

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 April 2019

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

Decision (including any steps ordered)

1. The complainant has requested information about cases heard by a particular judge. The Ministry of Justice ('the MoJ') confirmed that it held the information but that it was exempt from disclosure under section 32 (court records) of the FOIA.
2. The Commissioner's decision is that the MoJ was entitled to rely on section 32 to withhold the information.

Request and response

3. On 22 November 2018, the complainant wrote to the MoJ and requested information in the following terms:

"How many times during the period January 2017 - June 2017 did District Judge [name redacted] preside over claims brought by, or brought against, Cheshire West and Chester Council."
4. On 5 December 2018 the MoJ responded. It refused to provide the requested information. It cited the exemption at section 32(1)(a) (court records).
5. Following an internal review the MoJ wrote to the complainant on 3 January 2019. It upheld its original position.

Scope of the case

6. The complainant contacted the Commissioner on 4 January 2019 to complain about the way his request for information had been handled. He challenged the MoJ's decision to refuse the request.
7. During the Commissioner's investigation, the MoJ revised its position. It withdrew reliance on section 32(1)(a) and said that it was instead applying section 32(1)(b) and (c) to withhold the requested information. From its submissions, the Commissioner has interpreted the latter as a claim that section 32(1)(c)(i) and (ii) apply.
8. Following the combined cases of the Home Office v Information Commissioner (GIA/2098/2010) and DEFRA v Information Commissioner (GIA/1694/2010) in the Upper Tribunal, a public authority is able to claim a new exemption either before the Commissioner or the First-tier Tribunal and both must consider any such new claims.
9. The Commissioner has therefore considered whether the MoJ was entitled to rely on section 32(1)(b) and section 32(1)(c)(i) and (ii) to withhold the 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:
 - "(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(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.

11. 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?
12. 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 contained in a relevant document for the purposes of proceedings in a particular cause or matter?

13. The MoJ explained that the information the complainant is seeking is contained in court records relating to cases heard at Chester County Court. It explained that it would be necessary to cross reference information from several different records in order to answer the request.
14. It said that the names of the district judges sitting on any given day are set out in the court list. This is a document created by a member of administrative staff solely for the purposes of civil proceedings, to provide information to court users. A court list is made public on the day in question but ceases to be a public record afterwards.
15. It would also be necessary to cross match information from the court list with the electronic court records that are created for each case. These records contain information on the case, including who the case was brought before or against. The electronic court record is created by a member of administrative staff solely for the purposes of maintaining a record of the civil proceedings.
16. The MoJ said that this was information which was exempt under section 32(1)(c)(i) and (ii).
17. Furthermore, it might also be necessary to also consult information filed by the claimant/applicant or through information completed online through PCOL (Possession Claims Online) on issue of the relevant claim. These documents are served upon the court solely for the purposes of civil proceedings and the information contained within these documents would be entered onto the electronic court record.
18. The MoJ said that this was information which was exempt under section 32(1)(b).
19. Having considered the matter, the Commissioner is satisfied by the MoJ's description of the sources of the requested information that it 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?

20. In order for the exemption at section 32 to be engaged, the second test is that the information is held '*only by virtue of...*'.
21. 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.
22. The MoJ told the Commissioner that the requested information was held only by virtue of being contained in the records described above, and that it was not held elsewhere.
23. The Commissioner has previously accepted that, after the hearing date, court listings are considered to be data recorded and processed by the administrative team for HMCTS, and subsequently held only as part of a court record¹. She is also satisfied from the MoJ's submissions that the other information that would need to be consulted is also only held in the files described above, and that there are no other sources for it.
24. 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 documents served upon, or by, a public authority, or created by a court or a member of the administrative staff of a court, for the purpose of proceedings.
25. The Commissioner is therefore satisfied that the MoJ was entitled to rely on sections 32(1)(b) and 32(1)(c)(i) and (ii) to refuse to disclose the requested information in this case.
26. As section 32 of the FOIA is an absolute exemption, there is no requirement to consider whether there is a public interest in disclosure.

¹ See, for example, https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1625375/fs_50629556.pdf

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

Samantha Bracegirdle
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