

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 25 November 2014

**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 from the Ministry of Justice (MoJ) relating to applications received by Leeds County Court in the year ending 31 December 2006 for certain types of order made under the Family Law Act 1996.
2. MoJ confirmed that it held information within the scope of the request but refused to provide it citing sections 14(2) (repeated requests) and 32 (court records) of FOIA.
3. The Commissioner has investigated MoJ's application of section 32(1)(c) to those parts of the request it considers engage that exemption. The Commissioner's decision is that MoJ was entitled to rely on section 32(1)(c) of FOIA. The Commissioner does not require any steps to be taken.

### **Request and response**

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4. On 10 July 2014 the complainant wrote to MoJ making the following request for information under the FOIA:

*"A1. How many applications did Leeds County Court receive in the year ending 31 December 2006 ex parte without notice for a non-molestation order (injunction) [Family Law Act 1996 S45(3)]*

*2. How many of those applications were granted at the ex parte without notice hearing.*

*3. How many injunctions in that year were made by Leeds County*

*Court of its own motion for 'relevant children' as defined in the FLA and how many were made for 'children' over the age of 18.*

*4. How many of such injunctions made a finding of physical violence and therefore contain a power of arrest (a penal notice)*

*5. How many of such applications were made by McCormicks (now Clarion) solicitors then of 4 Oxford Row, Leeds.*

*B. Questions 1-5 above are repeated but instead of a reference to 'non molestation orders' please give the same information for 'occupation order applications' again made ex parte without notice (section 33 FLA)".*

5. MoJ responded on 29 July 2014. It confirmed that it holds information within the scope of the request. However, MoJ refused to provide the information it holds, citing section 14(2) FOIA (repeated request) in respect of some parts of the request and section 32(1) FOIA (court records) in respect of the remainder.
6. Regarding its application of section 32, MoJ explained that the requested information is held in a court record - either on the court database or court file where the court file still exists for that year. In that respect it explained that any court file which has not been accessed since 31 December 2009 has been destroyed in accordance with procedure.
7. In respect of those parts of the request it had previously responded to - and to which therefore it considers section 14(2) applies - MoJ provided the complainant with copies of its previous responses.
8. In requesting an internal review, the complainant told MoJ that he was not replying to the part of the request on occupation orders - part B.
9. Following an internal review, MoJ wrote to the complainant on 21 August 2014. It upheld its citing of section 32(1) in respect of parts A2-5 and B2-5 of the request. It also confirmed that the request in parts A1 and B1 duplicated requests previously made and responded to. It confirmed its application of section 14(2) in respect of those parts of the request.

## **Scope of the case**

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10. The complainant provided the Commissioner with the relevant documentation on 7 October 2014 to complain about the way his request for information had been handled.
11. He told the Commissioner he knew how many injunctions of the type he was interested in were received by Leeds County Court in the year ending 31 December 2006:

*"but they will not tell me how many were granted and how many applications were made by McCormicks (Clarion)".*

12. The Commissioner wrote to the complainant on 16 October documenting his understanding of the complaint and explaining the focus of his investigation.
13. During the course of his investigation, the Commissioner has received and considered a large amount of argument from the complainant. Within that correspondence, the complainant explained why, in his view, Leeds County Court:

*"have not supplied correct statistical information on ex parte without notice injunctions".*

14. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (FOIA).
15. In light of the above, and taking account of the concerns raised by the complainant which come within the Commissioner's remit, the Commissioner considers the scope of his investigation to be MoJ's application of section 32(1)(c) to the information within the scope of parts A2-5 of the request.

## **Reasons for decision**

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### *Section 32 court records*

16. Section 32(1) of 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.*
17. During the course of the Commissioner's investigation, MoJ confirmed that it considers section 32(1)(c) applies in this case.

18. 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.
19. In the complainant's view, the information he is seeking can easily be obtained from a computer. However, what is important in the context of this case 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?*

20. During the course of his investigation, MoJ provided the Commissioner with a copy of the withheld information. It told him that the information was extracted from its case management system for family court cases - FamilyMan. It explained that the FamilyMan case management system is used to progress cases through the court from application to disposal.
21. MoJ also explained how information is initially input onto the system from paper documents provided to the court and how the resulting case records can subsequently be used as the court proceedings progress, for example to create documents for service.
22. With respect to the wording in section 32(1)(c) about the nature of the proceedings, MoJ told the Commissioner the information is created and used in relation to administering applications:

*"for an ex parte non molestation injunction order and ex parte occupation order".*

23. Having considered the matter the Commissioner is satisfied that the entry of the information into FamilyMan is the creation of a document and that the documents containing the disputed information were created for the purpose of proceedings in particular matters.

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

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

25. 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.

26. In correspondence with the Commissioner, MoJ confirmed:

*"All this data is now only held on the FamilyMan system. It was originally held on paper, but all other files from that time have been destroyed under the County Court Records destruction and retention schedule".*

27. Having considered MoJ's submissions, the Commissioner is satisfied that the withheld information is only held by virtue of being contained in a document created by the court for the purposes of proceedings.

*Is the exemption engaged?*

28. From the evidence he has seen, the Commissioner is satisfied that MoJ was entitled to rely on section 32(1)(c) in respect of all the requested information which it applied that exemption to. It follows that he finds the information exempt from disclosure.

29. As section 32 of FOIA is an absolute exemption, no public interest test applies. In other words, there is no requirement to consider whether there is a public interest in disclosure.

## Right of appeal

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30. 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)

31. 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.
32. 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 Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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