

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 October 2019

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

#### Decision (including any steps ordered)

---

1. The complainant requested a copy of guidance referred to in a Practice Direction.
2. The Ministry of Justice (MoJ) ultimately withheld the requested information on the basis of the exemption at section 23(1) (information supplied by, or relating to, bodies dealing with security matters) of the FOIA.
3. The Commissioner is satisfied that the withheld information falls within the scope of this exemption and therefore the MoJ can rely on section 23(1) of the FOIA to withhold it.
4. The Commissioner requires no steps to be taken as a result of this decision.

#### Background

---

5. The Practice Direction<sup>1</sup> referred to in the request for information is dated 14 January 2019.

---

<sup>1</sup> <https://www.judiciary.uk/wp-content/uploads/2019/01/lcj-and-spt-practice-direction-closed-judgments-jan-2019-as-published.docx>

## Request and response

---

6. On 24 January 2019, the complainant wrote to the MoJ and requested information in the following terms:

*"I refer to the above Practice Direction. It is mentioned in para.4 that a document, the Closed Judgments Library – Security Guidance of 2017, can be obtained on application.*

*Please could you send me a copy?"*

7. The MoJ responded on 20 February 2019 and refused to provide the requested information citing the following exemption:
- section 40(2) personal information
8. Following an internal review the MoJ wrote to the complainant on 25 March 2019 maintaining its original position.

## Scope of the case

---

9. The complainant contacted the Commissioner on 5 May 2019 to complain about the way his request for information had been handled. He told the Commissioner:

*"There remains very high public interest in the handling by the courts of judgments affected by closed material procedures, and it is reasonably practicable to make a disclosure without touching on matters affected by section 40(2)".*

10. During the course of her investigation the MoJ revisited its handling of the request. In correspondence with the complainant, the MoJ confirmed that it held the requested information, but that it was exempt from disclosure under section 23(1) (information supplied by, or relating to, bodies dealing with security matters) of the FOIA.
11. The Commissioner accepts that a public authority has the right to claim an exemption for the first time before the Commissioner or the Tribunal. The Commissioner does not have discretion as to whether or not to consider a late claim.
12. The complainant remained dissatisfied with the MoJ's revised response. He emphasised that he was not seeking the disclosure of any individual court file, or its contents, nor was he seeking the identification of any official.

13. The analysis below considers the MoJ's application of section 23(1) of the FOIA to the requested guidance.

## Reasons for decision

---

### *Section 23(1) – information supplied by or relating to bodies dealing with security matters*

14. Section 23(1) of the FOIA provides an exemption which states that:

*'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'*

15. To successfully engage the exemption at section 23(1), a public authority needs only to demonstrate that the relevant information was directly or indirectly supplied to it by, or relates to, any of the bodies listed at section 23(3)<sup>2</sup>.
16. This means that if the requested information falls within this class it is absolutely exempt from disclosure under the FOIA. This exemption is not subject to a balance of public interest test.

### *The complainant's view*

17. Explaining that he considered the MoJ's response was misleading, the complainant told the Commissioner:

*"I am seeking information about how librarians respond to that Practice Direction which was issued by the Lord Chief Justice of England and Wales and the Senior President of Tribunals. This is an important issue for the administration of justice which is 'owned' by the senior judiciary not the security agencies".*

18. He considered that the response by the MoJ "*wrongly seeks to portray this matter as exclusively a security matter*", whereas, in his view:

*"It is primarily a matter for the administration of justice..."*

---

<sup>2</sup> A full list of the bodies referenced in section 23(1) is available here:

<http://www.legislation.gov.uk/ukpga/2000/36/section/23>

19. Furthermore, he considered that there was also a substantial public interest in the ways in which closed judgments are handled.

*The MoJ's view*

20. In support of its reliance on the section 23 exemption, and in accordance with the Memorandum of Understanding<sup>3</sup> (MoU) between the ICO and the MoJ (on behalf of Government Departments), the MoJ provided the Commissioner with a reasoned explanation that clarified how the information was supplied by (or otherwise relates to) a section 23 body.

*The Commissioner's view*

21. The Commissioner is necessarily restricted in what she is able to say about the nature of the MoJ's reasoned explanation without compromising the content of the withheld information.
22. However, in light of that explanation, and in the circumstances of this case, the Commissioner is satisfied that the information withheld by the MoJ under section 23(1) engages the exemption.
23. Section 23(1) is an absolute exemption which means that it is not subject to the public interest test set out in section 2(2)(b) of the FOIA. Once it is determined that the exemption is engaged, the information cannot be released under the FOIA.
24. The Commissioner has therefore concluded that the MoJ was entitled to rely on section 23(1) of the FOIA to withhold the information requested by the complainant.

---

<sup>3</sup> <https://ico.org.uk/media/about-the-ico/documents/1042533/mou-national-security-cases-foia-eir.pdf>

## Right of appeal

---

25. 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@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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 .....**

**Gerrard Tracey  
Principal Adviser  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**