

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 September 2019

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information about court records relating to a named person. The Ministry of Justice (the 'MOJ') neither confirmed nor denied holding the requested information, citing sections 32(3) (court records etc) and 40(5) (personal information) of FOIA.
2. The Commissioner investigated its application of section 32(3).
3. The Commissioner's decision is that the MOJ was entitled, by virtue of section 32(3) of FOIA, to neither confirm nor deny holding information within the scope of the request.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 12 May 2019 the complainant wrote to the MOJ and requested information in the following terms:

"In relation to the admitted maladministration of [name redacted] trail [sic] which should have occurred on the 28th February 2018 and was wrongfully vacated.

Please provide the following information and documents.

- *Details of any employment disciplinary action of Staff involved.*

- *Details of any employment disciplinary action of the Legal Advisor.*
 - *Confirmation of who the Legal Advisor was.*
 - *Confirmation of which Professional and Regulatory Bodies they belong too.*
 - *Details of any Staff being referred to these Bodies*
 - *Confirmation and details of both the Legal Advisor's personal and HMCTS liability insurance.*
 - *Copies of the complete bundles for both related vacation applications."*
6. The MOJ responded on 31 May 2019. It refused to confirm or deny that the requested information was held, citing sections 32(3) (court records) and 40(5) (personal information) of FOIA as its basis for doing so.
7. Following an internal review the MOJ wrote to the complainant on 2 July 2019, upholding its original position.

Scope of the case

8. The complainant contacted the Commissioner on 13 May 2019 to complain about the way his request for information had been handled. His initial complaint related to the MOJ's failure to respond to his information request within the statutory 20 working days' time limit.
9. The Commissioner understands that the original request was sent to the MOJ by post on 2 April 2019, however, the MOJ advised that it did not receive any request from the complainant until he had resubmitted it; this was received by the MOJ on 12 May 2019.
10. There is no evidence to suggest that the MOJ did receive the original request. As the MOJ then responded to the resubmitted request within the requisite time limit, the Commissioner will not consider any delay in this case.
11. The complainant's subsequent grounds of complaint, which did not refer to any delay, included the following:

"Rather than answering each point individually you have issued a blanket reply. Please address each point separately.

I once again contend that this is in the public interest to divulge. The MOJ are citing [sic] the Data Protection Act (DPA) as grounds for withholding the information requested."

12. The Commissioner has examined whether the MOJ was entitled to 'neither confirm nor deny' holding the requested information. She has first considered the MOJ's application of section 32(3).

Reasons for decision

Section 32 court records etc

13. Section 32(3) of FOIA provides that if a public authority receives a request for information which, if held, would be exempt under section 32(1) or 32(2), it can rely on section 32(3) to neither confirm nor deny whether or not it holds the requested information.
14. In this case, the MOJ considered that, if held, the requested information would be exempt by virtue of section 32(1).
15. Sections 32(1) and (3) of FOIA state:

"(1) 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 or matter, or

(c) any document created by-

(i) a court, or

(ii) member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter.

...

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of this section."

16. Section 32 is an absolute exemption and is therefore not subject to any public interest considerations.

17. The Commissioner has published guidance on section 32¹ of FOIA which sets out the ICO interpretation of the section 32 exemption:

"We believe that section 32 was drafted to allow the courts to maintain judicial control over access to information about court proceedings.

This includes giving courts control to decide what information can be disclosed without prejudicing those proceedings.

In effect, section 32 ensures that FOIA can't be used to circumvent existing court access and discovery regimes. Also, public authorities won't be obligated to disclose any information in connection with court, inquiry or arbitration proceedings outside those proceedings".

18. In this case, the MOJ told the complainant:

"FOI is a public disclosure regime, not a private regime. This means that any information disclosed under the FOIA by definition becomes available to the wider public. If any information were held, confirming this would reveal to the world at large that this individual was involved in the justice system; this would constitute the personal data of that individual. To disclose this fact would breach the General Data Protection Regulation and the Data Protection Act 2018 principles; individuals have a clear and strong expectation that their personal data will be held in accordance with data protection laws and not disclosed to the public under the FOIA.

The fact sections 32(3) and 40(5) have been cited, should not be taken as an indication that the information you have requested is or is not held by the MOJ. These are absolute exemptions and do not require a public interest test."

19. It also explained to him:

"... the information requested is exempt from disclosure because if held it would be contained in a court record".

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

20. In its submission to the Commissioner, the MOJ told her:

"The requester asked for information which, if held, could only be identified from examining the case file. This is because the file holds details of the complaint, and from that it could be determined which staff and legal advisers had been named in the complaint and from there identify what, if any disciplinary action had been taken. Copies of bundles, if held, could only be provided with reference to the case file; likewise details of the legal adviser in attendance at the hearing/making the order could only be determined by examining the court file. If these details were provided or that aspect of the request were considered, it would make it clear to the requester that a case does exist."

21. Under section 32(1)(b) of FOIA information is exempt if it is a document served upon, or by, the court for the purposes of proceedings in a particular cause or matter.
22. Under section 32(1)(c)(ii) of FOIA information is exempt if it is a document created by a member of the administrative staff of a court for the purposes of proceedings in a particular cause or matter.
23. The MOJ confirmed that, if held, the information that fell within the scope of the request in this case would only be held in court records and would therefore be exempt by virtue of section 32.

The Commissioner's view

24. In this case, the Commissioner is satisfied that the requested information, if held, would be held in relation to court proceedings. She also considers that the information within the scope of the request, if held, would be created by a court and she is further satisfied that there would be no other reason for the MOJ to hold it other than for the purposes of those proceedings.
25. The Commissioner has therefore concluded that the MOJ was entitled to rely on section 32(3) in response to the complainant's request and was not, therefore, obliged to confirm or deny whether it held information within the scope of the request.

Section 40 personal information

26. As the Commissioner considers that the section 32(3) exemption is engaged she has not considered the MOJ's application of section 40(5) in this case.
27. However, she acknowledges that the request in this case specifies an individual.

28. In that respect, the Commissioner recognises that, under FOIA, a public authority is not obliged to confirm or deny if it holds the requested information if to do so would disclose personal data which relates either to the requester (section 40(5)(a) of FOIA or to a third party (section 40(5)(b)).

Right of appeal

29. 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@justice.gov.uk

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

30. 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.
31. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF