

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 November 2021

Public Authority: Ministry of Justice

Address: 102 Petty France

London

SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information relating to probate proceedings.
2. The Ministry of Justice (MoJ) confirmed it held information within the scope of the request but refused to provide it, citing section 32 (court records) of FOIA.
3. The Commissioner's decision is that the MoJ was entitled to rely on sections 32(1)(a) and (c) to withhold the requested information.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. From the evidence she has seen, the complainant wrote to the MoJ, on a date which the MoJ referenced as being 17 September 2020, and requested information in the following terms:

"With reference to my Special Access request for ALL information relating to my late husband's Probate that was processed at the Winchester Probate Registry in 2015 to process and obtain the Grant of Probate. I wish to have access to ALL the documents that were sent to the Winchester probate Registry in connection with my late husband [name redacted] who died on [date redacted] 2014".

6. The Commissioner accepts that the reference to the 'special access request' relates to earlier correspondence, dated 11 February 2020 and received by the MoJ on 27 February 2020.
7. The MoJ responded on 14 October 2020. It refused to provide the requested information, citing the following exemptions as its basis for doing so:
 - section 32(1)(c) (court records)
 - section 40 (personal information).
8. Following an internal review, the MoJ wrote to the complainant on 4 December 2020. It revised its position, confirming that it no longer considered section 40 applied. It confirmed its application of section 32, variously citing subsections 32(1)(a), (b) and (c).

Scope of the case

9. The complainant contacted the Commissioner on 4 January 2021 to complain about the way her request for information had been handled.
10. The Commissioner understands that the complainant has a personal interest in the requested information. However the issue for the Commissioner to determine is whether the MoJ dealt with the specific request appropriately under the terms of FOIA.
11. During the course of the Commissioner's investigation, the MoJ confirmed that it is relying on sections 32(1)(a) and (c) (court records) to withhold the requested information.
12. The analysis below considers the application of section 32 of FOIA to the withheld information.

Reasons for decision

Section 32 court records

13. Section 32(1) of 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”.[

14. 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.
15. 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, or otherwise placed in the custody of a court, or 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?
16. 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?

17. The MoJ told the complainant:

“The information requested is contained in a court record in relation to the probate proceedings and held only for the purpose of being part of a court record, hence it is exempt under section 32(1)”.

18. It also told her:

“Under 32(1)(c) the documents requested in your request would fall under its scope which includes but is not exhaustive of judgments and orders of the court and court files containing information about the case”.

19. In correspondence with the Commissioner, the MoJ confirmed that the information withheld by virtue of section 32(1)(a) was filed with the court for the purposes of proceedings, namely probate. Similarly it

confirmed that the information withheld by section 32(1)(c) was created by the court for the purposes or proceedings, namely probate.

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. 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 withheld by virtue of section 32(1)(a) is only held by virtue of being contained in a document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter.
23. Similarly, with respect to the requested information withheld by virtue of section 32(1)(c), she is satisfied that it 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?

24. In a case such as this, what is important is whether the information fits the description in section 32(1)(a) and (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.
25. The requested information in this case relates to a legal process, namely probate proceedings.
26. From the evidence she has seen, the Commissioner is satisfied that the MoJ was entitled to rely on sections 32(1)(a) and (c) in this case. It follows that she finds the information exempt from disclosure.
27. As section 32 of FOIA is an absolute exemption, there is no requirement to consider whether there is a public interest in disclosure.

Section 16 advice and assistance

28. From the evidence she has seen, the Commissioner is satisfied that the complainant has been provided with advice and assistance, including with regard to accessing the requested information via other access regimes, such as the business as usual procedure.

Right of appeal

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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

**Laura Tomkinson
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