

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 June 2019

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

Decision (including any steps ordered)

1. The complainant requested information relating to a bankruptcy order for a named individual. The Ministry of Justice (the 'MOJ') refused to provide the requested information citing section 32(1) of FOIA (court records) and section 40(2) (personal information).
2. The Commissioner's decision is that the MOJ was entitled to rely on section 32(1)(c)(i) and (ii) to withhold the requested information. She does not require the MOJ to take any steps as a result of this decision.

Request and response

3. On 21 January 2019, the complainant wrote to the MOJ and requested information in the following terms:

"I request a copy of the court order regarding the bankruptcy of [name redacted]:

The Bankruptcy of [name redacted]. Her details in the London Gazette [reference removed] are given as:

[Name redacted], also known as [name redacted] Unemployed of [address redacted] and lately carrying on business as Phoenix Developments, [address redacted] and formerly carrying on business as Phoenix Homes [address redacted]. Court—EASTBOURNE COUNTY COURT. Date of Filing Petition—[date removed]. No. of Matter—[reference removed]. Date of Bankruptcy Order—[date removed]. Whether Debtor's or

*Creditor's Petition—Debtor's. Official Receiver—69 Middle Street,
Brighton, BN1 1BE. (804742)*

*Any comments the judge or other official or adjudicator dealing
with the bankruptcy might have made."*

4. The MOJ responded on 4 February 2019 and refused to provide the requested information citing the following FOIA exemptions: section 32(1)(c) court records, etc and section 40(2) personal information. It also advised the complainant that access to court records is available under the Insolvency Rules 1986 via payment of a fee and provided the applicable court contact details.
5. Following an internal review the MOJ wrote to the complainant on 4 March 2019 and maintained its original position.

Scope of the case

6. The complainant contacted the Commissioner on 4 March 2019 to complain about the way his request for information had been handled.
7. The Commissioner has considered whether the MOJ was correct to refuse this request on the basis of sections 32(1)(c) and section 40(2).
8. The analysis below considers the MOJ's application of section 32(1)(c) of FOIA to the requested information.

Reasons for decision

Section 32 - court records

9. Section 32(1) of the 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".

10. In correspondence with the Commissioner the MOJ confirmed that it considers that subsections 32(1)(c)(i) and (ii) apply in this case.
11. 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.
12. 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 created by a court or a member of the court's administrative staff for the purposes of proceedings in a particular cause or matter?
13. 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?

14. In its response to the request, the MOJ told the complainant that the information he is seeking is contained in the court files. It explained that:

"Under section 32(1)(c) information is exempt if it is a document created by (i) a court / (ii) a member of the administrative staff of a court for the purposes of proceedings in a particular cause or matter.

The reason for section 32 is not to do with the issue of whether information is a public record or not, it is to preserve the courts control over court records. Even if a document may have been made public at the hearing it ceases to be a public record after the hearing and then becomes protected by virtue of section 32. It was not the intention that the FOIA should 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 advised the complainant as follows about how he could obtain the requested information via other means:

"You may wish to contact the court directly to apply for access to court documents under the [sic] The Insolvency Rules 1986, notably the right to inspect the file as set out in rule 7.31. These

rules are separate and specific for access to information held by courts, designed to give those bodies themselves a measure of control over that information and govern the disclosure of court records and documents served in the course of proceedings. Please note that you will be required to pay a fee as advised by the court."

16. In correspondence with the Commissioner, the MOJ confirmed its reasons for applying section 32 to the requested information. In that respect it told the Commissioner:

"In this instance, the name of the claimant and their contact details, and the case reference number can only be provided by reference to court records, under section 32(1)(c)(i) and (ii).

Similarly, the court order which was created by virtue of the bankruptcy proceedings and contained in the court file, can only be provided by reference to court records, under section 32(1)(c)(i) and (ii).

Once the date for bankruptcy proceedings had passed, any other information relating to the case including the court order is considered to be data recorded and processed by the administrative team and subsequently held as part of the court record, under section 32(1)(c)(i) and (ii)."

17. Having considered the matter, the Commissioner is satisfied that the requested information is contained in documents that were created for the purpose of proceedings in particular matters.

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

18. In order for the exemption at section 32 to be engaged, the second test is that the information is held 'only by virtue of...'.
19. 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.
20. 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 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?

21. What is important in the context of a case such as this is whether the information fits the description in section 32(1)(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.
22. From the evidence she has seen, the Commissioner is satisfied that the MOJ was entitled to rely on section 32(1)(c) in this case. It follows that she finds the information exempt from disclosure.
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. As the Commissioner has found section 32 to be engaged, she has not found it necessary to consider whether section 40(2) applied to this request.

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

Jon Manners
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