



Mr Richard Taylor

[www.justice.gov.uk](http://www.justice.gov.uk)

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Our reference: FOI-80361 and ICO-81767

20 June 2013

**ICO Case FS5048873 (Mr Richard Taylor)**

Dear Mr Taylor,

I am writing further to your earlier requests and the complaint you have made to the Information Commissioner's Office (ICO) about the responses you have received.

We have reviewed the responses provided to your requests made via [www.whatdotheyknow.com](http://www.whatdotheyknow.com). Our records show that you submitted a request on 22 January 2013 at 02:20, in which you asked for the following information:

**Could you please release the register of decisions for Cambridge Magistrates' Courts on Monday the 21st of January 2013.**

This request is at

[https://www.whatdotheyknow.com/request/register\\_of\\_decisions\\_cambridge#comment-37820](https://www.whatdotheyknow.com/request/register_of_decisions_cambridge#comment-37820)

Our records also show that, on 22 January 2013 at 02:22, you asked for the following information:

**Could you please release the information which would be expected to appear on the full copy of the court list in relation to appearances, hearings, trials etc. currently scheduled to be held in Cambridge Magistrate's Court in the week commencing Monday the 25th of February 2013.**

This request is at:

[https://www.whatdotheyknow.com/request/cambridge\\_magistrates\\_court\\_list\\_2#comment-37690](https://www.whatdotheyknow.com/request/cambridge_magistrates_court_list_2#comment-37690)

Your requests were handled under our reference "FOI-80361".

Our Unit judged that your requests asked for information held by the court.

Our Unit took the view that the information that could be disclosed depended on the circumstances that prevailed in each case. For example, reporting restrictions may have been in place. The information that could be disclosed also depended on the person asking for the information. For example, information may be available to a member of the press that is unavailable to the general public. The Criminal Procedural Rules determine what can, or cannot, be disclosed. The court was therefore asked to provide you with a response, outside of the Freedom of Information Act 2000 (FOIA).

However, given your complaint to the ICO, I have reviewed our response to your request under the regime provided by the Freedom of Information Act.

I can now confirm that HMCTS holds information that you have asked for, but in this case we will not be providing it to you as it is exempt from disclosure. We are not obliged to provide information contained in a court record.

In this case:

- The register of decisions of Cambridge Magistrates' Court on 21 January 2013 is a document created by the court's administration, and holds information about the decisions made by the court's magistrates.
- The court list in relation to appearances, hearings, trials etc. held in Cambridge Magistrate's Court in the week commencing Monday the 25th of February 2013, is a document created by the court's administration

Given these are documents created by the court's administration, they are therefore exempt from disclosure to you under section 32 (1) (c) of the Act.

I should explain further that the rules of court already provide a comprehensive code governing for the disclosure of court records and documents. It was therefore not the intention that the FOI Act should provide indirect access to court records; the greater public interest was considered to lie in the preservation of the courts' own procedures for considering disclosure and so court records were made exempt from the FOIA.

The terms of this exemption in the Freedom of Information Act mean that we do not have to consider whether or not it would be in the public interest for you to have the information. You can find out more about Section 32 by reading the extract from the Act and some guidance points we consider when applying this exemption, attached at the end of this letter.

You can also find more information by reading the full text of the Act (available at <http://www.legislation.gov.uk/ukpga/2000/36/section/32>) and further guidance.

In addition, these documents contain information about people other than you. We are not obliged, under section 40(2) of the Act, to provide information that is the personal information of another person if releasing would contravene any of the provisions in the Data Protection Act 1998 (DPA) for example, if disclosure is unfair.

The terms of this exemption in the Freedom of Information Act mean that we do not have to consider whether or not it would be in the public interest for you to have the information.

You can find out more about Section 40(2) by reading the extract from the Act and some guidance points we consider when applying the exemption, attached at the end of this letter.

You can also find more information by reading the full text of the Act (available at <http://www.legislation.gov.uk/ukpga/2000/36/section/40>) and further guidance <http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/exemptions-guidance>. The Data Protection Act can be found at the following link: <http://www.legislation.gov.uk/ukpga/1998/29/contents>

You have the right to appeal our decision if you think it is incorrect. Details can be found in the 'How to Appeal' section attached at the end of this letter.

#### Disclosure Log

You can also view information that the Ministry of Justice has disclosed in response to previous Freedom of Information requests. Responses are anonymised and published on our on-line disclosure log which can be found on the MoJ website:

<http://www.justice.gov.uk/information-access-rights/latest-disclosure-log>

The published information is categorised by subject area and in alphabetical order.

I am copying this letter to the ICO case officer, Maureen White, who is dealing with your complaint at the Information Commissioner's Office (case reference FS50488873)

Yours sincerely

Mike Cranwell  
Operational Support Officer

## How to Appeal

### Internal Review

If you are not satisfied with this response, you have the right to an internal review. The handling of your request will be looked at by someone who was not responsible for the original case, and they will make a decision as to whether we answered your request correctly.

