

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 March 2012

**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 details of the outcome of First-tier Tribunal (Social Security) cases where the medical representative was a named individual. The Ministry of Justice (MoJ) refused this request and cited the exemptions provided by sections 32(1)(a) and 32(1)(c)(ii) (court records) of the FOIA. The Commissioner's decision is that the MoJ applied these exemptions correctly and so it is not required to disclose this information.

#### Request and response

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2. On 20 July 2011, the complainant wrote to the MoJ and requested information in the following terms:

*"With regard to decisions of the [First-tier Tribunal (Social Security)] when the medical representative is [name redacted], I am writing to ascertain how we can obtain the full records of [in] how many appeals in relation to osteoarthritis of the knee [name redacted] has made decisions, or been part of decisions.*

*We would also request the outcome of these decisions, i.e. how many were improved, how many were lost or reduced and how many remained the same."*

3. The MoJ responded on 16 August 2011. It stated that the request was refused under the exemptions provided by sections 32(1) (court records) and 40(2) (personal information) of the FOIA.
4. Following an internal review the MoJ wrote to the complainant on 7 October 2011. It stated that the refusal of the request under the exemptions cited previously was upheld.

### **Scope of the case**

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5. The complainant contacted the Commissioner to complain about the way his request for information had been handled on 14 November 2011. The complainant was dissatisfied with the decision to refuse the request and specified that he did not believe that the internal review had adequately addressed the matters raised when this review had been requested.

### **Reasons for decision**

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6. Section 32(1)(a) states that information is exempt if it is held only by virtue of being contained in any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter. Section 32(1)(c)(ii) provides the same in relation to any document created by the administrative staff of a court for the purposes of proceedings in a particular cause or matter. Information conforming to either of these descriptions is exempt.
7. There are two main steps to considering whether information falls within these exemptions; first, it is necessary to consider whether the information is contained within a document filed with a court, or that was created by the administrative staff of a court, in relation to a particular cause or matter. The next step is to consider if this information is held by the relevant public authority only by virtue of being held in such a document.
8. In this case the MoJ has stated that it holds the information in paper files relating to individual cases at the First-tier Tribunal (Social Security) in which the individual named in the request was the medical representative. The MoJ supplied copies of these court files to the Commissioner's office, where it was verified that these do contain the requested information.

9. As to whether these files contain documents filed with a court or that were created by the staff of a court, these files contain papers submitted by the appellant in the cases to which the files relate. They also contain papers recording the outcome of the cases that were created by the tribunal staff.
10. The Information Commissioner considers it clear that this information does fall within the classes specified in sections 32(1)(a) or 32(1)(c)(ii). First, the First-tier Tribunal (Social Security) is a court for the purposes of section 32 of the FOIA. Secondly, the information in question is within documents that fall within the classes described in these sections. The documents submitted by the appellants to the Tribunal in these cases are documents filed with a court and the documents recording the outcome of these cases were created by the administrative staff of a court. These documents also relate to particular matters in that they concern individual First-tier Tribunal (Social Security) cases.
11. The remaining issue is to consider if the MoJ holds this information only by virtue of its being contained in these tribunal files. The complainant questioned at internal review whether the information requested was held in a statistical form other than in the tribunal files and whether this indicated that this information was held otherwise than in these tribunal files.
12. On this point the Information Commissioner notes that the position of the MoJ is that this information is held in the tribunal files, copies of which were supplied to his office, and he is aware of no evidence to dispute this. In any event, he also notes that, even if it were the case that the information in question had been extracted from these paper files and converted into a different format, such as statistics, this would not preclude the exemption being engaged. For the purposes of section 32 the crucial point is how the information originally came to be in the possession of the MoJ, not what was done with it subsequently. In this case the Commissioner accepts that this information came to be in the possession of the MoJ only by virtue of the Tribunal documents covered above.
13. The Information Commissioner has found that the information in question is held by the MoJ by virtue of being contained in documents either filed with the First-tier Tribunal (Social Security), or that were created by tribunal staff, and that these documents were for the purposes of particular matters. He also accepts that this information is held by the MoJ only by virtue of it being contained in these files. On the basis of these findings the conclusion of the Commissioner is that the exemptions provided by sections 32(1)(a) and 32(1)(c)(ii) are engaged

by this information. The MoJ is not, therefore, required to disclose this information.

## Right of appeal

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14. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

15. 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.
16. 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**  
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