

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 September 2011

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

Decision (including any steps ordered)

1. The complainant has requested information concerning dates and locations when particular individuals acted as legal representatives in court cases. The Ministry of Justice (MoJ) refused to confirm or deny whether it held the information on the grounds that this information would be court records and so covered by the exemption provided by section 32(3) of the FOIA.
2. The Commissioner's decision is that the MoJ has dealt with the requests correctly in that the court records exemption was engaged and so it is not required to confirm or deny whether it holds this information.

Request and response

3. The complainant made the following information requests on 28 December 2010 and 5 January 2011:
 - i. *"The number of hearings between 21 October – 9 November 2009 where Benn Cameron represented.*
 - ii. *If Benn Cameron were representatives for appeals, was Mr Rajesh Babajee the representative appointed?*
 - iii. *Was a hearing listed on 10 November 2009 where Benn Cameron Solicitors were representing an appellant?*

- iv. *Did Mr Bushan Deepchand representative of Benn Cameron Solicitors represent an appellant on 10 November 2009 as he claimed in his fax to Wandsworth County Court?*
 - v. *Were Benn Cameron Solicitors representing an appellant on 10 November 2009 at AIT Hatton Cross, York House or any other AIT venues?*
 - vi. *Did Mr Bushan Deepchand represent any appellant on behalf of Benn Cameron Solicitors or other firm on 10 November 2009 at AIT Hatton Cross, York House Feltham as he has informed Wandsworth County Court (or other AIT venues)?"*
4. The MoJ responded on 24 January 2011. It stated that it was refusing the requests on the grounds that they were repeated.
 5. Following an internal review the MoJ wrote to the complainant on 11 March 2011. It stated at this stage that it no longer believed that section 14(2) applied and that it was instead refusing the requests as it believed that the information requested was exempt under section 32(1) (court records) and 40(2) (personal information).

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
7. During the Commissioner's investigation, the MoJ disclosed the information falling within the scope of requests (i), (iii) and (v). This Notice therefore only covers requests (ii), (iv) and (vi).
8. Also during the Commissioner's investigation, the MoJ changed its reasoning for refusing the requests and now cited the exemption provided by section 32(3). This subsection provides that it is not necessary to tell the requester whether the information requested is held if this information would be exempt under section 32(1).

Reasons for decision

9. Section 32(3) of the FOIA provides that it is not necessary to confirm whether the information requested is held in circumstances where any such information would fall within any of the types of information specified in section 32(1). If the information requested would be covered by section 32(1), section 32(3) will apply.

10. The Commissioner has focussed here on whether the information requested would be covered by section 32(1)(c)(ii). This section provides an exemption for any information held only as a result of being in a document created by the administrative staff of a court for the purposes of a specific case. The two issues to cover are first whether the information would be held in a document created by the staff of a court and, secondly, whether that document was created in relation to a specific case.
11. The MoJ has supplied to the Commissioner's office samples of the information that it has stated is representative of the type of information that would fall within the scope of the requests. This consists of papers recording the outcome of a particular court case and excerpts from a database which the MoJ has described as the HM Courts and Tribunals Service (HMCTS) case management system. The MoJ has stated that it is from these records that the information requested by the complainant would be extracted.
12. Covering first whether these samples are documents created by the staff of a court, the Commissioner considers it clear that this is the case in relation to the papers; these are 'documents' as this word would commonly be understood. The entries from a database are less clearly documents. However, the approach of the Commissioner is that 'document' in section 32 can be taken to cover information held in any form, including information held electronically. The Commissioner therefore accepts that the records from the HMCTS database are documents for the purposes of section 32. The Commissioner also considers it clear that the nature of these documents means that it is clear that they were created by the administrative staff of a court.
13. As to whether these documents were created for the purposes of a particular case, the samples supplied by the MoJ do all relate to a specific case. It is therefore clear that these samples do fulfil this requirement of this exemption.
14. The final point to consider here is whether the MoJ has correctly identified where any information falling within the scope of the requests would be held. If there are alternative sources for any relevant information that may be held, it would also be necessary to consider whether this information would be covered by any of the descriptions in section 32(1).
15. On this point the Commissioner notes that the wording of the requests indicates clearly that the information sought related to specific court cases. The Commissioner would therefore consider it reasonable that the source of any information falling within the scope of these requests would be held within records relating to specific court cases, such as the

sample information supplied to the Commissioner's office by the MoJ. On the basis that it appears reasonable that the sample information does accurately reflect from where information falling within the scope of the requests would be sourced, and there being no evidence of which the Commissioner is aware that suggests that there would be other sources of information falling within the scope of the requests, the Commissioner accepts that there are no alternative sources for this information.

16. The Commissioner has found that any information held by the MoJ that fell within the scope of the requests would be covered by section 32(1)(c)(ii) in that it would be information held only by virtue of being contained in a document created by a member of the administrative staff of a court. This means that the exemption provided by section 32(3) is engaged and so the MoJ is not required to confirm or deny whether it holds the information requested.

Right of appeal

17. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

18. 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.
19. 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
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