

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 April 2018

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

Decision (including any steps ordered)

1. The complainant requested information relating to the number of Plymouth Court cases struck out as a result of administrative error. The Ministry of Justice confirmed it held information within the scope of the request but refused to provide it citing the section 32(1) FOIA (court records) exemption.
2. The Commissioner investigated the application by the Ministry of Justice of the section 32(1)(c)(ii) FOIA exemption and decided that the Ministry of Justice was entitled to rely on this exemption to withhold the requested information. She requires no steps to be taken.

Request and response

3. Following a lengthy prior correspondence on connected matters, the complainant wrote to the Ministry of Justice (MOJ) on 12 May 2017 and requested the following information:

The number of Plymouth Court cases that were struck out as a result of administrative error for specifically the period of November 2015 to May 2017.

4. MOJ responded on 5 June 2017 relying on the section 32(1) FOIA (Court records) exemption to refuse the request.
5. Following an internal review MOJ wrote to the complainant on 14 August 2017 confirming that it held the information but regarded it as exempt from disclosure relying on the section 32(1)(c)(ii) FOIA exemption.

Scope of the case

6. The complainant contacted the Commissioner on 20 September 2017 to complain about the way her request for information had been handled. She said that her request had been specific and limited and that MOJ had applied the section 32(1) FOIA exemption to it unfairly
7. The Commissioner considered whether the section 32(1) FOIA exemption had been correctly applied to the request. She has considered the representations made to her by both parties and also the content of the earlier correspondence.
8. As the exemption is absolute, the Commissioner did not carry out a public interest test.

Reasons for decision

9. Section 32(1) of FOIA states:

“(1) Information held by a public authority is exempt information if it is held only by virtue of being contained in —

...

(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”.

10. For section 32 FOIA to be engaged the information must be contained in (or obtained from) a type of document specified by the exemption; and held ‘only by virtue...’ of being contained in that document.
11. Section 32(1)(c)(ii) FOIA provides an exemption for information which is only held by a public authority because it is contained in a document created by a member of the administrative staff of a court for the purposes of proceedings in a particular cause or matter.
12. Section 32(1) FOIA 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 it is 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.

13. What is important in this context is whether the information meets the criteria as set out in section 32(1)(c). As the wording of the exemption implies, it is not only the reason for holding the information 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?

14. The complainant said that, despite the fact that she had stated that her request was specific and limited to the number of cases struck out as a result of administrative error, MOJ had still acted unfairly in deciding to apply the exemption even though they had been willing to provide the information which had been requested in a similar way in relation to an earlier matter.
15. MOJ told the Commissioner it does hold the number of court cases struck out on its case management system. However, the reasons for the strike out are only held in the free format field on the individual case records. MOJ said it does not compile statistics on the number of cases struck out due solely to administrative error. MOJ added that it has no business reason to do so, and so statistics were not produced enumerating those cases.
16. MOJ said that the complainant had not asked for the total number of cases struck out, but specifically for those struck out as a result of administrative error. That detail was only recorded in individual court files in a free format field. The reason it was recorded in that way was to enable and assist in administering the case itself. MOJ added that it therefore relied on the section 32(1)(c)(ii) FOIA exemption and confirmed to the Commissioner that the requested information was not recorded anywhere other than in individual court case files.
17. MOJ said that the existence of any administrative error and its nature was only recorded on individual court case files. MOJ also confirmed that the number of such cases was not collated or recorded. The reasons for a case being struck off was only recorded on individual court files and then solely for the purposes of administering them.

Conclusion

18. The Commissioner has seen that the requested information – the numbers of cases struck out specifically due to administrative error – is

only held within the court case records which are created by court staff for the purposes of the relevant proceedings and are not held anywhere else.

19. The Commissioner found that the statistic requested could only be obtained by interrogating the individual records of proceedings. However those individual records constituted information contained in documents created by court staff for the purposes of proceedings. It follows that they are court records. The Commissioner therefore decided that they fall within the scope of the section 32(1) FOIA exemption and that MOJ was therefore entitled to rely on the section 32(1)(c)(ii) FOIA exemption to withhold the information.

Right of appeal

20. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

21. 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.
22. 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

Roy Wernham
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