

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 October 2012

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

Decision (including any steps ordered)

1. The complainant has requested the Particulars of Claim relating to a court case involving Slough Borough Council ('the council'). The Commissioner's decision is that Court records exemption at section 32 of FOIA has been correctly applied to the request. The Commissioner does not require any action to be taken.

Background

2. The Commissioner has dealt with a similar request to the council for litigation papers in relation to the same court case as the one in this decision from a different complainant under case reference FS50371759. In that decision notice, the Commissioner found that the requested information was held by a firm of solicitors, Barlow, Lyde and Gilbert, on behalf of the council but is exempt from disclosure under section 32 of the FOIA.

Request and response

3. On 16 January 2012, the complainant wrote to the council and requested information in the following terms:

"Pursuant to the Freedom of Information Act 2000, we should be most grateful if [sic] could please forward the details of the aforesaid case

(Particulars of Claim issued by Simons Muirhead & Burton on behalf of Ms. Clift) as early as possible.”

4. The council initially responded on 10 February 2012 stating that it no longer holds the information. A further response was sent on 20 February 2012 confirming that although the council no longer holds the information it is held by a firm of solicitors on its behalf but it is exempt from disclosure under section 32 of the 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.
5. An internal review was provided by the council on 11 April 2012 upholding the application of the Court records exemption at section 32 of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
7. The Commissioner has not examined the council's claim that the information is held only by the solicitors on behalf of the council. The decision notice referred to above (FS50371759) established that information related to the specific case was held only by the solicitors on behalf of the council and for brevity the Commissioner will not repeat such analysis.
8. The Commissioner has therefore only considered whether the exemption for Court records at section 32 of the FOIA applies in this case.

Reasons for decision

9. Section 32 of the Act states that information which is held only as part of a court record is exempt from disclosure where the information is held “only by virtue” of being contained in documents which have been:
 - filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
 - any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or

- any document created by a court, or a member of the administrative staff of a court for the purposes of proceedings in a particular cause or matter.
10. The council has stated that the requested information is exempt from disclosure because it is held only by virtue of being contained in a document which has been filed with a court for the purposes of proceedings.
 11. The Commissioner is aware that the Particulars of Claim is a document that a claimant files with the court and serves on the defendant. He has not obtained a copy of the withheld information as he does not consider it necessary to view the information in order to make a judgement upon the status of the document which has been requested in this case.
 12. The Commissioner has considered the council's argument and is satisfied that the complainant has requested a document which is filed with a court, and served upon the council, for the purposes of court proceedings.
 13. The Commissioner is also satisfied that the information is held only by virtue of it being contained in a document as described in sections 32(1)(a) and 32(1)(b). The solicitors, on behalf of the council, only hold the requested information by virtue of the fact that the council was a party to the proceedings.
 14. Consequently the Commissioner's decision is that the information is exempt from disclosure under section 32 of the Act.
 15. Section 32 of the Act is an absolute exemption. Therefore the Commissioner does not need to carry out a public interest test to decide whether the information should be disclosed where the exemption is applicable.

Right of appeal

16. 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

17. 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.
18. 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
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