it could neither confirm nor deny (NCND) holding the information requested and relied on the section 40(5) FOIA (personal information) exemption in so doing.
6. Following an internal review MOJ wrote to the complainant on 17 July 2017 and confirmed its reliance on the section 40(5) FOIA exemption.

Scope of the case

7. The complainant contacted the Commissioner on 6 September 2017 to complain about the way his request for information had been handled. He said that, in the interests of justice, he was working to satisfy his curiosity as to whether a document which he had already obtained from MOJ was genuine. He added that in essence he wanted MOJ to confirm the existence of a set of court proceedings he had named as having taken place in the Northampton County Court (the proceedings) and the MOJ public records for those proceedings.

8. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 FOIA.
9. Before the Commissioner, MOJ maintained its reliance on the section 40(5) FOIA exemption and additionally relied on the section 32(3) FOIA (court records) exemption to NCND holding the requested information. The Commissioner began her investigation by considering the MOJ reliance on the section 32(3) FOIA exemption.

Reasons for decision

Section 32 - court records, etc.

10. Section 32 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,

...

...(c) any document created by-

(i) a court, or

(ii) member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter.

...

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of this section."

11. The Commissioner has published guidance on section 32 FOIA which sets out the ICO interpretation of the section 32 exemption:

"We believe that section 32 was drafted to allow the courts to maintain judicial control over access to information about court proceedings. This includes giving courts control to decide what information can be disclosed without prejudicing those proceedings.

In effect, section 32 ensures that FOIA can't be used to circumvent existing court access and discovery regimes. Also, public authorities

*won't be obligated to disclose any information in connection with court, inquiry or arbitration proceedings outside those proceedings."*¹

12. MOJ said that, although not stated in its earlier correspondence with the complainant, section 32 FOIA applied and exempted information held by the public authority if it is held only by virtue of being contained in a court record.
13. The Commissioner has seen that CASEMAN is the MOJ's case management system for county court cases. Details held within it include the name, gender and address of the applicant, children's date of birth if applicable, names of respondents, details of solicitors if applicable, whether further documents are involved and the type of any orders made.
14. MOJ told the Commissioner that the information stored within its CASEMAN court records system had all been created by the courts themselves and by members of the administrative staff of a court. They were therefore all court records.
15. The complainant's information request had been for the CASEMAN documents in respect of the proceedings which were a specific named matter which had been identified by the complainant who had cited the case reference number in his information request. MOJ indicated that the information sought was held by it on the CASEMAN system. Accordingly, the Commissioner was satisfied that the information request had been for court records.
16. MOJ considered that to disclose whether the department did or did not hold a record of proceedings which identified an individual would in itself disclose to the world at large whether or not the sensitive personal information of the person who had been the subject of those proceedings was or was not held. It followed that section 32(3) FOIA applied in this case and required MOJ to NCND holding information about the named proceedings. Therefore, to NCND holding the information was the appropriate response to this request.
17. The complainant told the Commissioner that his request was being made in the context of a record that MOJ had already provided to him. He said that the record appeared to be genuine but there were things which, in his view, were fundamentally wrong with it and that it might not be

¹ <https://ico.org.uk/media/for-organisations/documents/2014222/section-32-court-inquiry-arbitration-records.pdf>

genuine at all. He did not explain what aspects of the record he considered had caused his misgivings.

18. The complainant told the Commissioner that in essence he required MOJ as the data holder to confirm the existence of court proceedings for a named case and their public records for that case. He added that he wanted to satisfy his curiosity as to whether or not the document which he had already obtained from MOJ was genuine. For those reasons he said he needed MOJ to simply answer the questions that have been posed. He said that the answers to his questions would not divulge any private or privilege information or, even if they did, MOJ could still simply redact any information that they do not wish to divulge.
19. He added that he had deliberately phrased his questions without putting any name or court. However the Commissioner noted that his request referred to identified proceedings in the County Court at Northampton and that the complainant had given the case reference number.
20. MOJ confirmed that all of the information held that came within the scope of the request, if held, would be held on its CASEMAN court case records system. The Commissioner therefore accepted that the request was for the court records of proceedings within that court.
21. The Commissioner decided that MOJ was entitled to rely on section 32(3) FOIA to NCND whether or not it held information within the scope of the request.
22. Since section 32 FOIA confers absolute exemption on the information to which it applies, a public interest test is not required.
23. In the light of her decision regarding the section 32 FOIA exemption, the Commissioner did not proceed to consider whether or not the section 40 FOIA exemption applied.

Right of appeal

24. 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

25. 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.
26. 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