

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 September 2025

Public Authority: UK Supreme Court
Address: Parliament Square
London SW1P 3BD

Decision (including any steps ordered)

1. The complainant requested legal documents held by the UK Supreme Court (the Supreme Court). The Supreme Court withheld the information under section 32(1) (Court records) of FOIA.
2. The Commissioner's decision is that the Supreme Court was entitled to rely on sections 32(1)(a) and (c) of FOIA to refuse the request.
3. The Commissioner is also satisfied that the Supreme Court provided reasonable advice and assistance in accordance with section 16(1) (duty to provide advice and assistance) of FOIA.
4. The Commissioner requires no steps to be taken as a result of this decision.

Background

5. The Commissioner acknowledges that, during the course of their correspondence with the complainant, the Supreme Court explained:

"For cases filed in the Supreme Court and JCPC [Judicial Committee of the Privy Council] before 2 December 2024, court documents are not publicly available. They are only available on formal application to the Registrar together with the fee of £485.00, unless parties are willing to provide them to you direct. Part of this application requires the views of the parties on the release of the documents.

[...]

We should also note, in the interest of providing complete information, that for cases filed after 2 December 2024, it will not be the case that all court documents will be available. Only the written cases and the Statement of Facts and Issues will be available from these cases. All other documents in relation to these cases will still be subject to Section 32 of the FOIA and require an application via Registry for access”.

Request and response

6. On 16 December 2024, the complainant wrote to the Supreme Court and requested information in the following terms:

“I am writing to request access to information under the Freedom of Information Act 2000.

I am seeking access to legal submissions, skeleton arguments, or related legal documents filed in the case of Carmichael v Secretary of State for Work and Pensions [2016] UKSC 58 (or similar variations of this case) that pertain to [specific legal issues, e.g., “the judicial review or appeals related to the ‘bedroom tax’ or discretionary housing payments”]. Additionally, the same information on the RR v Secretary of State for Work and Pensions [2019] UKSC 52, on appeal from [2018] UKSC 355 ACC.

[...]

If these documents are exempt from disclosure under Section 32 of the FOIA or other exemptions, I kindly request guidance on how I may obtain them through alternative legal or administrative channels. I would also appreciate being directed to any publicly available versions or summaries of the requested documents, such as judgments or transcripts.

Please confirm whether anonymised or redacted versions of the skeleton arguments and legal submissions are available for release”.

7. The Supreme Court responded on 16 January 2025, confirming that it holds the requested information. However, it stated that it was exempt from release under section 32 of FOIA, specifically either, or both, of 32(1)(a) and (c). By way of advice and assistance, it provided the complainant with details of other means of accessing the information.

8. Following an internal review, the Supreme Court wrote to the complainant on 6 March 2025 maintaining its position.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way their request for information had been handled. They disputed that the requested information had been correctly withheld.
10. They also considered that the Supreme Court had failed to offer meaningful advice and assistance, in accordance with section 16 of FOIA.
11. With regard to the application fee of £485 quoted by the Supreme Court, they asked the Commissioner:

“... whether it is appropriate, proportionate, or lawful for access to essential legal documents to be contingent on an excessive fee”.
12. The Commissioner acknowledges that the complainant described the application fee as ‘an excessive and discriminatory cost barrier’ and considers that it ‘functions as a financial deterrent’.
13. The Commissioner’s duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part I of FOIA.
14. The Commissioner recognises that, when explaining the principles that are followed when setting the Supreme Court’s fees, the Supreme Court referred the complainant to the Constitutional Reform Act 2005. However, for the avoidance of doubt, the Commissioner asked the Supreme Court to confirm the basis on which the application fee is charged.
15. From the evidence he has seen, the Commissioner does not consider the complainant’s concerns about the application fee fall within his remit, ie they are not a consideration under FOIA.
16. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part I of FOIA.
17. The analysis below considers the Supreme Court’s application of section 32 to the requested information. It also considers whether the Supreme Court complied with section 16.