If you would like to request a review, please write or send an email to the Data Access and Compliance Unit within two months of the date of this letter, at the following address:

Data Access and Compliance Unit (10.34),  
Information & Communications Directorate,  
Ministry of Justice,  
102 Petty France,  
London  
SW1H 9AJ

E-mail: [data.access@justice.gsi.gov.uk](mailto:data.access@justice.gsi.gov.uk)

### Information Commissioner's Office

If you remain dissatisfied after an internal review decision, you have the right to apply to the Information Commissioner's Office. The Commissioner is an independent regulator who has the power to direct us to respond to your request differently, if he considers that we have handled it incorrectly.

You can contact the Information Commissioner's Office at the following address:

Information Commissioner's Office,  
Wycliffe House,  
Water Lane,  
Wilmslow,  
Cheshire  
SK9 5AF

Internet address: [https://www.ico.gov.uk/Global/contact\\_us.aspx](https://www.ico.gov.uk/Global/contact_us.aspx)

## **EXPLANATION OF FOIA - SECTION 32 –COURT RECORDS**

We have provided below additional information about Section 32 of the Freedom of Information Act. We have included some extracts from the legislation, as well as some of the guidance we use when applying it. We hope you find this information useful.

### **The legislation**

#### **Section 1: Right of Access to information held by public authorities**

- (1) Any person making a request for information to a public authority is entitled—
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
  - (b) if that is the case, to have that information communicated to him.

#### **Section 32: Information held by virtue of being contained within court records**

- (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, 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.
- (2) Information held by a public authority is exempt information if it is held only by virtue of being contained in—
- (a) any document placed in the custody of a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration, or
  - (b) any document created by a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration.

### **Guidance**

Section 32 exempts information contained in those litigation documents and court, tribunal and inquiry records to which it applies. It exempts information held by a public authority if it is held solely by virtue of its being contained in those categories of document.

The information must be included in a particular type of document and must be held by the public authority only by virtue of this. However, if the information is so held, it will be exempt regardless of its content and for the reasons set out below public authorities should refuse the request. This applies both to the document itself and to any copies of that document or copies of the information which it contains. There are separate and specific regimes for access to information held by courts and tribunals, designed to give those bodies themselves a measure of control over that information. For example, Rule 5.4 of the Civil Procedure Rules deals with access to court documents in civil proceedings in the county courts, the High Court and the Court of Appeal. It allows any person, on payment of the prescribed fee, to inspect and take a copy of (a) a claim form which has been served, (b) a judgment or order given or made in public, and (c) any other document if the court gives permission. Where a person has the right to inspect a document without permission, a request can be made to the court staff. Where permission is required, an application must be made to a judge. The Civil Procedure Rules do not include any guidance on the court's exercise of its discretion but the court will take account of all the circumstances of the case and the competing principles of open justice and the right to privacy of persons who may be mentioned in court documents.

## **EXPLANATION OF FOIA - SECTION 40(2) – INFORMATION RELATING TO THIRD PARTIES**

We have provided below additional information about Section 40(2) of the Freedom of Information Act. We have included some extracts from the legislation, as well as some of the guidance we use when applying it. We hope you find this information useful.

### **The legislation**

#### **Section 1: Right of Access to information held by public authorities**

- (1) Any person making a request for information to a public authority is entitled—
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
  - (b) if that is the case, to have that information communicated to him.

#### **Section 40: Personal Information.**

- (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
- (2) Any information to which a request for information relates is also exempt information if—
- (a) it constitutes personal data which do not fall within subsection (1), and
  - (b) either the first or the second condition below is satisfied.
- (3) The first condition is—
- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—
    - (i) any of the data protection principles, or
    - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
  - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

### **Guidance**

Section 40 of the Freedom of Information Act applies to:

- requests for the personal data of the applicant him or herself
- requests for the personal data of someone else (a third party)

Personal data of a third party: Personal data of a third party is exempt under section 40(2) if its disclosure to a member of the public would contravene one or more of the data protection principles and a request must be refused.

#### **The Data Protection Principles:**

The data protection principles are a statutory code for the processing of personal data. They are set out in Part I of Schedule 1 to the Data Protection Act.

Three data protection principles require personal data to be:

- fairly and lawfully processed
- processed for specified and lawful purposes
- adequate, relevant and not excessive
- accurate, and kept up to date
- not kept longer than necessary

- processed in accordance with individuals' rights under the Data Protection Act
- kept secure
- not transferred to non-EEA (European Economic Area) countries without adequate protection

The principle most likely to be relevant to the disclosure of information under the Freedom of Information Act is the first principle. This requires personal information to be:

- processed 'fairly'
- processed 'lawfully'
- not processed at all unless one of the 'conditions' for fair processing is met

Processing in this context includes disclosure.

In most cases, personal data will be exempt if disclosure would be 'unfair'. Disclosure of personal data relating to a third party will often breach the fair processing principle if there was a legitimate expectation by a third party that this information would remain confidential.