

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 July 2018

**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 a breakdown of information with regards to pedal cycle offences and other non-motorised vehicle offences. The Ministry of Justice (the MoJ) refused the request under section 32(1)(c) of the FOIA – court records.
2. The Commissioner's decision is that section 32(1)(c) of the FOIA is engaged.
3. The Commissioner does not require the MoJ to take any steps.

#### Request and response

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4. On 4 January 2018, the complainant made the following request to the MoJ:

*"Each year you publish figures relating to the offence of '8.4 Causing bodily harm by furious driving (MOT)'. Referring in particular to the data you publish in your 'Criminal justice statistics outcomes by offence tool', please could you confirm that:*

*a) The figures cover motoring offences ONLY, as the 'MOT' suggests, and does not include pedal cycle offences, and/or those for other non-motorised vehicles.*

*If, however, the data do include pedal cycle offences, and/or other non-motorised vehicle offences (or if you have a record of these figures elsewhere), please:*

*b) Tell me how many convictions for 'Causing bodily harm by furious driving' offences in each year 2006-2016 relate to:*

*i. Pedal cycle offences alone*

*ii. Other non-motorised vehicle offences alone*

*c) Supply a copy of the above-mentioned table (2006-2016), broken down by the same values as in the existing table, for:*

*i. Pedal cycle offences alone*

*ii. Other non-motorised vehicles alone".*

5. The MOJ responded on the 11 January 2018 refusing the request under section 32(1)(c) of the FOIA as the information is held in a court record.
6. The complainant requested an internal review on the 16 January 2018 disputing the council's refusal.
7. The council provided its internal review on the 5 February 2018 upholding its refusal.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 16 February 2018 as she was not satisfied with the MoJ refusing her request.
9. The Commissioner considers the scope of the case it to determine whether the MoJ can rely on section 32(1)(c) of the FOIA to refuse the request.

### **Reasons for decision**

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#### **Section 32(1)(c) of the FOIA – Court records**

10. Section 32(1) of the 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 proceeding in a particular cause or matter."*

11. For section 32 of the 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.
12. Section 32(1)(c)(ii) of the 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.
13. Section 32(1) of the 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.
14. 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 it is contained in.

*Is the information contained in a relevant document created for the purposes of proceedings in a particular cause or matter?*

15. The complainant has told the Commissioner that the MoJ publishes overall figures online but does not break them down so that it is possible to tell how many offenders were drivers and how many were cyclists. She says that is both confusing and misleading and believes it is in the public interest for this information to be disclosed.
16. The MoJ has told the Commissioner that it has considered her guidance<sup>1</sup> on section 32 of the FOIA in making its determination. The MoJ points out that the guidance , at paragraph 39, states that '*if the requested information was originally created or obtained for the purposes of proceedings, and not acquired by any other route, then it will be held 'only by virtue' of being contained in a specified document*'. The MoJ also

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/2014222/section-32-court-inquiry-arbitration-records.pdf>

states the guidance, at paragraph 40, says information '*won't lose its exempt status if the authority goes on to use it for another purpose*'.

17. The MoJ has explained to the Commissioner that in this case, the information requested was recorded by court staff and in order for the MoJ to provide it, it would need to go into the courts case files to identify the vehicle types involved.
18. The MoJ has told the Commissioner that the courts need to record circumstances in which an offence has taken place in order to inform the proceedings related to that offence; for example, this may have a bearing on the sentencing or reports ordered.
19. The MoJ says it does have access to these case files because a complete extract from the magistrates courts and Crown Court administrative data system is made available to it, as the first step in the process through which it conducts statistical analysis of court data. However, the information in the system is only available to the MoJ because it was originally recorded by the courts for its own purposes.
20. The complainant is after a breakdown of the overall figures, the MoJ does not dispute these to be held, but states they can only be provided by interrogating the records created by court staff created for the purposes of proceedings. It follows that they are court records.
21. Therefore, the Commissioner's decision is that the requested information falls within the scope of section 32(1) of the FOIA and the MoJ is entitled to rely on section 32(1)(c) of the FOIA to withhold the information.

## Right of appeal

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22. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**