

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 April 2018

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

Decision (including any steps ordered)

1. The complainant requested information relating to civil court proceedings with a specific case reference number. The Ministry of Justice (MoJ) neither confirmed nor denied holding the information requested at part D of the request, citing sections 32(3) (court records) and 40(5) (personal information) of the FOIA.
2. The Commissioner has considered the MoJ's application of section 32(3) of the FOIA. Her decision is that the MoJ was entitled to rely on that exemption to neither confirm nor deny holding the requested information.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 24 October 2017, using the 'whatdotheyknow' website, the complainant wrote to the MoJ and requested information in the following terms:

"A - Confirm that you have all the recorded information stored and managed in your secure data centre system managed by the MoJ Technology directorate for the possession proceedings case ref. no: [reference redacted] allegedly created on [date redacted] and purported to have been issued by the Administration of the Bankruptcy Court in the Royal Court of Justice, London.

B - Confirm that all the recorded information contained in the computerised court record (log book) for the possession proceedings case ref. no: [reference redacted] created on [date redacted] was transferred to the MoJ by the staff of the administration of the Bankruptcy Court in the Royal Court of Justice, London who then recorded it on to Caseman system and it is now controlled by the MoJ Technology directorate.

C - Confirm that all the recorded information relevant to the alleged possession proceedings case ref. no: [reference redacted] purported to have been created on [date redacted] is in possession of the Information Asset Owner (IAO), as a member of the MoJ Operational Directorate and as part of all the data held, relating to all civil court proceedings under the direct control of the Ministry of Justice.

D - Confirm that the MoJ has the computerised court records (or log books) and the relevant court file/s of alleged possession proceedings case ref. no: [reference redacted] created allegedly on [date redacted]”.

5. The MoJ responded on 21 November 2017. It refused to confirm or deny whether the requested information was held, citing sections 32(3) (court records) and 40(5) (personal information) of the FOIA.
6. Following an internal review the MoJ wrote to the complainant on 5 December 2017, revising its position. With respect to parts A – C of the request, the MoJ stated that they should have been treated as official correspondence as they did not comprise requests for recorded information. With respect to part D it confirmed its application of section 32(3) but stated that the exemption at section 40(5) was not relied on.

Scope of the case

7. The complainant contacted the Commissioner on 5 December 2017 and 20 December 2017 to complain about the way her request for information had been handled.
8. She disputed the application of the exemption at section 32(3) resulting in the MoJ's refusal to confirm the existence of the court proceedings that are the subject matter of her request.
9. She also raised issues which are outside the remit of the Commissioner's authority.
10. The Commissioner wrote to the complainant clearly setting out the scope of her investigation, namely whether the MoJ was entitled to rely

on exemption(s) as a basis for refusing to confirm or deny whether it held information within the scope of part (D) of the request. The Commissioner asked the complainant to notify her if there were other matters that she considered should also be addressed. No response was received from the complainant.

11. During the course of the Commissioner's investigation, having reconsidered its handling of part D of the request, the MoJ confirmed its application of section 32(3) of the FOIA. Furthermore, it told the Commissioner that it considered that the information is also exempt by virtue of section 40(5) of the FOIA.
12. The analysis below considers the MoJ's application of exemptions to the information requested at part D of the request.

Reasons for decision

Section 32 court records

13. Section 32 of the FOIA covers information held 'only by virtue' of being contained in documents that are created or held for the purposes of court, inquiry or arbitration proceedings.
14. The Commissioner is mindful of the wording of part D of the request in this case. She recognises that the complainant asked for confirmation that the MoJ has the specified '*computerised court records (or log books) and the relevant court file/s*'.
15. In correspondence with the complainant the MoJ explained:

"The category of information that the records of this type would fall into (if held) is information covered by section 32 of the FOIA. Refusal to confirm or deny of the existence of such court records is applicable in preserving the courts' control over court records."
16. In its submission to the Commissioner, the MoJ said:

"... to disclose whether the department did or did not hold court records would in itself disclose to the world at large that sensitive personal information of the requester was or was not held and so we consider that section 32(3) would also be appropriate in this case".

17. The request in this case is similar to a request for information from another individual which the Commissioner has previously considered. The decision notice in that case (FS50699530) was issued on 29 January 2018¹.
18. Having considered all the factors applicable to this case, the Commissioner is satisfied that the similarity between the information request in this case and the request in case reference FS50699530 is such that she is able to reach the same decision about the citing of section 32(3) in this case.
19. For brevity, the Commissioner will not reproduce the content of that decision notice here but she has adopted the analysis and concluded that the MoJ was entitled to rely on section 32(3) in response to the complainant's request and was not, therefore, obliged to confirm or deny whether it held information within the scope of part (D) of the request in this case.
20. Having reached this conclusion on section 32(3), it has not been necessary for the Commissioner to also consider section 40(5).

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2258197/fs50699530.pdf>

Right of appeal

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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

**Deborah Clark
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**