

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 July 2012

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

Decision (including any steps ordered)

1. The complainant requested information regarding the tenancy of Tay House in Glasgow and any delegated authority the Chief Executive of the Criminal Injuries Compensation Authority (CICA) has to enter into agreements binding the Secretary of State for Justice. At the internal review stage the Ministry of Justice (MOJ) revised the advice originally given to the complainant. The MOJ stated that no information was held.
2. The Commissioner's decision is that the MOJ was correct to state no information was held in relation to the request.
3. The Commissioner does not require the MOJ to take any remedial steps to ensure compliance with the legislation.

Request and response

4. On 4 July 2011 the complainant wrote to the MOJ and requested information in the following terms:

"I am advised by the Criminal Injuries Compensation Authority that the tenant of the office which is occupied by the Criminal Injuries Compensation Authority at Tay House in Glasgow is the Secretary of State for Justice.

According to the sub-lease the tenant is the Secretary of State for the Environment.

Is it correct that the tenancy of this office has transferred from the Secretary of State for the Environment and has eventually been transferred to the Secretary of State for Justice?

If this is correct, please specify the basis on which the Secretary of State for Justice understands this has occurred.

Is it correct that the Chief Executive of the Criminal Injuries Compensation Authority, Mrs Carole Oatway, can enter into agreements binding the Secretary of State for Justice because she has delegated authority so to do?

If so, please forward a copy of the letter or other document granting her such delegated authority."

5. The MOJ responded on 28 July 2011. It provided answers with regards to the questions posed by the complainant in his correspondence.
6. On 17 October 2011 the complainant requested an internal review. The information provided to him by the MOJ was contradicted by information he had in his possession from the Home Office.
7. Following an internal review the MOJ wrote to the complainant on 15 November 2011. It apologised that the information previously provided had been inaccurate and stated that the tenant of Tay House was the Secretary of State for Communities and Local Government not the Secretary of State for Justice. Therefore, the MOJ stated that it did not hold any information relevant to the request.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He did not accept that the MOJ did not hold the information he had requested. He argued that as CICA is not independent from the MOJ if CICA held any information relevant to the tenancy then it followed that the MOJ would. The complainant found it difficult to believe that no information was held by the MOJ about the transfer or regulation of the tenancy.

Reasons for decision

9. Section 1(1) of the FOIA states that:

"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."

10. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
11. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
12. In order to make such a determination in this case, the Commissioner made enquiries to the MOJ with regards to any searches for the requested information it had carried out and how that information, if held, would be recorded and retained.
13. The MOJ provided the Commissioner with a detailed chronology of its handling of the request and admitted that the initial response to the complainant had been incorrect. The MOJ stressed that this was rectified at the internal review stage and went to some lengths to explain to the Commissioner that the correct response was that no information relevant to the request was held. It stated:

"Within [the Commissioner's] correspondence to us, [he] detailed a number of queries about the searches MOJ had made for the information requested and the basis of our conclusion that we do not hold this information. The key issue here, as outlined in our internal review response...is that the tenancy of Tay House has never been transferred to the Secretary of State for Justice and that therefore no recorded information within the scope of the original [request] is held".

14. The Commissioner's attention was drawn to the internal review which the MOJ had carried out. In paragraph 7.5 the MOJ stated, with regard to whether relevant secretaries of state hold tenancies for specialist buildings in their names:

*"For the ministry of Justice the specialist buildings in question are the prison estate and its related buildings only. The prison estate was transferred from the Home Office at the time that the Ministry of Justice was created, and **does not cover** [emphasis added by MOJ] the Tay House site. To be clear on this point, the tenancy of Tay House has never been transferred to the Secretary of State for Justice..."*

15. Having reiterated that the tenancy had never been transferred to the MOJ, it did continue addressing each of the Commissioner's queries. The MOJ listed the types of information it had searched for in order to answer the request, for instance, documentation held by the Estates Directorate for the MOJ and any email exchanges between MOJ and CICA officials.
16. The searches detailed by the MOJ were extensive and did not uncover any information suggesting that a transfer of tenancy had ever taken place. *'No documentary or other evidence of the existence of such a delegation'* as that referred to in the part of the request relating to Mrs Carole Oatway, Chief Executive of CICA, was found either.
17. The MOJ confirmed to the Commissioner that the searches had included electronic data. Relevant staff in both the MOJ and Home Office had been contacted and information held on laptops and personal computers either locally or on networked resources had been searched. No information regarding the destruction of any relevant documents was found and for clarification the MOJ provided the Commissioner with details of its retention policies.
18. The Commissioner is satisfied with the searches carried out and the detailed explanation concerning the tenancy of Tay House provided by the MOJ. He considers, on the balance of probabilities, that no information relevant to either part of the complainant's request is held by the MOJ.

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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

Jon Manners
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