

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 March 2017

Public Authority: Ministry of Justice

Address: 102 Petty France

London

SW1H 9AJ

(email: data.access@justice.gsi.gov.uk)

Decision (including any steps ordered)

1. The complainant requested the date on which a final case stated had been served on him, together with disclosure of the method of its delivery.
2. The Commissioner's decision is that the Ministry of Justice had applied section 1(1) of the FOIA legislation correctly in declaring to the complainant what relevant information the Ministry of Justice did, and did not, hold. She therefore does not require the Ministry of Justice to take any steps to comply with the legislation.

Request and response

3. On 1 August 2016, the complainant wrote to the Ministry of Justice (MOJ) and requested information in the following terms:

I would like the MoJ to disclose from records held on what date the final case which is referred to in the letter was served on the complainant. I also include in my request disclosure of the method by which the paper was delivered, i.e., standard post, delivered by hand, recorded delivery etc.

4. MOJ responded on 26 August 2016, refusing to take the matter further on the grounds that it was vexatious, a decision MOJ confirmed on 26 September 2016 following a review.

Scope of the case

5. Also on 26 September 2016, the complainant contacted the Commissioner to complain about the way his request for information had been handled.
6. The Commissioner found that MOJ had provided some information before her investigation in other connected correspondence. During the course of her investigation, MOJ disclosed further information to the complainant.
7. The Commissioner did not consider MOJ's initial contention that the request had been vexatious but has considered what information is held.

Reasons for decision

Section 1 – general right of access

8. Section 1(1) FOIA states that anyone making a request for information to a public authority is entitled to be informed whether the public authority holds the information and, if it does, to have that information communicated to them.
9. When the Commissioner receives a complaint alleging that a public authority has stated incorrectly that it does not hold the requested information, it is seldom possible to prove with absolute certainty whether or not the requested information is held. In such cases, the Commissioner applies the normal civil standard of proof in determining the matter and decides on the 'balance of probabilities' whether or not information is held.
10. The complainant's information request arose from a letter, dated 19 December 2013, from MOJ to the complainant (the 2013 letter). The 2013 letter concerned a disputed order made against the complainant by Justices at a named Magistrates' Court. MOJ says it sent the 2013 letter at the time it was written but the complainant says he did not receive it until after MOJ had resent it to him on 3 January 2017. He also says he did not receive some other letters which MOJ say were sent to him.
11. The information request of 1 August 2016 asked for the date on which the 2013 letter had been served and the means of delivery used.
12. During her investigation the Commissioner established that, while an attachment to the letter is dated 18 December 2013, the covering letter

itself is dated 19 December 2013. The Commissioner observed that there is nothing on the face of the letter to indicate the means of its delivery. She also found that the 2013 letter had been correctly addressed to the complainant. (In three later letters to the complainant MOJ had written the postcode incorrectly as XXXX XX3 rather than XXXX XXJ).

13. On 31 January 2017 MOJ told the Commissioner that, while it was able to confirm the date when the court said it had sent the 2013 letter, it was not now able to show proof of posting.
14. On 16 February 2017 MOJ told the Commissioner that the 2013 letter should have been sent by recorded delivery as its rules required. MOJ said that the request to send the 2013 letter by recorded delivery would have been made but that it could not now prove this from the records it now held.
15. On 22 February 2017 MOJ wrote to the complainant and, in the course of a comprehensive response to this and connected matters, said:

"... the [2013 letter] should have been sent by registered / recorded post in accordance with the Magistrates' Court rules 1981. ... I can say that at time of writing, we have been unable to confirm whether or not this was sent by registered / recorded post as our records for 2013 are no longer available. ... [it] had not been returned by Royal Mail. ... [MOJ] cannot confirm at this point whether [the 2013 letter] was sent to you by registered/ recorded post as required by the Rules."

16. The complainant acknowledged that, when it sent him a copy of the 2013 letter in January 2017, MOJ had satisfied the first element of his request by providing the date when it had been served.
17. As regards the second element of the request – the means of its delivery used – the complainant said:

"... the wording used implied that [MOJ] did send the letter by registered post only that it is unable to produce the receipt. I accept that the MoJ never held a record of how the correspondence was sent which is a subtle difference to accepting that the MoJ do not now hold a record. ... I do not accept that the correspondence was ever sent."

18. The Commissioner has seen that it is common ground between the parties that the date of the 2013 letter has been provided. However, the complainant continues to dispute whether that letter was in fact sent. Whether the 2013 letter was sent or not is not a matter for the Commissioner to consider. As regards the recorded information held by MOJ, she accepts the evidence from MOJ that, both now and on a balance of probabilities, also at the date of the request, MOJ did not hold

information that would confirm the means of delivery of the 2013 letter. She also accepts that it has complied with its section 1(1) FOIA duty to provide the information it does hold that falls within the scope of the information request and to say what information it does not hold.

Right of appeal

19. 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

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

20. 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.
21. 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
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