

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 27 January 2016

**Public Authority:** Leicester City Council

**Address:** City Hall  
115 Charles Street  
Leicester  
LE1 1FZ

#### Decision (including any steps ordered)

---

1. The complainant has requested information relating to a judicial review. Leicester City Council refused the request under the exemption for legal professional privilege – section 42 of the FOIA. During the Commissioner's investigation the council also sought to rely on section 32(1)(b) to withhold the information.
2. The Commissioner's decision is that has correctly withheld the requested information under section 32(1)(b) of the FOIA.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

#### Request and response

---

4. On 29 August 2015, the complainant wrote to Leicester City Council (the "council") and requested information in the following terms:

*"I understand that Leicester City Council is being judicially reviewed for its decision to boycott goods from Israeli settlements in the West Bank. Under the Freedom of Information Act, please provide me, in an electronic format, with:*

- A copy of any letter(s) before action received, possibly under the pre-action protocol*
- A copy of any legal papers subsequently served by the sender(s) of any letter(s) before action"*

5. The council responded on 11 September 2015. It stated that it was withholding the requested information under the FOIA exemptions for information accessible by other means (section 21) and legal professional privilege (section 42(1)).
6. Following an internal review the council wrote to the complainant on 21 September 2015. It stated that it was withdrawing its reliance on section 21 of the FOIA but maintaining its application of section 42(1) to withhold the requested information.

### Scope of the case

---

7. On 21 September 2015 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner confirmed with the complainant that his investigation would consider whether the council had correctly applied section 42(1) of the FOIA to withhold the requested information.
9. During the course of the Commissioner's investigation the council disclosed a redacted version of the information to the complainant. The council also advised the Commissioner that, in addition to section 42(1), it also wished to rely on the exemption in section 32(1)(b) of the FOIA in withholding the redacted information.
10. The Commissioner has considered whether the remaining withheld information is subject to the exemptions applied.

### Reasons for decision

---

#### Section 32(1) – Court records

11. Section 32(1) of the FOIA states:

*"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 case 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."*

12. In this case the council has confirmed that it is relying on section 32(1)(b) to withhold the requested information. It has stated that the information contained within the pre-action letter is exempt on the basis of section 32(1)(b) as it is held by the council only and solely by virtue of being contained in a document served on the council for the purposes of proceedings in a cause or matter.
13. The Commissioner notes that the withheld information consists of a letter before claim pursuant to the Judicial Review pre-action protocol. The letter was sent to the council by solicitors acting behalf of a third party which was seeking a judicial review of the council's boycott of goods from Israeli settlements in the West Bank.
14. The council has directed the Commissioner to a previously issued decision notice which found that, where there are proceedings at the time a request under the FOIA has been made this will bring pre-action letters within the scope of section 32(1)(b). The council has argued that section 32(1)(b) can apply to the letter before claim as the claim against the council was lodged with the High Court on 13th August 2015 and the council received the FOI request on 1st September 2015.
15. The Commissioner acknowledges that he has previously found that section 32(1)(b) can cover letters before claim, providing that proceedings have actually been brought at the time the request is made<sup>1</sup>.
16. In this instance, the Commissioner understands that the pre-action protocol for Judicial Review proceedings applies, and the letter before claim was in effect a necessary step before proceedings could be brought. Under the protocol the letter appears to be for the dual purposes of: (1) attempting to reach agreement without going to court and (2) preparing to issue proceedings if no agreement can be reached.
17. In addition, the Commissioner notes that at the time of the request, the claim against the council had been lodged with the High Court. He acknowledges that the circumstances in this case mirror those in a previously issued decision notice where he found that section 32(1)(b) had been correctly applied to withhold a pre-action letter. He has,

---

<sup>1</sup> See decision notice issued 31 July 2014, ICO reference: FS50508730; published on the ICO website here: [https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1008880/fs\\_50508730.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1008880/fs_50508730.pdf)

therefore, found that the council has correctly applied section 32(1)(b) to withhold the requested information.

18. As section 32(1)(b) is an absolute exemption the Commissioner is not required to consider the balance of the public interest. The Commissioner has therefore determined that the council correctly withheld the letter before claim. As the information has been found to be exempt under section 32(1)(b) the Commissioner has not gone on to consider whether section 42(1) is applicable in this case.

## Right of appeal

---

19. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

20. 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.
21. 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**