

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 17 October 2022

**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 information about 20 cases listed on the Court Funds Office's Unclaimed Balances index. The Ministry of Justice (the 'MOJ') provided the requested court locations but refused to provide the court claim/case numbers, citing both section 32 of FOIA (the exemption for court records) and 40 (the exemption for personal information). During the course of the Commissioner's investigation, the MOJ additionally relied on section 31(1)(a) of FOIA (the exemption for the prevention or detection of crime).
2. The Commissioner's decision is that the MOJ has correctly relied on section 32(1)(c) of FOIA to withhold the remaining requested information for the reasons set out in this notice. As he has found section 32 to be engaged, the Commissioner does not deem it necessary to consider the MOJ's reliance on sections 31 and 40 of FOIA.
3. No steps are required as a result of this notice.

#### **Request and response**

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4. On 17 September 2021, the complainant wrote to the MOJ and requested information about 20 cases listed on the Court Funds Office's Unclaimed Balances index, specifically (a) the location of the court that dealt with each case, together with (b) the court claim/case number.
5. The MOJ responded on 14 October 2021. It confirmed it held all the requested information but said part (b) of the request was exempt from disclosure by virtue of section 32(1)(c) of FOIA (the exemption for

documents created by a court for the purposes of proceedings in a particular cause or matter). The MOJ advised the complainant that he may wish to contact the court directly to apply for access to court documents under the Civil Procedure Rules. These are separate and specific regimes for access to information held by courts. The MOJ explained that the complainant will be required to pay a fee as advised by the court.

6. In addition, for part (b) of the request, the MOJ cited section 40(2) (the exemption for personal information). It said it would provide the information requested at (a) in due course.
7. On 21 October 2021, the MOJ provided the information in respect of the courts that had dealt with each of the 20 cases (part (a) of the request).
8. The complainant requested an internal review on 4 November 2021 in relation to part (b) only of his request. Following its internal review the MOJ wrote to the complainant on 22 November 2021. It maintained that sections 32(1)(c) and 40(2) of FOIA applied.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 11 March 2022 to complain about the way part (b) of his request for information had been handled.
10. The Commissioner reviewed the case correspondence, together with his guidance on sections 32 and 40<sup>1</sup> and some similar, published decision notices<sup>2</sup>. He wrote to the complainant on 25 April 2022, setting out his view that the information requested in part (b) was exempt by virtue of both sections 32 and 40 of FOIA.
11. There followed a lengthy exchange of correspondence between the parties. During the course of this exchange the MOJ informed the complainant that it was additionally relying on section 31 of FOIA (the law enforcement exemption) citing section 31(1)(a) (the exemption for the prevention or detection of crime).

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/2021/2619028/s32-court-inquiry-and-arbitration-records.pdf> and <https://ico.org.uk/media/for-organisations/documents/2619056/s40-personal-information-section-40-regulation-13.pdf>

<sup>2</sup> <https://icosearch.ico.org.uk/s/search.html?collection=ico-meta&profile=decisions&query=&f.By+section|sectionOfLegislation=FOI%2032>

12. The exchanges between the parties were lengthy and very detailed so the Commissioner does not intend to reproduce them here; however, he will set out his key considerations below. As the MOJ maintained its position and the complainant continued not to agree with the more detailed explanations provided, the Commissioner has been unable to informally resolve this complaint and has proceeded instead to a decision notice.
13. The Commissioner has considered whether the MOJ has properly relied on sections 31, 32 and 40 of FOIA in relation to part (b) of the complainant's request.

## Reasons for decision

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### Section 32 – court records, etc

14. The Commissioner will first consider the MOJ's reliance on section 32(1)(c) of FOIA which 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.”
15. Section 32 is a 'class based' exemption. This means that the requested information only needs to fall within one of the categories above for the exemption to apply and to allow the information to be withheld. There is no requirement to consider the public interest test where section 32 is applied.
16. From information provided to him by the MOJ, the Commissioner understands that the Court Funds Office ('CFO') deals with unclaimed monies from civil courts in England and Wales<sup>3</sup> including a link to the Unclaimed Balances database<sup>4</sup>.

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<sup>3</sup> <https://www.gov.uk/contact-court-funds-office>

<sup>4</sup> <https://www.gov.uk/find-court-money>

17. 'Unclaimed Balances' are accounts which have been deposited with the CFO as a result of a court case and where the person(s) entitled to claim the money has failed to do so after a set period of time, or where the person(s) entitled cannot be traced or refuse to engage and the relevant court has directed that the funds be deposited into CFO so that the depositor can fulfil their obligations (see Part 5 of the Court Funds Rules 2011, Rules 36-41). The database on the website is updated on a monthly basis. The CFO account number is shown on the website. The court case number is not.

18. The MOJ has explained that:

"The case number is not provided partly because it is specific court information, which would help identify the parties, and partly because those entitled to the funds would be expected to have those details and use them as part of a claim and as evidence of their entitlement.

The purpose of the Unclaimed Balances website is to allow those entitled to funds to claim them, not to provide researchers and asset tracing companies with a source of information that can be used to provide an income stream or even potentially to put in fraudulent claims.

If this information were supplied to this requestor only, it would give him an advantage over other researchers similarly trying to trace beneficiaries for financial gain, and thus prejudice their ability to trace potential clients. As there are over 75,000 accounts held in the UB [Unclaimed Balances] Database, including accounts that have been there for very many years, and for which the paperwork is only available via off site storage, updating the website with court case numbers would be a major task."

19. The Commissioner has considered the complainant's view that the case numbers are allocated to the case by the Court's administration team at the commencement of proceedings to assist the court to manage the case through the various stages. The complainant does not consider this to be a "document created" to bring it within the definition of section 32(1)(c), nor does he consider it has the purpose of being created for the "proceedings" in a particular cause or matter.

20. The MOJ has said:

"In all cases the relevant court generates the case number at the start of the proceedings. It is provided to CFO by way of the sealed court order or authority directing deposit. The main purpose the information has been created, is for court

proceedings (dominant purpose test). This is the main identifier used by both the court and the CFO for identification & evidence purposes. Section 32(1)(c) can still apply if the information has been extracted from a relevant document even if it is later transferred to other documents or held or used in other ways.”

21. Having considered all the evidence before him, the Commissioner is satisfied that the court case numbers do fall within the definition of section 32(1)(c) of FOIA. It follows that the Commissioner finds that the MOJ was entitled to rely on section 32(1)(c) of FOIA in relation to part (b) of the complainant’s request.
22. As the Commissioner has found section 32 to be engaged, he does not need to consider the MOJ’s reliance on sections 31 or 40 of FOIA.

## Right of appeal

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23. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

24. 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.
25. 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**