

Freedom of Information Act 2000

Decision notice

Date: 16 December 2013

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information relating to computer systems used by Her Majesty's Courts and Tribunal Service (HMCTS). HMCTS did not consider the requests to be valid requests for information under the terms of the Freedom of Information Act (the Act) and treated them instead as official correspondence.
2. The Commissioner's decision is that two of the requests made by the complainant are valid under the terms of the Act and should have been handled as such. The remaining request is not valid under the terms of the Act.
3. In addition, HMCTS has breached section 10 of the Act in respect of the two valid requests. Whilst a response has been issued which provided the recorded information held, it was done so after the 20 working day maximum limit afforded by the Act. No further action is required.
4. The complainant has also appealed to the Commissioner that HMCTS breached section 19 of the Act by not having certain information which is available on the website of the Ministry of Justice (of which HMCTS is an executive agency) listed in its publication scheme. The Commissioner's decision is that this is not a breach of section 19 and no further action is required.

Background

5. The complainant is listed on the Ministry of Justice's (MOJ) website as a vexatious litigant.¹
6. Section 42(5) of the Senior Court Act 1981 states that an order to declare an individual as a vexatious litigant shall be published in the London Gazette. The MOJ has also published this information on its website.
7. The complainant wrote to the Commissioner and stated that this was a breach of her data protection rights, as well as being a breach of section 32 of the Act (court records) as information kept in court records was being published in the public domain.
8. The Commissioner has carried out an assessment on whether the Data Protection Act has been complied with in a separate case which will not be discussed in this decision notice.
9. Regarding section 32 of the Act, this cannot be applied by a complainant on the grounds that they consider a public authority has incorrectly disclosed personal data contained in court records, and will not be considered in this decision notice.

Request and response

10. On 6 July 2013, the complainant wrote to HMCTS and requested information in the following terms:

"QUESTIONS TO THE HMCTS UNDER THE FREEDOM OF INFORMATION ACT 2000, [OR OTHERWISE]:

Q.] Does the HMCTS operate a court-case recording of information system similar, [or otherwise] to the Tribunal's ETHOS system?

i.] If the HMCTS does operate a ETHOS-like system, then is the dominant purpose of recording and filing the court-case information [such as section 42 SCA legal proceedings]-specifically for legal proceedings, and/or is the storing of that information in the HMCTS's

¹ <http://www.justice.gov.uk/courts/vexatious-litigants>

database for administrative purposes rather than any other 'subsequent use'?

Q.2] What is the name of the computerised system that the HMCTS uses to record and file information about individuals that have been imposed by the Court with a Anti-Social Behavioural Order ["ASBO"]?

Q.3] What is the name of the computerised system, [if any exists], that the HMCTS uses for recording and filing the case details of individuals that have been imposed with a 'Restriction Of Civil Proceedings' Order [pursuant to section 42 of the Senior Courts Act 1981]?"

11. HMCTS responded on 8 July 2013, stating:

"...your enquiry does not fall under the Freedom of Information regime and will be treated by the department as Official Correspondence."

12. The complainant wrote back on the same day asking for the decision to handle the requests as official correspondence to be reviewed. HMCTS also replied on the same day and stated that the requests would be handled as official correspondence by the relevant department, and not as requests under the Act.

13. HMCTS provided information relating to the complainant's requests on 30 August 2013 as follows:

"1. There are different recording systems for the different jurisdictions of HM Courts & Tribunals Service. They are used for administrative purposes.

I am not certain what you mean by 'subsequent use.'

2. As Anti Social Behaviour Orders are issued in Magistrates, County (Anti Social Behaviour Injunctions) and Crown Courts. ASBO's made by a magistrates' court would be recorded as a case on the Libra case management application. The Crown Court application is known as Crest. For the civil cases, casesman is the method of recording information.

3. HMCTS has a Microsoft word document which is updated with names of those imposed with the section 42 of the Senior Courts Act 1981."

