

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 February 2015

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

#### Decision (including any steps ordered)

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1. The complainant requested information relating to a specified court. The Ministry of Justice (the 'MOJ') failed to respond to him until the Commissioner's intervention. In its response, the MOJ advised that it did not consider the request constituted a valid request under FOIA and instead handled it as a 'normal course of business' request.
2. The Commissioner's decision is that the MOJ has handled the request properly. He does not require it to take any steps in order to comply with the legislation.

#### Request and response

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3. On 19 August 2014 the complainant wrote to the MOJ and requested information in the following terms:  
  
*"Please advise under the freedom of information act if Master Leslie has given instruction to his staff to tell people wishing to make a claim in the Queens Bench common law court of record that it does not exist or is unavailable.*  
  
*2) If the court does exist please advise the correct procedure to access the court in the district courts. At present these courts refuse access."*
4. In the absence of any response, the complainant contacted the Commissioner on 17 September 2014 and was advised to contact the MOJ to chase his request. The Commissioner understands that the complainant resubmitted his request around this time and, whilst he

received an acknowledgement that it had been received, he did not receive a substantive response.

## **Scope of the case**

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5. The complainant contacted the Commissioner again on 25 October 2014 to complain about the way his request for information had been handled.
6. The Commissioner understands that the complainant wishes to know whether the Queen's Bench common law court has been closed, and if it still exists, whether he is allowed access to it.
7. On 17 November 2014 the Commissioner wrote to the MOJ querying why it had not responded to the request. The MOJ replied to the Commissioner on 17 November 2014 and advised it had not received the request, but that it would make enquiries with Her Majesty's Courts and Tribunals Service ('HMCTS'), which falls under the MOJ umbrella.
8. Having viewed the request, the MOJ said that it did not consider it to be a valid request under FOIA. This is because the answer to the first part is a 'Yes/No' answer and part 2 asks for confirmation of a correct court procedure which could be given out as a 'business as usual' response. The MOJ confirmed that it had contacted HMCTS to see if the requested procedure could be provided to the complainant outside FOIA.
9. On 24 November 2014 the Commissioner wrote to the complainant and advised him of the MOJ's view. He explained that non-FOIA requests do not fall within his legal remit and he provided some guidance as to how the complainant might reword his request and resubmit it so that it might constitute a valid FOIA request. However, the complainant asked the Commissioner to consider his request as it stood.
10. The MOJ provided a 'business as usual' response to the complainant on 5 December 2014, considering the request to fall outside the remit of the FOIA.
11. On 5 December 2014 the complainant wrote to the Commissioner and expressed dissatisfaction with the MOJ's response. As a result, the Commissioner asked the MOJ to carry out an internal review of how it had handled this request.
12. The MOJ subsequently provided its internal review result on 6 January 2015 which found that the first question was not a request for recorded information. It also concluded that question two was interpreted as

seeking confirmation of a correct court procedure, which would be provided as a 'business as usual' response.

13. At various points during the investigation, the complainant has suggested that the MoJ could assist with the request by raising the matter with the judge Master Leslie directly, and posing some questions about the court. However, he has been advised by the Commissioner that judges are not public authorities for the purposes of FOIA. Therefore, any correspondence on this particular matter will not be considered in this notice as it is outside the Commissioner's jurisdiction.
14. In this case, therefore, the Commissioner had considered below whether the MOJ dealt with the request correctly, subject to any section 16 advice and assistance given.

## **Reasons for decision**

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### **Section 16 – advice and assistance**

15. Section 16 of FOIA sets out the duty on public authorities to provide advice and assistance, as far as it is reasonable to expect the public authority to do so, to anyone who is considering, or has made, a request for information to it. It also states that any public authority which complies with the section 45 Code of Practice in relation to the provision of advice or assistance is considered to have carried out its duty under section 16.
16. A public authority's duty to provide advice and assistance is extensive and will apply to both prospective and actual applicants for information. This duty potentially applies to most, if not all, stages of the request process under both the FOIA and the EIR. The provision of advice and assistance is how a public authority interacts with an applicant in order to discover what it is that the applicant wants and, where possible, assist them in obtaining this.
17. During the course of his investigation, the Commissioner asked the MOJ to provide him with a copy of its response to the complainant. As it did not believe the request to be valid for the purposes of the FOIA, the MOJ queried how the Commissioner deals with non-FOIA responses.
18. In response, the Commissioner advised that this depends on the facts of the case; that a request for information fails to engage section 1 of the FOIA does not mean that FOIA is irrelevant. He explained that if there is a problem with the formulation of a request, he would encourage a public authority to provide advice and assistance in accordance with section 16, so as to help bring the request into technical compliance.

19. Whether that is reasonable depends on the facts of the case. However, generally the Commissioner would not encourage a public authority to send a request down the 'normal course of business' route and apply lower standards (eg disclosing less information, or taking longer to deal with the request) when some section 16 advice and assistance could have brought the request into the scope of the FOIA.
20. In responding to the MOJ, the Commissioner confirmed that, in relation to 'normal course of business' responses generally, there are three basic scenarios:
- a request may be **valid** under FOIA but handled under 'normal course of business', provided that all of the requested information is disclosed at least as quickly as it would have been under FOIA – the benefit to the public authority is that it does not have to follow its formal freedom of information process, so the request may be disposed of more efficiently;
  - a request is **invalid** under FOIA (eg a 'yes/no' response is required) or **ineffective** (eg the specific information is not held but could be easily created), but the public authority decides to provide a response under 'normal course of business' in order to be helpful;
  - a request is **defective** under FOIA, but advice and assistance under section 16 could remedy the defect.
21. The Commissioner stated that, in this particular case, he was not convinced that the second part of the request is invalid as a freedom of information request. However, even if it is, the Commissioner advised the MOJ that he would expect it to have clarified the situation with the complainant as part of its section 16 obligation, with a view to assisting him in making an effective freedom of information request.
22. On 5 December 2014 the MOJ (HMCTS) provided its response to the complainant. It apologised for not having responded and confirmed that, after checking, it could find no record of any specific direction from Master Leslie. It advised that reference to a "*Queens Bench common law court of record*" is incorrect terminology and it provided him with two web links, one to the latest Queen's Bench Guide to Working Practices within the Royal Courts of Justice, and the second to the main [justice.gov](http://justice.gov) link which contains details of other courts.
23. The Commissioner is satisfied that the MOJ (HMCTS) provided assistance to the complainant in that it responded to the first question and confirmed that incorrect terminology in respect of the latter question

had been used, providing web links in an effort to assist the complainant.

*Conclusion*

24. The Commissioner has considered both parts of the request. He is satisfied that the MOJ dealt with the first question correctly. He is also satisfied that question 2 has been correctly handled as the MOJ is not obliged to make any further queries with the judge before responding to the request. He therefore considers that the MOJ met its section 16 obligations in the handling of this request.

**Other matters**

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25. The Commissioner acknowledges that public authorities may wish to handle requests as 'business as usual' requests. However, as outlined above, there is a duty under section 16 of FOIA to consider whether advice and assistance can be offered to remedy a defective FOIA request.

## Right of appeal

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26. 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)

27. 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.
28. 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**  
**Group Manager**  
**Information Commissioner's Office**  
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**SK9 5AF**