

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 26 November 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 about the Macur Review. The Ministry of Justice (the 'MOJ') handled the request outside FOIA as "official correspondence" and advised the complainant that the Macur Review is not covered by FOIA and that the MOJ is not responsible for the Review information, providing a link to the Review website.
2. The Commissioner's decision is that the request constitutes a valid request under FOIA and he therefore requires the MOJ to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response in compliance with the FOIA set out in paragraph 7
3. The MOJ must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

#### **Background**

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4. The Macur Review is an independent review, chaired by Lady Justice Macur, DBE. It is a review of Sir Ronald Waterhouse's inquiry into the abuse of children in care in the former Gwynedd and Clwyd council areas of North Wales between 1974 and 1996.

5. The Macur Review was set up to:
  - review the scope of the Waterhouse Inquiry, which published its report [Lost in Care](#) in February 2000;
  - determine whether any specific allegations of child abuse falling within the inquiry's terms of reference were not investigated;
  - make recommendations to the Secretary of State for Justice and the Secretary of State for Wales.

## Request and response

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6. On 3 August 2015 the complainant wrote to the MOJ and requested information via the *WhatDoTheyKnow.com*<sup>1</sup> website in the following terms:

*"s.3(2)(b) Freedom of Information Act 2000 states that information is held by a public authority where it is held by another person on behalf of the authority. Who owns the information held by the Macur Review (including minutes, correspondence and so on)? If it is not Lady Justice Macur who owns the information then it must be someone else. Who is that someone else? Is it the Ministry of Justice? If the Ministry of Justice owns the information held by the Macur Review then that information is subject to the FOIA.*

*So my question is 'Who owns the information held by the Macur Review (including minutes, correspondence and so on)?' Does Lady Justice Macur own that information and, if not, who does own it?"*

7. The MOJ responded on 4 August 2015. It stated that the above "enquiry" does not fall under FOIA and would instead be treated as "official correspondence". The MOJ explained that in order for a request for information to be handled as an FOIA request, it must be for recorded information.
8. That same day, the complainant requested an internal review of the MOJ's handling of his FOIA request, which included an alternative way of viewing his request, namely: *"What documents does the Ministry of Justice hold concerning ownership of the papers of the Macur Review?"*

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<sup>1</sup> [https://www.whatdotheyknow.com/request/macur\\_review\\_6#outgoing-466460](https://www.whatdotheyknow.com/request/macur_review_6#outgoing-466460)

9. On 5 August 2015, the MOJ responded stating that as the request does not fall under FOIA, the complainant was not entitled to an internal review. The MOJ said that an "official correspondence" reply would be issued as soon as possible.

## Scope of the case

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10. The complainant initially contacted the Commissioner on 18 August 2015 to complain about the way his request for information had been handled.
11. The Commissioner contacted the MOJ on 18 August 2015 to query whether the MOJ still intended to process the request as official correspondence and with a view to ensuring that a response would be provided within 20 working days.
12. The MOJ told the Commissioner that the Macur Review is judicially led. It said that the MOJ does not hold the information, and that the Review is not subject to FOIA. It also provided a weblink<sup>2</sup> showing that the Review is not subject to FOIA. It explained that the MOJ's Coroners, Burials, Inquests and Inquiries Team plays a role in sponsorship of the Review, but does not hold, and is not responsible for, its content.
13. In addition, the MOJ wrote to the complainant on 7 September 2015 via *WhatDoTheyKnow.com*, apologising for the delay in responding. It stated that the response was provided outside FOIA as official correspondence and confirmed that the Macur Review is a judicially led review sponsored by the MOJ and is not subject to FOIA. It confirmed that the MOJ is not responsible for the information held by the review and referred the complainant to the weblink in paragraph 12 of this notice.
14. The Commissioner then wrote to the complainant on 7 September 2015 asking him whether his case could now be closed and, if not, to set out his grounds of complaint.
15. On 20 October 2015, the complainant contacted the Commissioner to confirm that his case could not be closed as he still did not have the requested information from the MOJ relating to the ownership of the Macur Review papers. He said that he wants to know whether the MOJ

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<sup>2</sup> <https://www.gov.uk/government/organisations/macur-review>

holds any information to evidence who 'owns' the papers considered as part of the Macur Review. The Commissioner understands this to mean that he wishes to find out how and why it was set up as an 'independent' review in the first place.

16. The Commissioner passed the complainant's comments to the MOJ asking it if it wished to respond further. In the absence of any response, the Commissioner has issued this notice.
17. The Commissioner has considered 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 8 – request for information**

18. Section 8(1) of the FOIA states that requests for information should be in writing, bear the name and address of the applicant, and describe the information requested. The Commissioner considers that the request in this case fulfilled these criteria, and therefore constituted a valid request under the FOIA for recorded information.

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

19. 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.
20. 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 the FOIA. 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.
21. Generally, the Commissioner would not encourage a public authority to send a request down the 'normal course of business' or 'official correspondence' 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.

22. The Commissioner considers 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.
23. In this case, the MOJ did not respond within 20 working days. Instead it provided its response after 25 working days and only after the Commissioner's intervention. This means the complainant suffered a detriment in terms of the timescale taken to respond to his request.
24. Although the Commissioner is satisfied that the MOJ provided advice and assistance through directing the complainant to the Review weblink, the complainant is still unaware whether the MOJ holds any information relating to the Macur Review. Further, the Commissioner has also viewed the information available via the weblink and cannot find any references as to who 'owns' the Review information.
25. In addition, the complainant requested an internal review, which is recommended good practice for FOIA requests. This was refused by the MOJ because it maintained that the request should be dealt with as official correspondence. The complainant is clearly dissatisfied with the MOJ's response which resulted in him requesting an internal review. Again, by refusing to carry out an internal review in line with recommended good practice for FOIA requests, the Commissioner considers that the complainant has suffered a detriment in this case.
26. The Commissioner believes that it is feasible that the MOJ may hold some information about the Macur Review, given its sponsorship role, and that perhaps there may be some relevant information held such as terms of reference, details about who should take ownership and why and so on. He therefore requires the MOJ to issue a fresh response to the request under FOIA.

## **Other matters**

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27. 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. There is also a responsibility to ensure that the response is provided at least as quickly as it would have been under FOIA, which the MOJ failed to do.

## Right of appeal

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28. 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)

29. 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.
30. 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 .....**

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**