

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 February 2023

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

Decision (including any steps ordered)

1. The complainant has requested information about two sets of civil proceedings where he was named as the defendant. The Ministry of Justice ('the MoJ') refused the request, citing sections 32 (Court records) and 40 (Personal information) of FOIA.
2. The Commissioner's decision is that the MoJ was entitled to rely on sections 32(1)(a) and (c) of FOIA to refuse the request.
3. The Commissioner requires no steps as a result of this decision.

Background

4. The complainant told the Commissioner that over a period of many years, he has been the victim of identity theft and has suffered considerable financial loss. He says he recently changed his name by deed poll, in an attempt to avoid being subject to further fraud.
5. The request in this case asked for information about two county court claims made against the complainant (a Notice of Possession application by his former landlord, and a related sum of money).
6. Insofar as the request was for the complainant's own personal data, the Commissioner has dealt with that part of the request separately, in a complaint considered under the UK General Data Protection Regulation.
7. Whilst the complainant submitted his request to a particular county court, courts themselves are not public authorities. The Commissioner is

satisfied that it is the MoJ which is the relevant public authority in this case.

Request and response

8. On 10 January 2022, the complainant wrote to the MoJ (via a county court) and requested information in the following terms:

"FROM: [complainant's name redacted] (formerly [complainant's former name redacted]) 'the Defendant'

I am writing to request information under the Freedom of Information Act 2000.

This request relates to Claim Numbers: [redacted] and [redacted].

I am requesting that you provide all the documents, correspondence and orders relating to these claims in electronic form.

Both claims issued, served and posted by [redacted] County Court on 10th July 2019 are referenced in the Claimant's [Claimant's name redacted] Claim form for possession of property (N5) signed with a statement of truth on 2nd July, 2019.

Both claims were listed under District Judge [name redacted] afternoon docket at [redacted] County Court on the 18th September, 2019."

9. The complainant did not receive a response to the request. Following the Commissioner's intervention, the MoJ responded on 14 October 2022. It confirmed that it held the requested information, but said it was exempt from disclosure under sections 32(1)(a) – (c) and 40(2) of FOIA. It suggested that the complainant apply for access to court documents under the Civil Procedure Rules¹ and it explained how to do this.
10. Following an internal review, the MoJ maintained that sections 32 and 40 had been applied correctly.

Reasons for decision

Section 32 – court records etc

¹ <https://www.legislation.gov.uk/ukxi/1998/3132/contents>

11. Section 32(1) of FOIA covers court records. It provides an exemption for information held only by virtue of being recorded in a document that has been:
 - a) filed or placed in the custody of a court;
 - b) served on, or by, a public authority; or
 - c) created by the court, or a member of the administrative staff of the court.
12. The information in question must only be held for the purposes of proceedings in a particular cause or matter.
13. Courts are responsible for a wide variety of information, much of it of a sensitive nature, or which could prove harmful to the administration of justice if disclosed to the world at large. The purpose of the exemption at section 32 of FOIA is not to protect the court system from scrutiny, but to prevent FOIA from being used to circumvent the proper supervision of the courts over the information they acquire and create.
14. The Commissioner has not found it necessary to view the withheld information when reaching a decision in this case. This is because it is clear from the information specified in the request that it will fall within the scope of sections 32(1)(a) and (c) of FOIA.
15. 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. Section 32 is an absolute exemption and therefore it is not subject to the public interest test.
16. The request in this case specified that it was for all documents, correspondence and orders relating to two county court proceedings, and it listed the claim numbers. The Commissioner's guidance² on section 32 states that among the documents likely to fall within the scope of section 32(1)(a) are:
 - claim forms or other statements of case (particulars of claim, defence, a reply to a defence etc)
 - committal documents in criminal proceedings;

² <https://ico.org.uk/media/for-organisations/documents/2021/2619028/s32-court-inquiry-and-arbitration-records.pdf>

- witness statements, medical or other expert reports and exhibits;
 - skeleton arguments;
 - application notices;
 - trial bundles;
 - standard disclosure lists;
 - notices of appeal;
 - letters before action (provided proceedings have been brought by or are still anticipated at the time of the request); and
 - records of a defendant's submissions for costs."
17. To the extent that the withheld information also contains information prepared by court clerks, ushers, listing officers, jury bailiffs and back-office staff such as those who prepare case files and court orders, the Commissioner is satisfied that it will fall within the scope of section 32(1)(c). His guidance states that such information will include:
- “• judgments and orders of the court (where these haven't been published);
 - notebooks of judges, tribunal members, coroners and other judicial officers;
 - notices of hearings;
 - summaries prepared by judicial assistants;
 - court or tribunal internal memoranda;
 - correspondence which relate to particular proceedings;
 - records of when and how a fine is paid;
 - warrants issues by a magistrate at his home;
 - records held in a case management system;
 - diary sheets;
 - a register of cases to be heard before a magistrate;
 - court files containing information about the outcome of Tribunal cases; and
 - certificates of conviction.”

18. The MoJ has confirmed to the complainant that the withheld information is only held by virtue of being contained in court records for the purposes of proceedings.
19. Therefore, the Commissioner's decision is that the withheld information engages the exemption at section 32(1) of FOIA and the MoJ was entitled to rely on subsections 32(1)(a) and (c) of FOIA to withhold it.
20. As the Commissioner has found that the MoJ correctly applied section 32(1)(a) and (c) to withhold the requested information, he has not found it necessary to consider the MoJ's additional reliance on section 40(2) of FOIA.

Other matters

Access to court records

21. The MoJ has told the complainant, and the Commissioner would reiterate, that the Civil Procedure Rules provide the appropriate access regime for court documents.

Time for compliance

22. From the MoJ's correspondence it appears that it did not hold a copy of the complainant's request of 10 January 2022, until provided with one by the Commissioner, on 27 September 2022. It then responded to the request on 14 October 2022, 17 working days later.
23. The Commissioner has not investigated this, as the copy of the request that the complainant supplied to him did not include the email address to which it was submitted. Therefore the Commissioner cannot verify that it was sent to a valid email address, or that it was ever received by the MoJ, prior to the Commissioner forwarding a copy.

Right of appeal

24. 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

25. 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.
26. 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
Senior Case Officer
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