

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 30 June 2016

**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 a copy of the index of the Employment Tribunal database. The Ministry of Justice (the 'MOJ') advised that it does not hold such an index.
2. The Commissioner's decision is that, on the balance of probabilities, the requested information is not held. He does not require the MOJ to take any remedial steps to ensure compliance with the legislation.

#### Request and response

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3. On 22 January 2016 the complainant wrote to the MOJ and requested information in the following terms:

*"I would like to be provided with a copy of the index of the Employment Tribunal database.*

*I would be very grateful if you could consider the following as you process this request.*

- 1) *This is information that is already accessible to the public. There is no reason to withhold a private copy.*
- 2) *In response to a similar request submitted by my colleague last year, [name redacted], ...you asserted that the index was 'reasonably accessible' on the grounds that it can be accessed in a government building on the outskirts of Bury St Edmunds. I believe this is obviously not a fair interpretation of 'reasonably accessible'.*

*... I have taken advice from the ICO's helpline that they would interpret 'reasonably accessible' to mean the information was available online."*

4. The MOJ responded on 9 February 2016. It stated that the requested information is not held, but advised the complainant that he could search the Employment Tribunal Judgement Register database by visiting Bury St Edmunds County Court & Tribunal Service in person.
5. The complainant requested an internal review on 10 February 2016. He asked the MOJ to consider that its response to his colleague's similar request had been that the information is held, but the MOJ refused to provide it, citing section 21 (information accessible to applicant by other means). The complainant also cited an earlier request from August 2010 from another individual, where the MOJ had released the requested index.
6. Following its internal review the MOJ wrote to the complainant on 9 March 2016. It stated that it does not hold a printed or electronic index of judgements, and that there has never been a printed or electronic index of Employment Tribunal Judgements. It reiterated that the complainant could search the Judgement Register database by visiting the County Court at Bury St Edmunds.
7. In relation to the complainant's colleague's request made in 2015, the MOJ clarified that it had said *"The register is an index facility, enabling a quick search function to find the relevant files"*. It had stated that if one refers to a dictionary meaning of 'index' as a sequential arrangement of material, or a list or collection of information in alphabetical or numerical order, then the description of the Employment Tribunal Database as an index is not correct. The database, it said, *"is more a register with a search facility, guiding enquirers to search by name, type etc"* for Judgements.
8. In addition, the MOJ confirmed that it no longer has a record of the August 2010 request because its retention period for such records is three years, and the outcome had therefore been destroyed in line with its policy.

## Scope of the case

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9. The complainant contacted the Commissioner on 15 March 2016 to complain about the way his request for information had been handled.
10. The Commissioner has considered whether, on the balance of probabilities, the requested information is held by the MOJ.

## Reasons for decision

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11. Section 1 of 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.”*

12. The task for the Commissioner here is to determine whether, on the balance of probabilities, the MOJ holds any information relevant to the request which it has not disclosed to the complainant. Applying the civil test of the balance of probabilities is in line with the approach taken by the Tribunal when it has considered the issue of whether information is held in past cases.

13. The Commissioner asked the MOJ about the searches it had undertaken in order to respond to the complainant's request. In reply, the MOJ advised that enquiries were made with Bury St Edmunds Employment Tribunal ('ET') who hold the judgement database register, which is the only appropriate office to contact. It said that the ET would be aware if such an index was held.

14. The MOJ told the Commissioner that the information is not held, an '*index*' of the judgement database register does not exist, so it is not possible to say what format it would be in (ie hard copy or electronic). It confirmed that it is not aware that any recorded information ever held relevant to the scope of the complainant's request had been deleted or destroyed.

15. The MOJ also confirmed that there is no business purpose or statutory requirements for an '*index*' to be held.

16. Additionally, the MOJ advised that the judgement database register is only available to view/search at the Bury St Edmunds ET; it cannot be accessed elsewhere.

17. The Commissioner asked the MOJ why it had cited section 21 in response to the 2015 request for similar information but elected to state that the information is not held in this instance. In reply, the MOJ said section 21 was cited as the other requester had requested a copy of the Employment Tribunals **database**. This is not possible as the judgement database register is reasonably accessible to visit and search at Bury St Edmunds ET. Therefore the section 21 response was most appropriate.

As the complainant in the case under consideration here requested a copy of the **index** of the Employment Tribunal database, and because an **index** of the judgement database register does not exist either in hard copy or electronically, the 'do not hold' response was most appropriate.

18. The Commissioner sought further clarification from the MOJ about the database and any index. Having done so, he is satisfied that there is no separate index facility per se, and that all information about Employment Tribunal judgements is held by the MOJ on its judgement register database, which can be searched in order to locate specific Employment Tribunal judgements.
19. Given the explanations provided by the MOJ, the Commissioner is satisfied that no separate index for Employment Tribunal judgements exists. Instead, interested parties can search the database by attending Bury St Edmunds County Court in person.

### *Conclusion*

20. From the information provided, the Commissioner has concluded, on the balance of probabilities, that the MOJ does not hold the requested information.

### **Other matters**

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21. The complainant said he received advice from the Commissioner's helpline that information is only reasonably accessible if it is available online. This is not necessarily the case as it would depend on the wording of any particular request. Having a location where information can be viewed or searched in person, as with the database in this case, may also be reasonably accessible. In any case, it is irrelevant here as the request is for something which the MOJ does not hold.

## Right of appeal

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22. 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)

23. 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.
24. 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**