Reasons for decision

Section 32 Court records

18. Section 32 of 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.

19. In accordance with his [guidance](#) on section 32 the Commissioner considers:

"...that section 32 was drafted to allow the courts to maintain judicial control over access to information about court proceedings.

[...]

In effect, section 32 ensures that FOIA cannot 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".

20. Section 32(1) 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 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".

21. Therefore, to be caught by section 32, the information must be:

- contained in a type of document specified by the exemption; and
- held 'only by virtue' of being contained in that document.

22. Section 32(1) is a class based exemption. This means that any information falling within the category described is automatically exempt from disclosure, regardless of whether or not there is a likelihood of

harm or prejudice if it is disclosed. It is therefore conceivable that the exemption could apply to information which may otherwise be available to an applicant via other means, or to information which is already widely available.

23. The Supreme Court considers the relevant exemptions in this case are 32(1)(a) and (c).
24. The Commissioner has first considered the Supreme Court's application of section 32(1)(a).
25. In its submission, the Supreme Court confirmed:

"... that the types of document that were withheld fall within the scope of section 32(1)(a), namely: legal submissions, skeleton arguments and related legal documents".
26. It confirmed that the withheld documents relate to the appeals specified in the request.
27. It also said:

"The UK Supreme Court came to hold this information by virtue of it being submitted by the legal teams of the appellants and respondents".
28. The Supreme Court also told the Commissioner that the withheld information is only held by virtue of being contained in documents filed with the Court for the purposes of proceedings, namely proceedings relating to the activities of the Supreme Court .
29. From the evidence he has seen, the Commissioner is satisfied that the information withheld by virtue of section 32(1)(a) is contained in a document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings, and that there is no reason for the Supreme Court to hold it other than for the purposes of those proceedings.
30. The Commissioner is satisfied that section 32(1)(a) applies.
31. The Commissioner has next considered the Supreme Court's application of section 32(1)(c).
32. Acknowledging that the request specified 'related legal documents', the Supreme Court told the Commissioner most legal documents fall under section 32(1)(a). However, it had interpreted the request for 'related legal documents' to cover the full court record for the two cases specified in the request.

33. It explained that documents are created internally solely for the purposes of proceedings, including, for example, orders of the Court, notices of hearings, internal Court memoranda and correspondence relating to the proceedings.
34. It confirmed:
- “All these documents are created by members of the Court’s administrative staff for the purposes of proceedings in the particular case [sic] or matter. The relevant members of staff who would create these documents are judicial assistants, case managers, Registrars, and registry support officers”.
35. From the evidence he has seen, the Commissioner is satisfied that the information withheld by virtue of section 32(1)(c) is contained in a document created by a member of the administrative staff of a court, for the purposes of proceedings, and that there is no reason for the Supreme Court to hold it other than for the purposes of those proceedings.
36. The Commissioner is satisfied that section 32(1)(c) applies.
37. As section 32 is an absolute exemption, there is no requirement to carry out a public interest test.

Section 16 duty to provide advice and assistance

38. Section 16(1) of FOIA states:
- “It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.
39. Where an authority intends to refuse a request under section 32, the Commissioner considers it good practice to point the applicant to some other means by which that information may be obtained.
40. The complainant told the Commissioner:
- “I was simply told to file a procedural application and pay £485. No attempt was made to explore whether the information could be provided in part, redacted, or via another route”.
41. From the evidence he has seen, the Commissioner is satisfied that the Supreme Court explained to the complainant that they could make a formal application to the Registrar, or, to avoid the need for the application or the fee, contact the relevant parties directly.

42. The Commissioner recognises that, when providing the complainant with those other options for obtaining the requested documents, the Supreme Court also provided details to enable the relevant parties to be contacted.
43. The Commissioner is satisfied that the advice and assistance was reasonable in the circumstances of this case.

Right of appeal

44. 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)
General Regulatory Chamber
PO Box 11230
Leicester
LE1 8FQ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

45. 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.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Carolyn Howes
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