

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 January 2012

**Public Authority:** Slough Borough Council  
**Address:** Town Hall  
Bath Road  
Slough  
SL1 3UQ

### Decision

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1. The complainant has requested information about a court case involving the public authority. The request was refused on the grounds that the information was not held by the public authority.
2. The Information Commissioner's decision is that the requested information is held by a firm of solicitors on behalf of the public authority, but is exempt from disclosure under the provisions of the exemption provided at section 32 of FOIA, because the information is held only by virtue of being contained in documents which have been filed with a court for the purposes of proceedings.
3. He does not require any action to be taken.

### Request and response

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4. On 24 December 2010, the complainant wrote to Slough Borough Council (the council) and requested information in the following terms:

*"You should provide us and disclose copies of the documents, Court Orders and Payment details made to Barlow Lyde & Gilbert (A Firm) as soon as possible."*

The complainant included a reference to a court case: Clift v Slough Borough Council [2010] EWCA Civ 1171 (21 December 2010)<sup>1</sup> together with a copy of the judgement itself.

5. The council responded on 11 January 2011. It stated that it was unable to supply the requested information because the payments were made by its insurers, not by the council itself.
6. Following an internal review the council wrote to the complainant on 12 January 2011. It stated that payments totalling £111,000 were made by Zurich Municipal to Barlow Lyde and Gilbert but that the council did not hold the information requested as the solicitors [Barlow Lyde and Gilbert] were appointed by, and acting on behalf of, its insurers, Zurich Municipal, and not Slough Borough Council.

### Scope of the case

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7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He complained that the council's reply was that the insurance company were responsible.
8. The Commissioner clarified the scope of the request with the complainant as follows:
  - Where he stated that he was requesting copies of "... documents, court orders and payments" **made to** Barlow Lyde and Gilbert he was asking for copies of:
    - documents which have been provided to Barlow Lyde and Gilbert by the council;
    - court orders which have been provided to Barlow Lyde and Gilbert by the council; and
    - payments which have been made to Barlow Lyde and Gilbert by the council;

where these have been provided by the council in connection with a libel case, Clift v Slough Borough Council, identified above.
9. The Commissioner considers that the scope of the case is to establish what information of the type described in the request is held, and to

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<sup>1</sup> The reference quoted by the complainant is different, the actual judgement can be found at <http://www.bailii.org/ew/cases/EWCA/Civ/2010/1484.html>

examine any reasons given by the council for refusing to provide that information.

## Reasons for decision

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### Public Authorities

#### Section 3(2) provides that –

“For the purposes of this Act, information is held by a public authority if –

- (a) it is held by the authority, otherwise than on behalf of another person, or
- (b) it is held by another person on behalf of the authority.”

### Court Records

#### Section 32(1) provides that –

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

10. The council explained that it pays for ‘Libel and Slander’ insurance and all claims above an agreed value are under the full control of its insurer. Therefore all conduct of the case and all payments were dealt with by Barlow Lyde and Gilbert (BLG), the defending solicitors appointed by its insurers. The libel claim was handled by BLG on behalf of insurers, Zurich Municipal. BLG had full conduct of the case and the associated administration. BLG prepared the witness statements for the defence and the Court notices and Court order were served on BLG. BLG did not copy the Council in to the Court orders although the Judgments were copied over to Slough Borough Council.

11. The council provided BLG with information required for the conduct of the case, for example: copies of emails, and witness statements. It has not retained copies of these documents and initially claimed therefore that the information was not held by it. The Commissioner observes that the information is nevertheless held by BLG on behalf of the council, where it has been retained by it for the purposes of conducting council business, namely the defence of the claim against it.
12. No payments were made to BLG by the council, as the matter of funding was dealt with by its insurers, Zurich Municipal. The Commissioner therefore accepts that this information was not held by the council at the time of the request. The Commissioner notes that the council's internal review subsequently disclosed, in round figures, the sum paid by Zurich Municipal to BLG. This is understood to have been provided, by way of advice and assistance, after consultation with BLG and with its agreement. The Commissioner has not considered this element of the request further.
13. The Commissioner contacted BLG, which accepts that the information is held by it on behalf of the council, and provided the Commissioner with a schedule of the documents it holds. This comprises three elements:
  - Pleadings.
  - Lists of Documents and documents referred to therein.
  - Witness statements.
14. It also confirmed that the pleadings and Court Orders are available for inspection by the general public at the Court Office of the Royal Courts of Justice.
15. The Commissioner notes that the pleadings were prepared and served by BLG. Similarly, the court orders were sent to BLG by the court, and not 'provided to' BLG by the council. Therefore, irrespective of any arguments, made by the council, that the information is reasonably accessible to the applicant by other means (as expressed in the exemption at section 21 of FOIA), this particular information is not actually described in the request.
16. The Commissioner has therefore established that the information held by BLG on behalf of the council, and which is caught by the description in the request is as follows:
  - Lists of Documents, and the documents referred to in those lists.
  - Witness statements.

17. BLG further confirms that the witness statements and documents were all filed with the Court as evidence as part of the Trial bundle (as were the Lists of Documents themselves). The council, via BLG, has confirmed that it intends to withhold the information and apply the exemption at section 32 of the Act (Court Records) to this information and considers it exempt from disclosure.
18. The Commissioner has established that the council no longer holds copies of the documents listed in the List of Documents, which are mostly emails, internal memos and correspondence dating from 2001. The only copies are those held by BLG, on the council's behalf.
19. The Commissioner is therefore satisfied that this information is only held by virtue of being contained in documents filed with a court, for the purposes of proceedings. The Information Tribunal in the case of *Mitchell v ICO* [EA/2005/0002]<sup>2</sup> considered what type of court records would be covered by section 32(1)(a) and (b). The Tribunal said:

*"...documents to which (a) and (b) relate will routinely include pleadings, witness statements and exhibits served as part of a litigant's (or in criminal proceedings most often the prosecution's) case as well as lists of documents, material served under an obligation to disclose and documents such as skeleton arguments prepared by advocates..."* (paragraph 33).
20. The Commissioner's decision is that the requested information falls within the class of information which is exempt under the provisions of section 32(1)(a) of FOIA. This is an absolute exemption for which no public interest consideration is required. The information has therefore been correctly withheld under this exemption.

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[http://www.informationtribunal.gov.uk/DBFiles/Decision/i47/mitchell\\_v\\_information\\_commissioner.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i47/mitchell_v_information_commissioner.pdf)

## Right of appeal

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21. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

22. 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.
23. 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** .....

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**Wilmslow**  
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