

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 18 August 2022

Public Authority: Doncaster Council

Address: FOI@doncaster.gov.uk

Decision (including any steps ordered)

1. The complainant requested information about a particular court case. Doncaster Council (the Council) withheld the information requested under section 32 (court records) of the FOIA. The Commissioner's decision is that the Council was entitled to rely on section 32(1)(a) to withhold the requested information. The Commissioner does not require any steps to be taken.

Request and response

2. On 29 April 2021, the complainant wrote to the Council and requested information in the following terms:

"I would like all the information presented at court regarding my complaint against my neighbour for anti social behaviour including what is said about me and the situation I was in, I would like all the case paperwork, I want to know why the court made the decision to fine my neighbour even though he had breaches against an abatement order, for me to try and understand why a fine of £250 was given to my neighbour I need to see what Doncaster Environmental services presented at court, for now this is what I would like, I would like this sending to me in paper form by post".
3. The Council responded on 22 June 2021 and stated that the information requested was exempt under section 32 of the FOIA.

4. On 25 June 2021 the complainant requested an internal review of the refusal to provide the information requested. The complainant pointed out that the court case was about themselves and the anti social behaviour from their neighbour. The complainant stated that they were never advised of the date of the court case or the outcome until they asked about it several months later.
5. The Council provided the outcome of its internal review on 6 July 2021 and upheld its decision that the information was exempt under section 22 of the FOIA. The Council also confirmed that it was processing a subject access request in respect of any personal data relating to the complainant.

Scope of the case

6. The complainant contacted the Commissioner on 12 October 2021 to complain about the way their request for information had been handled.
7. The scope of the Commissioner's investigation into this complaint is to determine whether the Council has correctly relied on section 32 to withhold the requested information.

Reasons for decision

Section 32 court records

8. 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”.

9. During the course of the Commissioner's investigation the Council confirmed that it was relying on section 32(1)(a) in respect of the withheld information.
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 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.
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, 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?
12. 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?

Is the information contained in a relevant document for the purposes of proceedings in a particular cause or matter?

13. The withheld information in this case is a case summary which was created by the Council's environmental health team for the purpose of criminal proceedings relating to noise nuisance under the Environmental Protection Act 1990. The document was prepared for use by a prosecutor at the court. The case summary was read by the barrister as the court only requires the main points of the case. As the case was determined in the absence of the defendant no documents were handed to the bench.
14. From the evidence he has seen, the Commissioner is satisfied that the information withheld by virtue of section 32(1)(a) is 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 ie proceedings for noise nuisance under the Environmental Protection Act 1990.

Is the information held only by virtue of being contained in such a document?

15. In order for the exemption at section 32 to be engaged, the second test is that the information is held 'only by virtue of...'

16. 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.
17. In this case, having considered the Council's submissions, and in the absence of any evidence that the Council 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.
18. The Commissioner has therefore determined that the information requested falls within the scope of the section 32(1) exemption and that the Council was entitled to rely on section 32(1)(a) to withhold the information.
19. As section 32 of the FOIA is an absolute exemption, there is no requirement to consider whether there is a public interest in disclosure.

Right of appeal

20. 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

21. 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.
22. 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

Joanne Edwards
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