

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 12 August 2009

Public Authority: Bath & North East Somerset Council
Address: The Guildhall
High Street
Bath
BA1 5AW

Summary

The complainant made a request to Bath & North East Somerset Council ('the Council') for copies of a number of documents relating to a particular court case which had been heard in Bristol County Court. The Council refused to provide the information requested as it considered it was exempt from disclosure under section 32(1) of the Act. The Commissioner is satisfied that that all of the requested information is exempt by virtue of sections 32(1)(a) and 32(1)(b). However, the Commissioner finds that the Council breached section 1(1)(a) of the Act in failing to inform the complainant that some information relating to the request was not held, and section 17(1) for failing to specify in its refusal notice which subsection(s) of section 32(1) it was relying on.

The Commissioner's Role

1. 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 ('the Act'). This Notice sets out his decision.

The Request

2. On 12 January 2009, the complainant made a request to the Council for:

“...copies of the Documents Claim Form, Defence and Particulars of Claim and Court Order made in the Bristol County Court where we believe that the Council had paid the amount of £750.000-00”.

3. The Council responded to the request on 16 January 2009 stating that the information requested was exempt from disclosure under section 32(1) of the Act. The Council suggested to the complainant that he contact the relevant Court directly to ascertain whether any of the information he was requesting was publicly available.
4. The complainant requested an internal review of the Council's decision on 17 January 2009. The complainant stated that he was unsure of the case number of the court case in question and provided details of his reasons for disputing the Council's decision.
5. On 29 January 2009 the complainant contacted the Commissioner to complain about the way his request for information for court documents had been handled.
6. On 11 February 2009 the Commissioner wrote to the complainant advising that before accepting a complaint, the complainant should await the outcome of the public authority's internal review. The Commissioner advised the complainant to contact him again should he remain dissatisfied with the outcome of the Council's review.
7. On 20 March 2009 the Council provided the complainant with the outcome of its internal review. The Council confirmed that the case number of the court case in question was 9324149 and stated that the documents in question were official court documents which were covered by sections 32(1)(a) and 32(1)(b). The Council upheld its decision that the information requested was exempt from disclosure by virtue of section 32(1).

The Investigation

Scope of the case

8. The information requested by the complainant was explicitly set out in his initial information request to the Council dated 12 January 2009 as detailed in paragraph 2 of this Notice. The Commissioner's investigation has sought to establish whether the Council correctly withheld the requested information on the basis that it was exempt under section 32(1) of the Act.

Chronology

9. Having received the Council's internal review decision, the complainant contacted the Commissioner on 21 March 2009 to advised that he remained dissatisfied with the Council's response,.
10. On 6 April 2009 the Commissioner wrote to the complainant confirming receipt of the relevant documentation required in order to investigate the complaint. The Commissioner also wrote to the Council confirming that the complaint had been deemed eligible for formal consideration under the Act.
11. On 24 June 2009 the Commissioner contacted the Council and requested copies of the withheld information and further representations that the information fell within the definitions as set out in sections 32(1)(a) and 32(1)(b).
12. On 29 June 2009, the Commissioner received copies of the withheld information from the Council. The Council confirmed that it did not hold a copy of the Claim Form requested by the complainant and provided copies of the Judgement (Court Order), Defence and Particulars of Claim in relating to court case number 9324149 which was heard in Bristol County Court. The Council confirmed to the Commissioner that the withheld information was only held by virtue of documents served upon the Council by the court for the purposes of proceedings.

Analysis

Exemptions

Section 32

13. Section 32 provides for an exemption from the Act for information which constitutes court records. The Council has specifically stated that sections 32(1)(a) and 32(1)(b) applies to the information requested in this case. This provides that information is exempt 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,..".
14. The withheld information in this case consists of the Amended Particulars of Claim which is the document lodged with the Court and served on the defendant (the Council), the Amended Defence which is the defendants response to the Particulars of Claim and the Judgement which outlines the decision of the Court.

15. In reaching a decision in this case, the Commissioner has been assisted by the Information Tribunal's decision in *Mitchell v The Information Commissioner* (EA/2005/0002) in respect of information which is caught under sections 32(1)(a) and 32(1)(b) of the Act. The Tribunal at paragraph 33 said: "...documents to which (a) and (b) relate will routinely include pleadings, witness statements and exhibits served as part of a litigant's (or in criminal proceedings most often the prosecution's) case as well as lists of documents, material served under an obligation to disclose and documents such as skeleton arguments prepared by advocates...".
16. The Commissioner is satisfied that the Amended Particulars of Claim, Amended Defence and Judgement fall within the definitions as set out in sections 32(1)(a) and 32(1)(b). As the initial request for information was explicit in that only copies of these court documents were requested, the Commissioner is also satisfied that the Council holds the information only by virtue of it being contained in documents as described in sections 32(1)(a) and 32(1)(b). However, the Commissioner also considers that a Judgement could also fall within the definition in section 32(1)(c)(i) as a document created by a court for the purposes of proceedings in a particular cause or matter.
17. As section 32 of the Act is an absolute exemption the Commissioner has not gone on to consider the public interest test.

Procedural Requirements

18. As stated in paragraph 12 above, it was established during the Commissioner's investigation that the Council does not hold a copy of the Claim Form requested by the complainant. The Council should have informed the complainant in its refusal notice dated 16 January 2009 that it did not hold any recorded information relevant to this part of his request. In failing to do so, the Commissioner finds that the Council breached section 1(1)(a) of the Act.
19. In its refusal notice the Council stated that the information requested was exempt under section 32(1). In failing to specify which subsection(s) under section 32(1) it was relying on, the Council breached section 17(1) of the Act.

The Decision

20. The Commissioner's decision is that the Council was correct to rely on sections 32(1)(a) and 32(1)(b) as the basis for withholding the information requested.

21. However, the Commissioner has also decided that the Council did not deal with the request for information in accordance with Part 1 of the Act in the following respects:
- Section 1(1)(a) for failing to inform the complainant that it did not hold any recorded information relating to the request for a copy of the Claim Form of the court case in question
 - Section 17(1) for failing to specify in its refusal notice which subsection(s) under section 32(1) on which it was relying.

Steps Required

22. The Commissioner requires no steps to be taken.

Other matters

23. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern.

Internal Review

24. Paragraph 39 of the code of practice issued under section 45 of the Act recommends that complaints (internal review) procedures '*should be as clear and simple as possible*' and '*encourage a prompt determination of the complaint*'. In his Good Practice Guidance No.5, the Commissioner qualifies this further by explaining that he considers an internal review should not have more than one stage and should be completed within 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer, but in no case should the time taken exceed 40 working days.
25. In this case, the complainant requested an internal review of the Council's decision on 17 January 2009 and the Council did not communicate the outcome of its review until 20 March 2009, a period of 44 working days. The Commissioner would expect that the Council would conduct reviews promptly in future.

Right of Appeal

22. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 12th day of August 2009

Signed

**Anne Jones
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

General Right of Access

Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him”.

Refusal of Request

Section 17(1) provides that –

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

Court records

Section 32(1) provides 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 of matter, or
- (c) any document created by –
 - (i) a court, or
 - (j) a member of the administrative staff of a court, for the purposes of proceedings in a particular cause of matter.”