

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 July 2020

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

Decision (including any steps ordered)

1. The complainant requested, from the Ministry of Justice information on court cases initiated by a particular company in the previous two years. The Ministry of Justice withheld the information in its entirety under Sections 32(1)(a) and 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

4. On 16 December 2019 the complainant wrote to the Ministry of Justice (the "MoJ") and requested information in the following terms:

"Any information you have on the company involved, regarding any court cases that they have initiated in the last two years and what the outcome of the cases were, whether they won or lost and what the financial awards were".

The company is Ernest Wilson.

5. The MoJ responded on 7 January 2020 and confirmed it held all of the requested information. However, it withheld it under Sections 32(1)(a) and 32(1)(c) of the FOIA as it constituted court records.
6. On 8 January 2020 the complainant requested an internal review. He said he did not want any personal data just the number of cases and the

outcomes. He also said he was aware similar information had been disclosed by the MoJ in the past.

7. Following an internal review, the MoJ wrote to the complainant on 24 January 2020 upholding its original decision.

Scope of the case

8. The complainant contacted the Commissioner on 29 January 2020 to complain about the way his request for information had been handled. In particular, he complained about the MoJ's application of Sections 32(1)(a) and 32(1)(c) of the FOIA to the requested information.
9. The scope of the Commissioner's investigation will be to assess whether the MoJ has successfully engaged Section 32(1) of the FOIA.

Reasons for decision

Section 32 court records

10. 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."

11. The MoJ withheld the information under Section 32 (1)(a) on the basis that the information was held for the purposes of proceedings in the cases or matters specified in the request and under Section 32(1)(c) on the basis that the information was a document created by a member of the administrative staff of a court for the purposes of proceedings in those cases or matters.

12. In its response to the Commissioner, the MoJ accepted that in the past it had released information relating to the number of claims initiated by this company referred to in the request but after careful consideration and discussion it became clear that such information should not have been released and that it was only held by virtue of being contained within the claim form and input onto the court database for the production of court orders/letters /judgments (for the parties only, not third parties).
13. The MoJ added that the information was filed with or otherwise placed in the custody of a court, for the purposes of the court and created by a court or member of the administrative staff for the purposes of court proceedings.
14. It said even if the documents had been made public at a hearing it did not alter the fact that Section 32 (court records) applied after the hearing date. The MoJ pointed out that information ceases to be a public record after a hearing and then becomes protected by virtue of Section 32 of the FOIA. It said it was not the intention that the FOIA should exist to provide indirect access to court records; the greater public interest was considered to lie in the preservation of the courts' own procedures for considering disclosure.
15. The MoJ also stated the information was not used for any other purpose than the court cases and it did not collect statistics on individual claimants.
16. During the course of her investigation, the MoJ provided the Commissioner with a complete copy of the withheld information.
17. 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.
18. 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?
19. 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?

20. 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.
21. The Commissioner has taken into account her guidance on Section 32¹. 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 from' a court record, and exempts both from disclosure under Section 32.

Is this information held by the public authority only by virtue of being held in such a document?

22. 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.
23. As Section 32 of the FOIA is an absolute exemption, there is no requirement to consider whether there is a public interest in disclosure.
24. 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.

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

Right of appeal

25. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.

27. 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

**Laura Tomkinson
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**