

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

### **Decision notice**

**Date:** 14 June 2016

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

#### **Decision (including any steps ordered)**

---

1. The complainant requested information from the Ministry of Justice (MoJ) relating to Employment Tribunals brought against the London Borough of Haringey. The MoJ responded to the request but the complainant believed that the MoJ must hold further information within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, no further relevant information is held. The Commissioner does not require the MoJ to take any steps.

#### **Background**

---

3. Information on how to make a claim to an Employment Tribunal is available on the gov.uk website<sup>1</sup>. The guidance leaflet 'Making a claim to an Employment Tribunal'<sup>2</sup> includes information about how it is determined which tribunal office deals with a claim once it has been accepted.

---

<sup>1</sup> <https://www.gov.uk/employment-tribunals/when-you-can-claim>

<sup>2</sup> [http://hmctsformfinder.justice.gov.uk/HMCTS/GetLeaflet.do?court\\_leaflets\\_id=2622](http://hmctsformfinder.justice.gov.uk/HMCTS/GetLeaflet.do?court_leaflets_id=2622)

4. That guidance states:

*"If your claim is accepted, the tribunal office which subsequently deals with your claim will normally be determined by the postcode of the place where you worked, where you applied to work or where the matter which you are complaining about happened".*

### **Request and response**

---

5. On 26 October 2015, the complainant wrote to the MoJ and requested information in the following terms:

*"Could you tell me the number of Employment Tribunals brought against the London Borough of Haringey at any time which were then heard during the period 1 April 2014 to 31 March 2015?*

*By 'Employment Tribunals', I am not including Preliminary Hearings.*

*Furthermore, could you tell me how many of these tribunals resulted in the London Borough of Haringey agreeing, or were instructed by the tribunal, to pay compensation to the complainant?"*

6. The MoJ responded on 17 November 2015. It advised that there were no cases against the London Borough of Haringey in the requested time period.

7. Following an internal review, the MoJ wrote to the complainant on 21 December 2015. It revised its position, advising that, having extended its search to incorporate additional administrative Employment Tribunal offices, one claim against London Borough of Haringey was heard between the specified dates. It told the complainant that London Borough of Haringey was not ordered to pay compensation to the claimant in that case.

### **Scope of the case**

---

8. The complainant provided the Commissioner with the relevant documentation on 26 January 2016 to complain about the way his request for information had been handled.

9. The complainant disputes the thoroughness of the searches carried out by the MoJ and, consequently, the accuracy of the information that the

MoJ has provided. He considers that the number disclosed in response to his request should be higher.

10. The complainant told the MoJ:

*"The reason I appealed the first response of 'no cases' is because I raised the same query with Haringey and got the response 'three' and 'two' respectively (which I also had reasons to not believe)".*

11. The analysis below considers whether, on the balance of probabilities, the MoJ holds any further information relevant to the request which it has not disclosed to the complainant.

## **Reasons for decision**

---

### *Section 1 general right of access*

12. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
13. Where there is some dispute between the amount of information identified 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 First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
14. 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 – or, as in this case, any further information – which falls within the scope of the request (or was held at the time of the request).
15. In applying this test the Commissioner will consider:
  - the scope, quality, thoroughness and results of the searches; and, or
  - other explanations offered as to why the information is not held.
16. The Commissioner is mindful that the MoJ explained to the complainant how Employment Tribunal cases are allocated to an administrative office. It also provided him with a link to its guidance on how to make a claim to an Employment Tribunal which explains the allocation of claims.
17. In progressing his investigation, the Commissioner asked the MoJ to respond to him, including with respect to:

- what searches it carried out for information falling within the scope of the request – and at which locations - and why those searches would have been likely to retrieve any relevant information;
  - the search terms used;
  - whether any recorded information relevant to the scope of the complainant's request had ever been held but had been deleted/destroyed; and
  - whether there were any statutory requirements upon the MoJ to retain the requested information.
18. In its substantive response to the Commissioner, the MoJ described the searches it had carried out for the requested information including with respect to the Employment Tribunal administrative offices within the scope of the search.
19. For example, the MoJ said that the business areas that had been approached were those considered to be:
- "best placed to deal with this request due to the scope of the request....."*
- and that it then:
- "relied on their expertise".*
20. The MoJ also told the Commissioner:
- "Employment tribunal cases are retained for 12 months unless an appeal is made. If the case is appealed a file may be kept for 2 years 6 months".*
21. When, as in this case, the Commissioner receives a complaint that a public authority has not provided all of the requested information, it is seldom possible to prove with absolute certainty that there is nothing further to add.
22. Having considered its submissions, the Commissioner is satisfied that the MoJ has undertaken relevant searches in order to establish and provide the complainant with the information it does hold within the scope of the request.
23. The Commissioner appreciates why the complainant considers that the MoJ may hold more information than that supplied, however, based on the explanations and searches carried out by the MoJ the Commissioner is satisfied the MoJ has conducted a reasonable and thorough search.

24. Accordingly, the Commissioner has concluded that on the balance of probabilities the MoJ does not hold any further recorded information within the scope of the request.

## Right of appeal

---

25. 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)

26. 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.
27. 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**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**