

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 3 March 2020

**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, from the Ministry of Justice, the identity of a large mortgage provider and the number of possession claims it pursued as referenced in a statistical report. The Ministry of Justice withheld the information in its entirety under Section 32(1)(c) of the FOIA
2. The Commissioner's decision is that Ministry of Justice has correctly applied Section 32(1)(c) to the requested information.
3. The Commissioner does not require the Ministry of Justice to take any steps to ensure compliance with the legislation.

#### Request and response

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4. On 14 August 2019 the complainant wrote to the Ministry of Justice (the "MoJ") and requested information in the following terms:

*"On 8th of August, MOJ published statistics on home possessions<sup>1</sup> based on court records:*

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/823752/Mortgage\\_and\\_Landlord\\_Possession\\_Statistics\\_Apr-Jun\\_19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/823752/Mortgage_and_Landlord_Possession_Statistics_Apr-Jun_19.pdf)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/823752/Mortgage\\_and\\_Landlord\\_Possession\\_Statistics\\_Apr-Jun\\_19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/823752/Mortgage_and_Landlord_Possession_Statistics_Apr-Jun_19.pdf)

*In the report, you comment on the increase in possession claims:*

*"This continues the large increase seen in October to December 2018 (with a 30% increase when compared to the same period the previous year); the highest level since October to December 2014. This has been driven by increases seen by one large mortgage provider."*

*Could you please disclose the name of the "one large mortgage provider" and the number of possession claims in which they were involved".*

5. The MoJ responded on 11 September 2019. It stated the requested information was exempt under Section 32(1)(c) of the FOIA.
6. Following an internal review, the MoJ wrote to the complainant on 8 October 2019 upholding its original decision.

### **Scope of the case**

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7. The complainant contacted the Commissioner 9 October 2019 to complain about the way her request for information had been handled. In particular, she complained about the MoJ's application of Section 32(1)(c) of the FOIA to the requested information.
8. The scope of the Commissioner's investigation will be to assess whether the MoJ has successfully engaged Section 32(1)(c).

### **Reasons for decision**

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#### *Section 32 court records*

9. Section 32(1) of the FOIA states:

*"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.”*

10. The MoJ has applied Section 32(1)(c)(ii) to the requested information. This is on the basis that it was contained in a document created by a member of the administrative staff of a court for the purpose of proceedings in a particular cause or matter.
11. During the course of her investigation, the MoJ provided the Commissioner with a copy of the withheld information.
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 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.
13. There are two main tests in considering whether information falls within this exemption. First, is the requested information contained within a relevant document? Secondly, is this information held by the public authority only by virtue of being held in such a document?
14. 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 created for the purposes of proceedings in a particular cause or matter?*

15. What is important in this context is whether the information meets the criteria as set out in section 32(1)(c). As the wording of the exemption implies, it is not only the reason for holding the information which is relevant, but also the type of document it is contained in.
16. In her internal review request, the complainant made reference to a previous parliamentary question (PQ) when an MP asked the Secretary of State, in relation to its publication on 'mortgage and landlord

possession statistics'<sup>2</sup>, "which large mortgage provider has driven up the number of home repossessions"<sup>3</sup>. The answer was:

*"the organisation was required to provide its details to enable the court to process its possession claims. It would be inappropriate to release such information where it would be likely to prejudice an organisation's commercial interests"*.

The complainant suggested this answer contradicted the MoJ's response to her request.

