

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 June 2019

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

Decision (including any steps ordered)

1. The complainant requested information about court records relating to a named person. The Ministry of Justice (MoJ) neither confirmed nor denied holding the requested information, citing sections 40(5) (personal information) and 32(3) (court records etc) of the FOIA.
2. The Commissioner investigated its application of section 32(3).
3. The Commissioner's decision is that the MoJ was entitled, by virtue of section 32(3) of the FOIA, to neither confirm nor deny holding information within the scope of the request.
4. The Commissioner requires no steps to be taken as a result of this decision.

Background

5. On the subject of Council Tax arrears, the *gov.uk* website states¹:

"Your council can ask a magistrate for a 'liability order' if you owe them unpaid Council Tax. This is a legal demand for payment. ... You're allowed to go to the court and give your reasons for not paying if you want."

¹ <https://www.gov.uk/council-tax-arrears>

...

Your council can take you to court if you don't pay the money you owe and the bailiffs can't recover enough property to cover it."

Request and response

6. On 16 November 2018, the complainant wrote to the MoJ and requested information in the following terms:

"The following information is required from your place of business under the Freedom of Information Act.

Does the Leicester Magistrates' Court have in its records any properly issued (sealed by the court and signed by a judge) liability orders against the man [name redacted]?

Does the Leicester Magistrates' Court have in its records any properly issued warrants against the man [name redacted]?"

7. The MoJ responded on 10 December 2018. It refused to confirm or deny that the requested information was held, citing sections 32(3) (court records) and 40(5) (personal information) of the FOIA as its basis for doing so.
8. Following an internal review the MoJ wrote to the complainant on 21 January 2019, upholding its original position.

Scope of the case

9. The complainant provided the Commissioner with the relevant documentation on 26 February 2019 to complain about the way his request for information had been handled.
10. The complainant told the Commissioner:
- "My latest request regarding valid liability orders was sent as a Subject Access Request [SAR]. I expected the Leicester Magistrates Court to respond to the request, however it was eventually passed to the Ministry of Justice".*
11. The request in this case was made by email to Leicester Magistrates Court's enquiries email address. The Commissioner is satisfied that it was appropriate for the MoJ, a ministerial department responsible for the courts, amongst other things, to respond to the request.

12. The Commissioner notes that while the 'subject' of the email in which the request was made was "SAR request", the complainant referred to the FOIA in the body of the request.
13. During the course of the Commissioner's investigation, the MoJ confirmed that both sections 32(3) and 40(5) apply in this case.
14. The analysis below considers whether the MoJ was entitled to neither confirm nor deny holding the requested information. The Commissioner has first considered the MoJ's application of section 32(3).

Reasons for decision

Section 32 court records etc

15. Section 32(3) of the FOIA provides that if a public authority receives a request for information which, if held, would be exempt under section 32(1) or 32(2), it can rely on section 32(3) to neither confirm nor deny whether or not it holds the requested information.
16. In this case, the MoJ considered that, if held, the requested information would be exempt by virtue of section 32(1).
17. Sections 32(1) and (3) of the FOIA state:

"(1) 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) member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter.

...

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of this section."

18. Section 32 is an absolute exemption and is therefore not subject to any public interest considerations.

19. The Commissioner has published guidance on section 32² of the FOIA which sets out the ICO interpretation of the section 32 exemption:

"We believe that section 32 was drafted to allow the courts to maintain judicial control over access to information about court proceedings.

This includes giving courts control to decide what information can be disclosed without prejudicing those proceedings.

In effect, section 32 ensures that FOIA can't be used to circumvent existing court access and discovery regimes. Also, public authorities won't be obligated to disclose any information in connection with court, inquiry or arbitration proceedings outside those proceedings".

20. In this case, the MoJ told the complainant:

"... the information requested is exempt from disclosure because if held it would be contained in a court record".

21. It also explained to him:

"FOI is a public disclosure regime, not a private regime. This means that any information disclosed under the FOIA by definition becomes available to the wider public. If any information were held, confirming this would reveal to the world at large that this individual was involved in the justice system..."

22. In its submission to the Commissioner, the MoJ told her:

"The requester asked for information, which, if held, would relate to a magistrates' court case, namely a liability order case, against [name redacted]"

23. The MoJ further explained:

"A liability order is an order authorising the Local Authority (LA) to take certain steps against a person who had not paid council tax".

² <https://ico.org.uk/media/for-organisations/documents/2014222/section-32-court-inquiry-arbitration-records.pdf>

24. In its submission to the Commissioner, the MoJ explained the liability order procedure.
25. The Commissioner understands that, before a liability order is issued, the LA files a complaint list with the court comprising details of those it wishes to summons for hearing.
26. A summons will be sent directing the person who has not paid to appear before the court to show why they have not paid the sum outstanding. The court keeps a record of the decision to issue the summonses.
27. At the subsequent hearing, the LA provides the court with a list of those respondents they wish to issue a liability order against. The list is endorsed by the court and retained as the court register.
28. The MoJ told the Commissioner that the information held on the court register in a council tax liability order case would include, amongst other information:
 - details of the individual's name and address;
 - details in relation to amounts owing.
29. With regard to the reference in the request to a warrant, the MoJ told the Commissioner:

"Following the making of a liability order, the council may apply to a Magistrates' Court for a warrant committing a person to prison for non-payment of council tax..."

"Before issuing a warrant of commitment, the Court must hold a means enquiry with the person present in Court. A warrant of arrest can be issued to ensure the person appears. A warrant will only be issued if the court is satisfied that the failure to pay is the result of wilful refusal or culpable neglect and that the warrant is likely to result in payment".

30. The MoJ confirmed that, if held, the information that fell within the scope of the request in this case would only be held in court records and would therefore be exempt by virtue of section 32.
31. With respect to a liability order, and in accordance with the procedure noted above, the MoJ told the Commissioner:

"the complaint list, filed by the Local Authority – so exempt s32(b) [sic]

the decision made to issue the summons made by Legal Adviser – so exempt s32(c)(i)

the court register, the final list endorsed by the Legal Advisor s32(c)(i)".

32. Similarly, with respect to a warrant, it told her:

" ... it is the Court which determines whether a warrant can be issued, rather than an administrative function, therefore if a warrant were to exist it would be exempt under 32(1)(c)(i) as it is a court record/document created by a Court".

The Commissioner's view

33. In this case, the Commissioner is satisfied that the requested information, if held, would be held in relation to court proceedings relating to council tax matters. She also considers that the information within the scope of the request, if held, would be created by a court.
34. She is further satisfied that there would be no other reason for the MoJ to hold it other than for the purposes of those proceedings.
35. The Commissioner is therefore satisfied that the MoJ was entitled to rely on section 32(3) in response to the complainant's request and was not, therefore, obliged to confirm or deny whether it held information within the scope of the request.

Section 40 personal information

36. As the Commissioner considers that the section 32(3) exemption is engaged she has not considered the MoJ's application of section 40(5) in this case.
37. However, she acknowledges that the request in this case specifies the name of an individual.
38. In that respect, the Commissioner recognises that, under the FOIA, a public authority is not obliged to confirm or deny if it holds the requested information if to do so would disclose personal data which relates either to the requester (section 40(5A) or to a third party (section 40(5B)).

Right of appeal

39. 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

40. 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.
41. 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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