

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 December 2016

Public Authority: Ministry of Justice

Address: 102 Petty France

London

SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information relating to cases discontinued at trial.
2. The Ministry of Justice (MoJ) confirmed it held information within the scope of the request but refused to provide it citing sections 32 (court records) and 40(2) (personal information) of the FOIA.
3. The Commissioner investigated the MoJ's application of section 32(1)(c)(ii) and concluded that the MoJ was entitled to rely on this exemption to withhold the information. She requires no steps to be taken.

Request and response

4. On 26 April 2016 the complainant wrote to the MoJ and requested information in the following terms:

"... I am writing to request a database of cases that have been discontinued at trial... I would like for the dataset that records cases that fail to proceed, and I would like to request this dataset in its totality".
5. The MoJ responded on 20 May 2016. It confirmed it held the requested information but refused to provide it. It cited the following exemptions as its basis for doing so:
 - section 32(1)(c)(ii) court records;
 - section 40(2) personal information.

6. The complainant requested an internal review on 3 June 2016. The MoJ sent him the outcome of its internal review on 23 June 2016.
7. The MoJ concluded that its initial response was partially compliant with the requirements of the FOIA if the complainant's request "*was taken literally*".
8. With respect to the scope of the request in this case, the MoJ told the complainant:

"Your request for "the dataset in its totality" was interpreted to include individual case details including, amongst others, the dates and locations of hearings and the names of claimants and defendants involved in those cases that had failed to proceed. There was no time span associated with your request and it was further not made clear whether you were enquiring about criminal cases in magistrates and crown courts, civil cases in county courts, or tribunal's cases. Your question was therefore deemed to include all of these".

9. It told him that it upheld its original position on the basis that it had interpreted the request correctly but also explained that, on the basis of his reasons for requesting an internal review, it may have been appropriate to ask him to clarify the nature of his request.
10. In that respect, the MoJ invited the complainant to make a new request defining the exact information he is seeking.

Scope of the case

11. The complainant contacted the Commissioner on 29 June 2016 to complain about the way his request for information had been handled.
12. He disputed the MoJ's application of sections 32 and 40 of the FOIA. He told the Commissioner:

"[The MoJ] took the position that case titles were exempt as they are both 'court records' (S32) and contain personal data (S40)".

13. With respect to its application of section 32 he said:

"...to apply this to simple case names is an overextension of the intention of the exemption".

14. With regard to the scope of his request and the MoJ's suggestion that he may wish to make a new request, the complainant confirmed that he had not done so. In correspondence with the Commissioner, he said that he considered that he had properly described the type of data he was

requesting. He also explained that he did not consider that making a new request would resolve the substantive issues relating to the MoJ's application of sections 32 and 40.

15. The Commissioner has therefore proceeded on the basis that the complainant accepts the MoJ's interpretation of the information that falls within the scope of his request.
16. During the course of the Commissioner's investigation the MoJ confirmed that it considered that section 32(1)(c)(ii) and section 40(2) applied in this case.
17. The analysis below considers the MoJ's application of section 32 of the FOIA to the requested information – namely cases that have been discontinued at trial.

Reasons for decision

Section 32 Court records

18. Section 32 of the FOIA states:

"(1) Information held by a public authority is exempt information if it is held only by virtue of being contained in—

...

(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".

19. In other words, for section 32 to be engaged the information must be:

- contained in (or obtained from) a type of document specified by the exemption; and
- held 'only by virtue...' of being contained in that document.

20. In this case, the MoJ considered section 32(1)(c)(ii) applied.

21. Section 32(1)(c)(ii) provides an exemption for information which is only held by a public authority because it is contained in a document created by a member of the administrative staff of a court for the purposes of proceedings in a particular cause or matter.

22. 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 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.
23. 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.

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

24. In its correspondence with the complainant, the MoJ told him that the requested information is contained in the court files for each case and is only held for the purpose of the court proceedings.
25. The complainant disputed the MoJ's view that the requested information comprises court records. In that respect, he told the MoJ:

"I would like to argue that as the database requested contains reasoning for the cases failing to proceed, it is a dataset that has in fact been created externally of the court system itself. For example, any column on the dataset recording the reasons for a case failing to proceed has been manually created after the court case has concluded and therefore by definition is not a court record".

