

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 November 2020

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

Decision (including any steps ordered)

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

Request and response

5. On 17 March 2019, in correspondence addressed to the Manager, Central London County Court, the complainant requested information in the following terms:

"I would like to receive a copy of your GoldFax logs (08707394144) showing transmissions received for the following periods and relating to claim [court case reference redacted]. A copy of the actual document transmitted will do.

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
4. 14/02/17 between 20:00 and 22:00

5. *04/12/17 between 24:00 and 01:00*
 6. *11/7/18 between 19:00 and 20:00*
 7. *22/8/18 between 22:00 and 23:00*
 8. *09/9/18 between 17:00 and 18:00".*
6. The MoJ responded on 4 May 2019. It denied holding the requested information, explaining that there was no legal or business requirement for it to hold the requested information.
 7. Following an internal review the MoJ wrote to the complainant on 26 June 2019, upholding its original position.

Scope of the case

8. The complainant contacted the Commissioner on 5 July 2019 to complain about the way his request for information had been handled.
9. In subsequent correspondence, he confirmed that the dates specified in this request intentionally overlap those in another request he had made to the MoJ, and that the request in this case additionally includes a court case reference.
10. It is not in dispute that the complainant had made a similar request to the MoJ - for the transmission log of faxes received by the Central London County Court during specified times - on 23 August 2018. The decision notice¹ in that case was issued on 14 March 2019. The Commissioner's decision in that case was that, on the balance of probabilities, the MoJ does not hold the requested information.
11. With the agreement of the complainant, the Commissioner delayed her investigation of his complaint in this case pending the outcome of his appeal of that decision to the First-tier Tribunal (Information Rights) (the Tribunal).
12. The decision of the Tribunal was promulgated on 25 November 2019 (EA/2019/0102). It confirmed the Commissioner's decision. The

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2614553/fs50798333.pdf>

complainant sought permission to appeal the outcome of that matter to the Upper Tribunal: permission was refused.

13. The complainant contacted the Commissioner on 24 September 2020 advising that the matter in the related case has now concluded. He subsequently wrote to the Commissioner on 1 October 2020 confirming that he wished his complaint in this case to be concluded by way of a formal decision notice.
14. The analysis below considers below considers whether, on the civil standard of the balance of probabilities, the MoJ held information within the scope of the request for information dated 17 March 2019.

Reasons for decision

Section 1 general right of access

15. 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."

16. 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 First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
17. For clarity, the Commissioner is not expected to prove categorical judgement on whether the information is held on the civil standard of the balance of probabilities.
18. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also 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 the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.

19. The Commissioner acknowledges that the complainant considers that the MoJ holds the requested information. He told the Commissioner:

"Besides keeping a copy of the actual file transmitted, Goldfax also by default keeps track of all faxing activity...."

20. During the course of her investigation, the MoJ confirmed that, having searched again, it does not hold the requested information. In its submission, it highlighted the age of the requested information and confirmed that it considers that its arguments in the related case also apply in this case.
21. Having considered all the factors applicable to this case, the Commissioner is satisfied that the similarity between this case and FS50798333 is such that she is able to reach the same decision, a decision confirmed by the Tribunal, without the need for further analysis.
22. The Commissioner is satisfied in this case that, on the balance of probabilities, the MoJ 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@justice.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

Laura Tomkinson
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF