

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 25 March 2022

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

Decision (including any steps ordered)

1. The complainant has requested information relating to an employment tribunal.
2. The Commissioner's decision is that the Ministry of Justice (MOJ) was entitled to rely on section 32(3) FOIA to neither confirm nor deny that the requested information is held.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 25 May 2021, the complainant wrote to MOJ and requested a number of items relating to an Employment Tribunal. Given the nature of the request and being mindful of his responsibility as the regulator of the UK GDPR, the Commissioner does not consider it is appropriate for the request to be detailed in its entirety in a public document
5. The MOJ responded on 17 June 2021. It stated that it could neither confirm nor deny that any information was held by virtue of sections 32(3) and 40(5B)(a)(i).
6. The complainant requested an internal review and disputed the application of section 40(5B)(a)(i). MOJ responded on 28 July 2021 and maintained its position.

Scope of the case

7. The complainant contacted the Commissioner on 2 August 2021 to complain about the way their request for information had been handled.
8. The Commissioner wrote to the complainant to establish their outstanding concerns and they confirmed *"My sole complaint is the refusal of the MoJ to tell me the name of the chambers as set out in the third item on the FOIA."*
9. It was unclear to the Commissioner which exemption MOJ had relied on to withhold this information. However, he invited MOJ to clarify which exemption it considered applicable and provide its supporting arguments.
10. MOJ confirmed that it had refused to confirm or deny the information was held under Section 32(3) and Section 40(5B)(a)(i).
11. Therefore, the Commissioner considers the scope of this case to be to determine if MOJ was entitled to rely on either of the above exemptions in response to the request.

Reasons for decision

Section 32 court records etc

12. Section 32(3) of FOIA provides that if a public authority receives a request for information which, if held, would be exempt under section

32(1) or 32(2), it can rely on section 32(3) to neither confirm nor deny whether or not it holds the requested information.

13. In this case, the MOJ considered that, if held, the requested information would be exempt by virtue of section 32(1)(b).

14. Sections 32(1) and (3) of FOIA state:

“(1) Information held by a public authority is exempt information if it is held only by virtue of being contained in—

(b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of this section.”

15. Section 32 is an absolute exemption and is therefore not subject to any public interest considerations.

16. The Commissioner has published guidance on section 32 of FOIA which sets out the ICO interpretation of the section 32 exemption¹:

“We believe that section 32 was drafted to allow the courts to maintain judicial control over access to information about court proceedings. This includes giving courts control to decide what information can be disclosed without prejudicing those proceedings.

In effect, section 32 ensures that FOIA can't be used to circumvent existing court access and discovery regimes. Also, public authorities won't be obligated to disclose any information in connection with court, inquiry or arbitration proceedings outside those proceedings.”

17. MOJ explained that if the information was held it would be considered as part of a court record as the information could only be obtained from reviewing the court file. It also considered it could neither confirm nor deny the information was held as to do so would show to the world at large that a particular court case was in existence. This would also trigger Section 40(5B)(a)(i) as confirming whether the information was held, would also confirm to the world at large that a case in the justice system is in existence. In turn, that confirmation would lead to the individuals concerned, within the case, being identified.

¹ <https://ico.org.uk/media/for-organisations/documents/2021/2619028/s32-court-inquiry-and-arbitration-records.pdf>

18. In its submission to the Commissioner, MOJ confirmed that if held, the information would relate to a court case specified in the request. It explained that this information would have been obtained from reports, and an application submitted by individuals, on behalf of individuals.

Commissioner's decision

19. FOIA is a public disclosure regime, not a private regime. This means that any information disclosed under FOIA by definition becomes available to the wider public. If any information were held, confirming this would reveal to the world at large that particular individuals were involved in the justice system.
20. In this case, the Commissioner is satisfied that the requested information, if held, would be held in relation to court proceedings. He also considers that the information within the scope of the request, if held, would be created by a court and she is further satisfied that there would be no other reason for the MOJ to hold it other than for the purposes of those proceedings.
21. The Commissioner has therefore 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 the information.

Right of appeal

22. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF