

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2018

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 its consultation on proposals to reform fees for grants of probate.
2. The MoJ denied holding the requested information.
3. The Commissioner's decision is that the MoJ fulfilled its obligations under section 1(1) of the FOIA by stating that this information is not held. She requires no steps to be taken as a result of this decision.

Background

4. The request in this case relates to a consultation that set out the government's proposals for reforming the fee payable for an application for a grant of probate.

Request and response

5. On 1 April 2017, the complainant wrote to the MoJ and requested information in the following terms:

"... copies of the minutes of your committee that considered the responses to the consultation exercise [on proposals to increase probate fees]".

6. The MoJ responded on 2 May 2017. It denied holding the requested information.
7. The complainant expressed dissatisfaction with that response on 26 June 2017.
8. The MoJ sent him the outcome of its internal review on 25 July 2017. It upheld its original position with respect to the information requested on 1 April 2017 – the copies of minutes.

Scope of the case

9. Following earlier correspondence, on 2 January 2018 the complainant provided the Commissioner with the relevant documentation to support his complaint about the way his request for information had been handled.
10. He disputed that the MoJ did not hold the requested information. He told the Commissioner that he found it unbelievable that a department such as the MoJ launched a public consultation but kept no records of its considerations of the response.
11. As is her practice, at the start of her investigation, the Commissioner wrote to the complainant clearly setting out the scope of her investigation, namely whether the MoJ was correct when it said that it did not hold the information he requested.
12. During the course of her investigation, the MoJ confirmed that it did not hold information within the scope of the request of 1 April 2017.
13. In light of the above, the analysis below considers the MoJ's assertion that the information within the scope of the request for information dated 1 April 2017 is not held.

Reasons for decision

Section 1 general right of access

14. Section 1 of the 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."

15. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of Information Rights Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, she must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
16. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, the MoJ holds copies of minutes of a committee that considered the responses to the consultation exercise on proposals to increase probate fees.
17. In deciding where the balance of probabilities lies, the Commissioner will consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and results the searches yielded. She will also consider any other information or explanation offered by the public authority which is relevant to her determination.
18. In progressing her investigation, the Commissioner asked the MoJ how it established whether or not it held the requested information, including with respect to:
 - the searches it carried out for information falling within the scope of the request and the search terms used; and
 - whether the MoJ has a business purpose for which the requested information should be held.
19. In its substantive response to the Commissioner, the MoJ confirmed what it had told the complainant, namely that it did not hold the information in the scope of his request as there is no legal or business requirement for it to do so.
20. With regard to the nature of the searches it had conducted, the MoJ told the Commissioner:

"We collated documents from the policy leads The probate policy leads would be aware of anything relating to the scope of the request, electronic or otherwise. We also searched the dedicated 'probate fee' inbox for any relevant attachments/emails".

21. The MoJ told the Commissioner that it had:

"... looked through all information held on the networked email inbox dedicated to probate".

22. In support of its view that it did not hold recorded information relevant to the request the MoJ's submission to the Commissioner described how the issue of revised probate fees was handled.

23. 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.

24. While appreciating the complainant's frustration that the MoJ does not hold the specific information he has asked for, the Commissioner is mindful of the comments made by the Information Tribunal in the case of *Johnson / MoJ (EA2006/0085)*¹ that the FOIA:

"...does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".

25. Having considered the MoJ's response, and on the basis of the evidence provided to her, the Commissioner is satisfied that on the balance of probabilities the MoJ does not hold the requested information.

26. The Commissioner therefore considers that the MoJ complied with its obligations under section 1(1) of the FOIA.

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<http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>

Other matters

27. With respect to one aspect of his correspondence dated 26 June 2017 – a matter that is outside the scope of this decision notice - the Commissioner explained to the complainant that, before accepting complaints, she generally expects complainants to request an internal review.

Right of appeal

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
Website: 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

**Deborah Clark
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