

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2018

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. In a series of correspondence, the complainant requested information in relation to a claim for loss of earnings.
2. By the date of this notice, the Ministry of Justice (MoJ) has yet to provide a substantive response to some aspects of his requests for information.
3. The Commissioner's decision is that the MoJ breached sections 1(1) and 10(1) (general right of access and time for compliance respectively) of the FOIA.
4. The Commissioner requires the MoJ to take the following steps to ensure compliance with the legislation:
 - issue a response to the requests detailed in paragraph 11 below in accordance with its obligations under the FOIA.
5. 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.

Request and response

6. Following earlier correspondence, the complainant wrote to the MoJ on 21 February 2017 requesting information in the following terms:

"... a copy of the documentation that these figures have been based on. Furthermore can I please have a copy of exactly what the Ministry of Justice regulations are in calculating loss of earnings for workers without a contract and on zero hours. Finally as I do not concur with your decision, will you now supply me with the courts complaints procedure".

7. Following the MoJ's response, the complainant wrote to the MoJ on 23 February 2017 and requested information in the following terms:

"The attached documents do not as far as I can see cover any guidelines for employees on zero hour contracts, can I please have the Courts guidance as to exactly how the Court instructs employers to calculate loss of earnings for someone on zero hours.

Can you let me have a copy of 'I want to complain. What do I do?' along with the contact details for the Court Manager".

8. Following further correspondence, the complainant wrote to the MoJ on 10 April 2017 and requested information in the following terms:

"... can you now please confirm that a conversation took place between [name redacted] and [name redacted] on February 21, whether or not a different Loss of Earnings Certificate has been accepted by the Court, or why the original has been accepted if it contains errors?

...

My employer is adamant that it has correctly completed the Loss of Earnings Certificate. If this is not the case what course of action will the Court take with my employer?

...

Who is responsible for checking the accuracy of the Loss of Earnings Certificate? What action is taken with an incorrectly completed Certificate? Who is responsible in deciding what criteria is used to determine how income is established for zero hour contracts, this has to come from the Ministry of Justice, not the individual interpretations of employers?

The advice given to me on December 5 stands today as it did then - unless the guidelines have been changed - can I please receive a transcript of that advice".

Scope of the case

9. The complainant contacted the Commissioner on 10 July 2017 to complain about the MoJ's handling of his requests for information.
10. It is not in dispute that the MoJ corresponded with the complainant, for example on 23 February 2017, 3 April 2017 and 3 May 2017, about his requests for information and that it provided a response to some aspects of the requests.
11. The complainant detailed the information he had requested during the course of his correspondence with the MoJ which he considered remained outstanding, namely:
 - *"A copy of the documentation that these figures have been based on. (when the 0.00 was authorised) (requested 21 February 2017)*
 - *A copy of exactly what the Ministry of Justice regulations are in calculating loss of earnings for workers without a contract and on zero hours. (requested 21 February 2017)*
 - *A copy of 'I want to complain. What do I do' (requested 23 February 2017)*
 - *Who is responsible for checking the accuracy of the Loss of Earnings Certificate? (requested 10 April 2017)*
 - *What action is taken with an incorrectly completed Certificate? (requested 10 April 2017)*
 - *Who is responsible in deciding what criteria is used to determine how income is established for zero hour contracts. (requested 10 April 2017)*
 - *Courts guidance as to exactly how the Court instructs employers to calculate loss of earnings for someone on zero hours (requested 23 February 2017)".*
12. Following receipt of the complaint the Commissioner contacted the MoJ, reminding it of its responsibilities and asking it to respond to the complainant within 10 working days.
13. Despite the Commissioner's intervention, the complainant has yet to receive a substantive response from the MoJ to the outstanding aspects of his requests for information.

Reasons for decision

Section 1 general right of access

Section 10 time for compliance

14. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
15. Section 10(1) of the FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
16. The Commissioner's decision is that the MoJ did not deal with the requests for information in accordance with the FOIA. By failing to respond substantively to the requests within 20 working days, the MoJ breached sections 1(1) and 10(1) of the FOIA.

Other matters

17. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is to do with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.
18. The Commissioner's website provides advice in respect of what a public authority should do when it receives a request for information¹:

"For a request to be valid under the Freedom of Information Act it must be in writing, but requesters do not have to mention the Act or direct their request to a designated member of staff. Any letter or email to a public authority asking for information is a request for recorded information under the Act.

¹ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/>

This doesn't mean you have to treat every enquiry formally as a request under the Act. It will often be most sensible and provide better customer service to deal with it as a normal customer enquiry under your usual customer service procedures...

The provisions of the Act need to come into force only if:

- you cannot provide the requested information straight away; or*
- the requester makes it clear they expect a response under the Act."*

19. The Commissioner accepts that the complainant did not specifically state that he was making his requests under the FOIA. She acknowledges that in the circumstances, the MoJ may therefore have considered it appropriate to respond to the complainant outside of the provisions of the FOIA.
20. She is disappointed to note however, that, despite her intervention, the MoJ failed to provide the complainant with a formal response under the terms of the FOIA.

Right of appeal

21. 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

22. 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.
23. 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

**Deborah Clark
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