

-Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 3 January 2013

Public Authority: Her Majesty's Courts and Tribunals Service (an executive agency of the Ministry of Justice)

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested the names of barristers who acted in a specified court case. The Commissioner's decision is that HMCTS was entitled to refuse the request under section 32(1) of the FOIA. The Commissioner does not require any steps to be taken.

Background

2. The complainant originally made his request to Croydon Crown Court in October 2011. The Court advised the complainant that his request was "not feasible", and that he should seek legal advice.
3. Following an approach to the Commissioner the complainant's request was passed to Her Majesty's Courts and Tribunals Service (HMCTS), who responded on 16 January 2012.
4. HMCTS is an agency of the Ministry of Justice (the MOJ). Therefore the MOJ is the public authority under the FOIA. However, for ease of reference this decision notice refers to HMCTS throughout.

Request and response

5. The complainant requested the following information:

"The full names of the barristers who acted for the defendants in the case of [specified case]."

6. As indicated above, HMCTS responded on 16 January 2012. It stated that the requested information was exempt under sections 32(1) and 40(2) of the FOIA.
7. Following a further complaint to the Commissioner the complainant requested an internal review. On 27 June 2012 HMCTS advised the complainant that it had now completed the internal review. The outcome of the review was that HMCTS upheld its refusal of the request.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant was of the view that he should have been provided with the information he requested. The complainant also raised issues that do not form part of this decision notice as they do not fall within the scope of the FOIA.

Reasons for decision

9. HMCTS confirmed to the Commissioner that it was seeking to rely on section 32(1)(c)(i) and (ii). Section 32(1)(c)(i) provides an exemption for information which is only held by a public authority because it is contained in any document created by a court for the purposes of proceedings in a particular cause or matter. Section 32(1)(c)(ii) provides a similar exemption for any document created by a member of the administrative staff of a court.
10. In considering the application of section 32(1)(c)(i) and (ii) it is first necessary to consider whether the information is in fact contained within a document created by the administrative staff of a court, in relation to a particular cause or matter. The next step is to consider if this information is only held by the public authority in such a document.
11. HMCTS explained to the Commissioner that the withheld information in this case was contained in listing documents and judgment orders created by the court when handling the proceeding. These documents form part of the case records.
12. In light of the above the Commissioner is satisfied that the first test of section 32(1)(c)(i) is met as the withheld information was created by the court.
13. HMCTS also confirmed that the withheld information was only contained and held by HMCTS in the documents mentioned above. HMCTS did not

hold the withheld information outside of the court records, and the withheld information was only created and used for the purposes of proceedings.

14. Consequently the Commissioner is also satisfied that the second test of section 32(1)(c)(i) is met as the withheld information is only held by HMCTS by virtue of being contained within a document created by the court. The Commissioner is therefore satisfied that the exemption at section 32(1)(c)(i) does apply to the withheld information in this case. The Commissioner concludes that HMCTS was entitled to withhold the requested information in this case.
15. As the Commissioner is satisfied that the withheld information is exempt under section 32(1)(c)(i) he is not required to consider section 32(1)(c)(ii). Nor is he required to consider the exemption at section 40(2) also cited by HMCTS.

Right of appeal

16. 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: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

17. 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.
18. 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

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