

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 September 2011

Public Authority: Broadland District Council
Address: Thorpe Lodge
1 Yarmouth Road
Thorpe St Andrew
Norwich
Norfolk
NR7 0DU

Decision (including any steps ordered)

1. The complainant has requested copies of court produced documents and orders of the High Court relating to a particular case.
2. The Commissioner's decision is that Broadland District Council correctly applied the Court Records exemption to the complainant's request.

Request and response

3. On 3 December 2010, the complainant wrote to Broadland District Council and requested information in the following terms:
 - *"Copies of the Appellants Notice and Orders made in the Court of Appeal.*
 - *The Order made in the High Court of Justice Administrative Court before Mr Justice Beatson."*
4. Broadland District Council responded on 24 December 2010. The Refusal Notice said that the complainant's request was unclear in that it does not identify the case number or the parties to the proceedings which he was asking about. However the Council also confirmed that, even if it was able to identify the case in question, it would refuse to provide the

information requested on the basis that the exemption in the Act for court records would apply.

5. The complainant appealed that decision on 8 January 2011. Again he did not clarify what case he was referring to, however with his letter he provided a transcript of a judgement of the Court of Appeal in the case of Murrell v Secretary of State for Communities and Local Government and Broadland District Council [2010] EWHC (Admin). From this the council surmised that this was the case which the complainant was referring too.
6. Following its review of its decision, the Broadland District Council wrote to the complainant on 1 February 2011 stating that it upheld its original decision for the same reasons.

Scope of the case

7. On 10 March 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. Again he did not clarify which case he was requesting information about. The Commissioner concludes however that the case which the council identified is the case which the complainant is referring to.
8. The Commissioner considers that the complainant's complaint is that the council did not disclose the information he requested to him.

Reasons for decision

9. Section 32 of the Act states that information which is held only as part of a court record is exempt from disclosure where the information is held "only by virtue" of being contained in documents which have been:
 - filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
 - any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or
 - any document created by a court, or a member of the administrative staff of a court for the purposes of proceedings in a particular cause or matter.

10. The council argues that the information is exempt because it is held in Court Documents which are prevented from disclosure under the Court Practice Rules, and in particular CPR 5.4C. The council argues that the only authority able to legally disclose that information would be the court itself.
11. The Commissioner has considered the councils arguments. He has also borne in mind a description of the withheld information held by the council and also the request which the complainant made.
12. The Commissioner has not obtained a copy of the withheld information as he agrees with the argument submitted by the council that it is not necessary to view the information in order to make a judgement upon the status of the documents which have been requested in this instance.
13. The Commissioner is satisfied that the complainant has requested documents which will have either been produced by a court, that were filed with or otherwise placed in the custody of a court, or that were served upon or by a public authority, for the purposes of court proceedings.
 - an order of the court is a record which has been created by the court of a member of the court and therefore is a court record for the purposes of the Act.
 - Similarly, an Appellant's Notice is a notice placed before the court asking leave to appeal its decision. Therefore it is a document which is filed with or otherwise placed in the custody of a court (or tribunal).
14. The Commissioner is also satisfied that the council would only hold that information by virtue of the fact that it is held in court records. The council would only hold those records by virtue of the fact that it was a party to the proceedings and the records were provided to it by the court.
15. Consequently the Commissioner's decision is that the information is exempt from disclosure under section 32 of the Act.
16. Section 32 of the Act is an absolute exemption. This means that the Commissioner does not need to carry out a public interest test to decide whether the information should be disclosed where the exemption is applicable.

Right of appeal

17. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

18. 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.
19. 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

Andrew White
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