

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 20 March 2012

**Public Authority:** Coventry City Council  
**Address:** The Council House  
Earl Street  
Coventry  
CV1 5RR

#### Decision (including any steps ordered)

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1. The complainant requested Coventry City Council (the council) to provide him with several court orders. The council refused the requested information under section 32 (court records) and section 40 (personal data).
2. The Commissioner's decision is that the council correctly applied the exemption for court records to the complainant's request. He requires no steps to be taken.
3. However, the council has breached the requirements of section 1(1) in relation to one part of the request where the information was 'not held' at the time of the request. The council has also breached section 10(1) of FOIA because it failed to tell the complainant about this within 20 working days of his request.

#### Request and response

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4. On 17 June 2011, the complainant wrote to the council and requested information in the following terms:

*"RE: - [named case, reference number and date] Court Order and Payments made to the Barrister.*

*We [named persons] of [address, phone number] do hereby make a request under any Statutory Act and Statutory Instrument issued by any Minister of the Crown that: -*

- "1. You should provide us with a copy of the Claim Form.*
- 2. The Copy of the Court Order*
- 3. The Amount of Money that had been paid to the Counsel-Barrister [named person] who had been instructed by [named person] Council Solicitor) as there was a hearing on the [date], whilst the Judgment has been given on the [date].*
- 4. We request your attention that if and when replying to this E-Mail than you should send a copy to the London Borough of Redbridge Council Housing and Council Tax Benefit Department."*
5. Another request was made on 5 July 2011:

*"We, [named persons] of [address, telephone number] do hereby request under any Statutory Act and Statutory Instrument issued by the Minister of the Crown that:-*

  - 1. You should kindly provide us with copies of the Court Orders made before the High Court Judges- Wyn Williams and Beatson J and also Before Mr Justice Foskett on the [date]*
  - 2. We request your attention that if you could kindly at the same time send copies of the Court Orders to the Member of Parliament Scott Lee by E-Mail Attachment since we have a complaint against the Officers in the Information Commissioner's Office whilst there is Mal-Administration in the Information Commissioners Office which has caused us some Injustice.*
  - 3. You should kindly inform us of the Charges for providing us with copies of the Court Orders since normally the Court Services normally charges £5-00 for less than 10 Pages*

*Section 62 and 63 of the Freedom of Information Act 2000 does apply- as those Orders are not exempt documents once a Judgment has been given in Chambers or in Open Court."*

*Regardless of what has been stated in Section 32 of the Freedom of Information Act 2000...*
6. On 3 August 2011, the council explained that point 1 of the first request (17 June 2011) was not held. The council disclosed the requested information under point 3 of the same request and suggested that the information provided could be forwarded by the complainant himself to satisfy point 4. Point 3 of his second request (5 July 2011) was irrelevant as the council was withholding the information. The council withheld point 2 of the first request under

section 32 of the FOIA. Points 1 and 2 of his second request were also withheld under section 32 of the FOIA. The council advised the complainant that he should make a request for information to HM Courts & Tribunals Service for the requested court orders. The complainant asked for an internal review on the same day.

7. On 10 October 2011, the council provided its internal review. It considered that the information requested concerning the court orders fell within the remit of court records. The council explained that section 32 ensured that the existing rules regarding access to, or publication of, information contained in court records or information held for the purposes of inquiries or arbitrations are not circumvented by the use of the FOIA. The council did not accept the complainant's view that the fact that the matter had been heard in court invalidated the application of section 32. The internal review also considered that section 40(2) applied to the requested court orders.

### Scope of the case

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8. The complainant contacted the Commissioner on 4 September 2011 to complain about the way his request for information had been handled. He highlighted the length of time it had taken for the council to respond to his request. He also complained about the length of time it had taken to undertake an internal review.
9. The Commissioner considers the scope of this case to be the application of section 32 and section 40(2) to the withheld information. Section 32 was applied to the following parts of the two requests:

Request 1:

*"2. The Copy of the Court Order"*

Request 2:

*"1. You should kindly provide us with copies of the Court Orders made before the High Court Judges- Wyn Williams and Beatson J and also Before Mr Justice Foskett on the [date]"*

*2. We request your attention that if you could kindly at the same time send copies of the Court Orders to the Member of Parliament Scott Lee by E-Mail Attachment since we have a complaint against the Officers in the Information Commissioner's Office whilst there is Mal-Administration in the Information Commissioners Office which has caused us some Injustice."*

Section 40(2) was applied to the third party personal data contained in these documents.

10. On 5 January 2012, the council provided its arguments to the Commissioner.

## Reasons for decision

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### Section 32

11. The council has argued that the requests for court orders are exempt from disclosure on the basis of sections 32(1)(b), (c)(i) and (ii). These sections state that:

*"32(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*

*(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."*

12. With regard to the draft judgement requested on 17 June 2011, the council considered that the information held fell within the remit of court records and that the exemption relating to court records therefore applied. The unapproved High Court draft judgement in question was created by a court. The council holds the requested information, as it was party to the case.
13. The council reiterated the argument it had made to the complainant that section 32 ensures that the existing rules regarding access to, or publication of, information contained in court records or information held for the purposes of inquiries or arbitrations are not circumvented by use of the FOIA.
14. In respect of the complainant's second request, the council stated that it did not hold the court orders at the time of the request. The council only holds the publicly available judgment which was downloaded from

- a website for which the council holds a subscription. The Commissioner asked the council to confirm that it had not held the information relating to the second request at the time it was requested.
15. For the reasons cited in the paragraph above, the Commissioner has not considered request 2 further.
  16. The Commissioner is satisfied in respect of request 1 that the complainant has requested documents which will have either been produced by a court, or that were served upon or by a public authority, for the purposes of court proceedings.
  17. The Commissioner is also satisfied that the council would only hold those records by virtue of the fact that it was a party to the proceedings and the records were provided to it by the court. Section 32(1) is not limited in time to the period in which the litigation is taking place. It can apply to documents that continue to be held by a public authority after the litigation has been completed, if that is the only reason for which they are held.
  18. Consequently the Commissioner's decision is that the information is exempt from disclosure under section 32 of the FOIA.
  19. Section 32 of the FOIA is an absolute exemption. This means that, where the exemption is applicable, the Commissioner does not need to carry out a public interest test to decide whether the information should be disclosed.
  20. As the Commissioner finds section 32 to be engaged, he has not gone on to consider the council's application of section 40(2) to the requested information.

## **Section 1**

21. Section 1(1)(a) of the FOIA requires a public authority to confirm or deny whether it holds information within the scope of any request made to it under the FOIA. Where it holds such information, the public authority must (under Section 1(1)(b)) provide it or explain why it is not obliged to do so under the FOIA.
22. The council issued a refusal notice citing section 32 as the reason why it was withholding the requested court orders. However, it subsequently explained to the Commissioner that, at the time of the request, it had not, in fact, held some of the requested information.

## Section 10

23. Section 10(1) of the FOIA provides that, on receipt of a request for information, a public authority must comply with its obligations under section 1(1) within 20 working days from the date of receipt of the request.
24. The Commissioner finds that the council breached section 10 of the FOIA by taking more than 20 days to respond to the complainant's request/s for information.

## Other matters

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25. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 48 days for an internal review to be completed, despite the publication of his guidance on the matter.

## Right of appeal

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26. 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)

27. 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.
28. 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**