17. The MoJ disputed that the response to the PQ contradicted its response to the information request. It pointed out that the PQ response referred to the fact that, in order for the court to process possession claims, it required certain information to be provided to it, including the name of the organisation making the claim. Once this information was recorded by the court, it was then 'held' for the purposes of the FOIA.
18. The complainant further informed the MoJ that she was not asking it to 'make any court records public' nor was she asking it to 'disclose the names of any court records or case names'. She said she simply wanted to know 'the name of the one large mortgage provider' that the MoJ had identified from its own analysis which would not require it to 'hand over any court records whatsoever'.
19. The MoJ responded by stating that Section 32 referred to information contained in a court record, not necessarily the record itself. It therefore followed that the name of an organisation bringing a claim before the court would fall under this definition and therefore be exempt. In support of this view the MoJ referred to previous decisions made by both the Commissioner<sup>4</sup> and the Upper Tribunal<sup>5</sup> which concluded that

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<sup>2</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/823752/Mortgage\\_and\\_Landlord\\_Possession\\_Statistics\\_Apr-Jun\\_19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/823752/Mortgage_and_Landlord_Possession_Statistics_Apr-Jun_19.pdf)

<sup>3</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-09-02/284958/>

<sup>4</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432849/fs\\_50573033.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432849/fs_50573033.pdf)

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<sup>5</sup> Peninsula Business Services Limited The Upper Tribunal Appeal No. GIA 1528 2013 <http://www.bailii.org/uk/cases/UKUT/AAC/2014/284.html>

information originating from a court record was still covered by Section 32 even if, as in the present case, it was used for a different purpose, namely, a statistical analysis.

20. In her correspondence with the Commissioner, the complainant made reference to a specific Decision Notice FS50862380<sup>6</sup> where the MoJ's application of Section 32(1)(c) was not upheld. The complainant suggested the facts in this case were not dissimilar to her own and therefore the requested information should be disclosed. Although she accepted the names of the mortgage providers would be contained in relevant documents created for the purposes of court proceedings, she did not accept the *number* of cases linked to each mortgage provider would constitute a court record.
21. Referring to Decision Notice FS50862380, the MoJ pointed out that in paragraph 37 it stated '*the wording of the request*' was '*crucial*'. In that case, the complainant had not asked for any details other than the total number of prosecutions for excessive motorcycle noise. However, in the present case, the complainant had asked for more than just a total number of cases. She asked for a number linked to a specific mortgage provider.
22. The MoJ said Decision Notice FS5057300<sup>7</sup>, which related to a request for a list of convicted corporations, was more analogous to the complainant's request for the name of a mortgage provider which was a party to possession claims in court. In that case, the Commissioner upheld the MoJ's application of Section 32(1)(c) of the FOIA.
23. The Commissioner is not bound by any of her previous decisions but will consider them when making an assessment.
24. The Commissioner has taken into account her guidance on Section 32<sup>8</sup>. In particular, paragraph 24 which states that: "*For section 32 to be engaged the information must be contained in (or obtained from) a type of document specified by the exemption*". The guidance makes a distinction between information '*contained in*' and information '*obtained*'

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<sup>6</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2616328/fs50862380.pdf>

<sup>7</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432849/fs\\_50573033.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432849/fs_50573033.pdf)

<sup>8</sup> <https://ico.org.uk/media/for-organisations/documents/2014222/section-32-court-inquiry-arbitration-records.pdf>

from' a court record, and exempts both from disclosure under Section 32.

25. In the present case, the only way to identify the large mortgage provider and the number of possession claims pursued by it, is through an examination of the court records which identifies the claimant in order to isolate the relevant cases. The Commissioner believes that the need to extract specific information from court records in order to arrive at the identity of a claimant and number of claims, means that it constitutes information contained in a court record, and if not then it constitutes information 'obtained from' a court record and is therefore exempt from disclosure according to the ICO's guidance.
26. From the evidence she has seen, the Commissioner is satisfied that the information withheld by virtue of section 32(1)(c) is contained in a document created by a member of the administrative staff of a court, for the purposes of proceedings, and that there is no reason for the MoJ to hold it other than for the purposes of those proceedings.
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.
28. Therefore, the Commissioner's decision is that the requested information falls within the scope of section 32(1) of the FOIA and the MoJ was entitled to rely on section 32(1)(c)(ii) of the FOIA to withhold it.

## Right of appeal

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

30. 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.

31. 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 .....**

**Carolyn Howes  
Senior Case Officer  
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Wycliffe House  
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