26. He also contested the MoJ's assertion that case names and titles belong to the court. He told the MoJ:

"Unlike witness statements that are unique and relate solely to cases, these are a simple labelling system used to identify individual court proceedings. To argue that they are 'court records' is to stretch S32 beyond the boundaries of its intent..."

27. In support of its citing of section 32, the MoJ told the complainant:

"Data items such as the locations and dates of hearings or names of defendants and claimants are only recorded for the process of administering the case and are only in the public domain whilst a case is in progress. Once a case is finished and closed this information ceases to be in the public domain and becomes court records".

28. During her investigation, the MoJ provided the Commissioner with a representative sample of the requested data, those samples being taken from both the crown and magistrates' courts management information systems.
29. The MoJ argued that the information was only acquired by virtue of being in a court record – even though it was later transferred to other documents or held or used in other ways.
30. It explained how the requested information is created by a member of the administrative staff of a court for the purpose of proceedings in a particular cause or matter. For example, it told the Commissioner that information relating to individual ineffective trials and the reasons for them is logged and signed off in the court at the time of the hearing. It acknowledged that the information may subsequently be recorded electronically but that the raw data is created at the time of the hearing.
31. It acknowledged that information about trials that have been discontinued or collapsed at trial is recorded:

"..so that the court Judges and the Crown Prosecution Service can monitor the reasons for ineffective trials and aim at improving effectiveness both locally and nationally".
32. It also advised that the data is used to compile reports that Judges receive about the performance of their crown court.
33. The complainant asserted that the MoJ was incorrect to rely on section 32 because the requested dataset is the result of court proceedings but does not contain information directly derived from proceedings.
34. In its submission to the Commissioner, the MoJ referenced a Tribunal decision ([GIA/1934/2015]) which considered the issue of whether statistical information was only acquired by virtue of being contained in a relevant court record.
35. In that case, the Upper Tribunal concluded:

"As the tribunal found, the statistics requested could only be obtained by interrogating the individual records of proceedings, Those individual records were exempt because they constituted information contained in a document created by court staff for the purposes of proceedings".
36. The MoJ argued that the same logic applied to this request.
37. When considering whether the requested information is contained in a relevant document, the Commissioner considers that the term *'member of the administrative staff'* will cover any person who is engaged to

assist the proceedings of a court by carrying out administrative duties. This will include, for example, court clerks, ushers, listing officers, jury bailiffs and back-office staff.

38. The Commissioner's guidance on section 32 provides examples of the type of documents that are likely to fall within the scope of section 32(1)(c). The guidance notes that the list is not exhaustive.
39. In this case, having viewed a sample of the withheld information and mindful of the wording of the request, the Commissioner is satisfied that the information sought in this request is contained in a relevant document created for the purposes of proceedings in a particular cause or matter.
40. She is therefore satisfied that it is contained in court record.

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

41. In order for the exemption at section 32 to be engaged, the second test is that the information is held '*only by virtue of...*'.
42. 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.
43. From the evidence she has seen, the Commissioner is satisfied that the MoJ did not hold the withheld information outside of the court records, and that the withheld information was only created and used for the purposes of proceedings.
44. The Commissioner notes that in *Department for Business, Enterprise and Regulatory Reform v ICO and Peninsula Business Services* [EA/2008/0087]¹, the Information Tribunal commented that there is nothing in section 32 which limits the way in which information falling within it may be used or processed by the public authority provided it is, in effect, only acquired by virtue of being in a 'court record' (i.e. a document falling within s.32(1)(a),(b) or (c). Therefore if the information, once acquired, is used for management or policy matters, it is still covered by the exemption.

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[http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i305/BERR%20v%20IC%20&%20PBS%20\(EA-2008-0087\)%20Decision%2028-04-09.pdf](http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i305/BERR%20v%20IC%20&%20PBS%20(EA-2008-0087)%20Decision%2028-04-09.pdf)

45. In accordance with the position taken by the Information Tribunal in EA/2008/0087, the Commissioner is satisfied that, although subsequently used by the MoJ for another purpose – namely to monitor the performance of the courts - the information retained its exempt status on the basis that it originated from the 'court record' created and maintained by the Court in respect of each of its cases.

Conclusion

46. The Commissioner has concluded that the MoJ was entitled to rely on section 32(1)(c)(ii) to withhold the information. Accordingly, she has not gone on to consider its application of section 40(2) to the same information.

Right of appeal

47. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

48. 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.

49. 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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