

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 March 2019

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

Decision (including any steps ordered)

1. The complainant has requested from the Ministry of Justice a transmission log of the faxes received by the Central London County Court during three specified time periods.
2. The Commissioner's decision is that, on the balance of probabilities, the Ministry of Justice does not hold the requested information.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 23 August 2018, the complainant wrote to the Ministry of Justice ('the MoJ') and requested information in the following terms:

*"Dear Her Majesty's Courts and the Tribunals Service,
(Central London County Court)*

I would like to receive a copy of your GoldFax logs (08707394144) showing transmissions received for the following periods:

1. 12/7/16 between 22:00 and 23:00
2. 24/7/16 between 21:00 and 23:00
3. 30/10/16 between 13:00 and 14:00".

5. The MOJ responded on 17 September 2018. It said that it did not hold any information falling within the scope of the request. It explained that there was no legal or business requirement for it to hold the requested information.
6. Following an internal review, the MoJ wrote to the complainant on 29 October 2018, maintaining its position that it did not hold the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 29 October 2018 to complain about the way his request for information had been handled. He disputed the MoJ's claim that it did not hold the requested information.

Reasons for decision

Section 1 – general right of access

8. Section 1(1) of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to him.
9. In this case, the complainant suspects that the MoJ holds a transmission log of the faxes it receives. The MoJ's position is that it does not.
10. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
11. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

The complainant's position

12. The complainant disputes the MoJ's claim that it does not hold the information, arguing that fax machines automatically generate audit trails of faxes sent and received.

The MoJ's position

13. The MoJ explained to the Commissioner that Her Majesty's Courts and Tribunals Service was the relevant business area for the information specified in the request and that it had conducted a search for the requested information, and had advised the MoJ regarding the capabilities of the Goldfax system.

"[The] GoldFax system enables the sending and receiving of faxes from desktop applications, email and multi-functional devices. It had been discussed with the court who confirmed that no log is held regarding the sending of these types of faxes.

If the matter is case specific the information it [sic] is recorded on the electronic court database against the relevant case. If the matter is not case specific, e.g. a general enquiry relating to fees or forms, a response is provided following which the email is erased. There are no reports generated and, therefore, the information requested was not held".

14. The MoJ reiterated that there is no reason or statutory requirement for it to create or retain a discrete transmission log of the faxes it receives. The only way information about incoming faxes would be held is if a fax had subsequently been forwarded to a specific case file, in which case a copy of it could be accessed via that case file.
15. The Commissioner asked the MoJ to provide further information, in the face of the complainant's belief that fax transmission data is automatically generated. The MoJ explained that the system is not set up to generate the information the complainant has requested. Details of faxes that are sent and received are not retained and there are no backups from which deleted faxes can be restored.
16. Referring to its data retention and disposal practices and noting that the requested information dated back two years, it observed that even if the information had been generated, it would, in all likelihood, no longer be held by the time the request was submitted.

The Commissioner's conclusion

17. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in paragraphs 10 and 11, above, the Commissioner is required to make a finding on the balance of probabilities.
18. The Commissioner has contacted the manufacturers of the Goldfax system to obtain more information about the way in which the system operates. From the information it provided, she notes that whether or not a log of transmission data is generated depends upon the system configurations put in place by the user. If the user does not configure the system to automatically generate and retain such information, then no transmission report of the type requested by the complainant will be created.
19. In this case, the request is for a transmission log of the faxes received by a specific court during three time periods. The MoJ says that it does not hold this information, as the system is not configured in such a way that a report or log of transmission data is automatically generated.
20. The only way it would be possible to identify whether a fax had been received during the periods specified in the request would be by referring to the individual case record to which the fax had been added (where appropriate). The Commissioner recognises that this approach to answering the request would be impractical, as without individual case details it would necessitate examining the record for every case that was held by the MoJ during the specified periods, which would almost certainly exceed the appropriate costs limit at section 12(1) of the FOIA. The Commissioner is also mindful of the wording of the request, which was for a copy of the transmission log of faxes received, rather than to know whether faxes were received in respect of individual cases.
21. Finally, the Commissioner notes the MoJ's point that two years had elapsed between the dates specified in the request and the request being submitted, and that the MoJ's retention and disposal practices made it highly unlikely that such information, supposing it had ever been held, would still be held.
22. Having taken account of all of the above the Commissioner is satisfied in this case that the MoJ has demonstrated that it has reasonable grounds for considering that, on the balance of probabilities, it does not hold the requested information, and therefore that it has complied with the requirements of section 1(1) of the FOIA.

Right of appeal

23. 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

24. 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.
25. 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

Samantha Bracegirdle
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