Scope of the case

14. The complainant contacted the Commissioner on 8 July 2013 to complain about the way her request for information had been handled. Specifically, the complainant outlined her complaint as follows:

- That the eventual response was provided after 20 working days

- That the request was handled as official correspondence
 - That the HMCTS has no right to publish her name on a website of vexatious litigants
 - That the list of vexatious litigants is not available through the MOJ's publication scheme.
15. The Commissioner considers the scope of the case to be whether the requests are valid under the terms of the Act – and if so whether a response was issued in the appropriate time limit – as well as whether the list of vexatious litigants should be provided in the MOJ's publication scheme.

Reasons for decision

Section 8 – request for information

16. Section 8 of the Act states that a “request for information” must meet the following criteria:
- It is in writing
 - States the name of the applicant and an address for correspondence
 - Describes the information requested.
17. The Commissioner considers that the first two points have been met and has focussed on the third. Section 84 of the Act defines “information” as “information recorded in any form”. For the requests in this decision, the Commissioner considers that the pertinent part of the definition is the word “recorded”. Namely, does the request describe information which could be held in a recorded format?
18. For the first request, the Commissioner considers that the complainant has not phrased her question as one which seeks information in conformity with the definition at section 84. By asking whether HMCTS operates a computer system similar to ETHOS, the complainant is asking HMCTS to compare various computer systems and make a judgement on their similarities. Responding to this query would require specialist knowledge about the various computer systems and a view to be provided as to whether or not the systems are similar. Furthermore, the Commissioner notes that the queries in the first request invite simple ‘yes’ or ‘no’ responses which could be provided without reference to - or the disclosure of - any recorded information HMCTS might hold.

19. Therefore the Commissioner's view is that the question does not "describe the information requested" as required under section 8 of the Act, and is not a valid request for information.
20. For the second and third request, the Commissioner considers that it is much more straightforward. Both ask for the name of the computer system used to record specific information. These requests describe the information requested and thus meet the definition provided by section 8 of the Act for requests for information.
21. As the second and third requests are considered to be requests for information under the terms of the Act, the Commissioner's decision is that HMCTS should have handled these requests under the provisions of the Act. The Commissioner asks that HMCTS is more diligent in identifying valid requests for information.

Section 10 – time for compliance with request

22. Section 10 of the Act states that public authorities should respond to requests for information promptly, or in any event not later than the twentieth working day after the request for information was made.
23. As HMCTS did not consider any of the complainant's requests to be requests for information it considered it was not obliged to respond within this timeframe. However, the Commissioner has established, the second and third requests are clearly requests for information under the terms of the Act and so are afforded the provisions within the legislation, including a response being provided within 20 working days.
24. The response that HMCTS provided to the second and third request gave the recorded information that would have been provided to a response for information made under the Act. HMCTS's response came on 30 August 2013 which was 38 working days after the request was made. Therefore HMCTS has breached section 10 of the Act. However, as HMCTS has provided the information no further action is required.

Section 19 – publication schemes

25. Under section 19 of the Act a public authority has a duty to adopt and maintain a publication scheme, and publish information in accordance with that publication scheme.
26. There are a number of criteria that a publication scheme has to meet in order to be approved by the Commissioner. This includes making particular classes of information available to the public as part of a

public authority's normal business. The classes of information are listed in the Commissioner's model publication scheme.² However, it is not a requirement that all information available held by a public authority – or all information disclosed on its website – has to be listed in its publication scheme.

27. In this case, the complainant stated that as the MOJ has a list of vexatious litigants on its website this information should be published through its publication scheme.
28. The Commissioner does not consider that this information falls within the classes of information public authorities are required to include in a publication scheme. Purely because information is provided on a public authority's website does not mean that said information must be listed in the authority's publication scheme.
29. The Commissioner's decision is that HMCTS has not breached section 19 of the Act and that no further action is required.

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http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/model-publication-scheme.pdf

Right of appeal

30. 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: GRC@hmcts.gsi.gov.uk

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

31. 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.
32. 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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF