

## Freedom of Information Act 2000 (FOIA)

### Decision Notice

**Date:** 29 September 2016

**Public Authority:** Ministry of Justice

**Address:** 102 Petty France  
London  
SW1H 9AJ

#### Decision (including any steps ordered)

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1. The complainant requested information relating to the way a Judge determined their decision in a specific court case.
2. The MoJ confirmed it holds information within the scope of the request but refused to provide it relying on sections 32(1)(a) (court records) and 40(2) (personal information) of the FOIA.
3. The Commissioner investigated the MoJ's application of section 32(1)(a) and concluded that the MoJ was entitled to rely on this exemption to withhold the information. She requires no steps to be taken.

#### Background

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4. In making his request for information, the complainant referred to a newspaper article<sup>1</sup> about an individual who lost his appeal against Haringey council tax court charges. The article states:

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<sup>1</sup> [http://www.hamhigh.co.uk/news/crime-court/reverend\\_loses\\_appeal\\_against\\_haringey\\_council\\_tax\\_court\\_charges\\_1\\_4433179](http://www.hamhigh.co.uk/news/crime-court/reverend_loses_appeal_against_haringey_council_tax_court_charges_1_4433179)

*"But Lord Justice Hamblen said it was "factually incorrect" that Haringey Council charged everyone for court hearings in 2013/14.....*

*Lord Justice Hamblen said the costs Haringey Council charged were "not unreasonable"."*

## Request and response

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5. On 26 February 2016, the complainant wrote to the MoJ via the *whatdotheyknow* website. Referring to the newspaper article quoted above, he requested information in the following terms:

*"In context of the high standards required by the Royal Courts of Justice, please disclose the specific information which enabled Lord Justice Hamblen to determine the above".*

6. The MoJ responded on 29 March 2016. It confirmed it held the requested information but refused to provide it citing the following exemptions:
- section 32(1) (court records)
  - section 40(2) (personal information)
7. The MoJ provided an internal review on 26 April 2016 maintaining that position.

## Scope of the case

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8. The complainant contacted the Commissioner on 18 May 2016 to complain about the way his request for information had been handled. He told the Commissioner:

*"In order to have a properly accountable court process, it is essential that information surrounding cases is not made inaccessible to members of the public with the barrier of an application fee ...".*

9. During the course of the Commissioner's investigation, the MoJ confirmed that it considers sections 32(1)(a) and 40(2) apply in this case.
10. The analysis below considers the MoJ's application of section 32(1)(a) of the FOIA to the requested information.

## Reasons for decision

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### *Section 32 - court records*

11. Section 32(1)(a) states that information is exempt if it is held only by virtue of being contained in any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter.
12. 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.
13. There are two main tests in considering whether information falls within this exemption. First, is the requested information contained within a relevant document? Secondly, is this information held by the public authority only by virtue of being held in such a document?
14. In the Commissioner's view, the phrase 'only by virtue of' implies that if the public authority also holds the information elsewhere it may not rely upon the exemption.

*Is the information held only by virtue of being contained in a relevant document for the purposes of proceedings in a particular cause or matter?*

15. In correspondence with the complainant, the MoJ told him that the information which enabled the Judge to make his judgement is part of the court proceedings which are part of the court file. In that respect, the MoJ explained that the information the complainant is seeking is contained in the relevant case files which are part of a court record.
16. During the course of her investigation, the MoJ confirmed to the Commissioner that:  
  
*"the specific information which enabled Lord Justice Hamblen to make his judgement is held on the court file and is not held for any other purpose".*
17. The complainant told the Commissioner:

*"In respect of Section 32(1) there is a reasonable argument to be made regarding whether the evidence (the required information) exists solely by virtue of being contained within the court record. If*

*not it wouldn't be exempt information under Section 32(1) as it would not be held only by virtue of being contained within the court record. A calculation produced by the council for budget purposes for example, if submitted as evidence would not exist only by virtue of being contained within the court record".*

18. The issue for the Commissioner to decide in this case is whether the requested information is held by the MoJ only by virtue of it being contained in a court record.
19. From the evidence she has seen, the Commissioner is satisfied that the information withheld by virtue of section 32(1)(a) was filed with, or otherwise placed in the custody of, the court for the purposes of proceedings and that there was no reason for the MoJ to hold it other than for the purposes of those proceedings.
20. The conclusion of the Commissioner is that the exemption provided by section 32(1)(a) of the FOIA was engaged and so the MoJ was not obliged to disclose the requested information. As section 32 of the FOIA is an absolute exemption, there is no requirement to consider whether there is a public interest in disclosure.

*Other exemptions*

21. As the Commissioner has concluded that the MoJ correctly applied section 32, she has not gone on to consider its application of section 40(2) in this case.

## Right of appeal

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22. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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**  
**Group Managers**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**