

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 October 2020

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

Decision (including any steps ordered)

1. The complainant requested information connected with a court matter. The Ministry of Justice (the 'MOJ') advised the complainant that it did not hold the requested information.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, the MOJ does not hold the information.
3. The Commissioner does not require any steps to be taken as a result of this notice.

Background

4. The Commissioner understands that the request relates to a number of ultimately unsuccessful attempts by different bailiffs to serve a warrant on a named defendant (a third party). The Head Bailiff (referred to in the request) also allegedly made several failed attempts to execute the warrant in late 2018.
5. Allegedly, a police officer offered to assist the Head Bailiff to serve the warrant by alerting him, should he find signs that the defendant was at home.
6. The complainant said that he had contacted the local policeman for that area who advised that no contact had been made in regards to the serving of the warrant.

7. The Commissioner understands that, due to the lack of progress, Her Majesty's Courts and Tribunals Service ('HMCTS', which falls under the MOJ), asked the Head Bailiff to prepare a report for the named judge for Judicial directions. In January 2019 the named judge ordered that the committal order and warrant be discharged as all efforts to execute the warrant had been exhausted.
8. It is against this background that the FOIA request was submitted by the complainant.

Request and response

9. On 12 September 2019, the complainant wrote to the MOJ and requested information in the following terms:
 1. *The name of the Senior Officer [name redacted] Head of Cheshire Bailiff met to discuss this case, as reported in [Bailiff's name redacted] email to my solicitor dated 8 November 2018.*
 2. *The name of the Local Beat Officer that [bailiff's name redacted] was meeting to assist him as reported in [bailiff's name redacted] email dated 7 Dec 2018.*
 3. *The evidence/information provided by [Bailiff's name redacted] that H.H.J. [judge's name redacted] relied upon to come to her decision to discharge the case against [individual's name redacted]."*
10. On 15 October 2019 the MOJ responded. It advised that it was unable to process the request without further information and queried whether this was a court related matter.
11. On 22 October 2019 the complainant clarified his request, providing a court claim number. Specifically, he said:

"Section 1 and 2 of my Freedom of Information request is seeking the information within the communications directly attributable to the Bailiff [name redacted], in correspondence with the police.

Section 3 requests the correspondence and information relied on by HHJ [judge's name redacted] given by [bailiff's name redacted] for consideration."
12. On 12 December 2019, the MOJ responded, late, to the clarified request and denied holding the requested information. It said no information or

correspondence was held between the named bailiff and the police, nor between him and the named judge.

13. Following an internal review the MOJ wrote to the complainant on 17 January 2020. It maintained that the requested information was not held.

Scope of the case

14. The complainant first contacted the Commissioner on 27 January 2020 to complain about the way his request for information had been handled. He provided all the necessary documentation to support his complaint on 20 February 2020.

15. The complainant disputed that no information was held in relation to all parts of his request, and also contended that the named bailiff had either failed in his duties to keep proper records or that he had fabricated evidence.

16. The Commissioner advised the complainant that her remit:

"... is limited to determining whether any recorded information is held, on the civil standard of the 'balance of probabilities' relevant to your request; she cannot consider whether any individual has failed in their duties or fabricated evidence etcetera. If any recorded information is held, she will also determine whether some or all of it can be disclosed to you or whether the MOJ is entitled to rely on any FOIA exemptions. At this stage, no exemption has been cited given the MOJ's stated position that it does not hold the requested information, although it is entitled to revise its position during my investigation should it feel this is appropriate".

17. In response to the above scope confirmation, the complainant said he very much doubted whether the Commissioner would be given any information relevant to his request by the MOJ. He contended that the named bailiff could not:

"for the sake of his job and career, admit either

A). Holding information of "proposed meetings" when he has previously denied holding any information. OR

B). He was untruthful and that no proposed meetings with the Police were ever arranged."

18. However, he said he noted that *"failing in their duties or fabricating evidence etcetera is outside of [the Commissioner's] scope".*

19. The Commissioner has considered whether, on the balance of probabilities, the MOJ holds the requested information.
20. 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 concerned 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.

Reasons for decision

Section 1 – general access to information

21. Section 1 of FOIA states that anyone making a request for information to a public authority is entitled to be informed whether the public authority holds the information, and, if so, to have that information communicated to them.
22. The Commissioner is mindful that when she receives a complaint alleging that a public authority has stated incorrectly that it does not hold the requested information, it is seldom possible to prove with absolute certainty whether the requested information is held. In such cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide on the 'balance of probabilities' whether information is held.
23. 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.
24. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, the MOJ holds any recorded information within the scope of the request. Accordingly, she asked the MOJ to explain what enquiries it had made in order to reach the view that it did not hold the information.

25. In relation to the existence or otherwise of the judge's report, the MOJ advised:

"I have now heard again from the team that handled this FOI request. They have again confirmed there is no written report between [the named bailiff] and [the named judge]; a conversation did take place between the two, prior to the Judge's decision."

26. In relation to the searches undertaken for all parts of the request, the MOJ said that HMCTS had asked the named bailiff to carry out a search of his emails and other correspondence. It said that any electronic data would have been held on the named bailiff's email account and that such searches were carried out. Search terms included the name of the judge, the complainant's name and a timeframe search from November to December 2019.
27. The MOJ said that, if the information were held, it would be held electronically and held on the individual's work email account. It stated that no information had been held that was deleted or destroyed, and that there are no business or statutory reasons for the information to be held.
28. The MOJ explained that the named bailiff had undertaken three searches of his emails, stating:

"After conducting a further search, [the named bailiff] has confirmed that there has been no correspondence between either himself and HHJ [named judge] or the police officer during the stipulated timeframe. If the data existed, it would be held on [the named bailiff's] personal justice email account. [The named bailiff] has confirmed that the information requested does not exist; however, for completeness, [the named bailiff] has conducted a third search through his emails, which again has proved negative. [The named bailiff] is confident that no such recorded information has ever existed.

Although a meeting or conversation may have occurred, we cannot confirm anything that may or may not have been said. This is because nothing was recorded and therefore it would not meet the definition set out in section 84 of the Freedom of Information Act 2000, which defines 'information' as 'information recorded in any form'.

In conclusion, I am satisfied that the response and internal review were dealt with correctly. It may have been beneficial if

we, perhaps in the initial response, had explained what is meant as recorded information for the purposes of an FOIA request."

29. It follows that, were the judge to hold any recorded information it would only be as a result of written contact with the bailiff. Therefore, the Commissioner considers that the searches undertaken by the bailiff are adequate as they would reveal any correspondence between the parties.
30. The Commissioner appreciates that the complainant has made several attempts with various organisations to elicit the information he believes must exist. As she has already explained to him, her remit is solely to determine whether, on the balance of probabilities, any recorded information is held pursuant to his request.
31. In this case, whilst a meeting or encounter may have taken place between the named bailiff and a passing police officer, the Commissioner can only concern herself with whether such an encounter resulted in any recorded information. She has considered all the available correspondence and notes HMCTS' explanation to the complainant (in its letter of 5 March 2019) which sets out the action taken by the bailiff in question and the reasons why.
32. The Commissioner has also considered whether, on the balance of probabilities, any recorded information is held between the named bailiff and the named judge.

Conclusion

33. 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 the paragraphs above, the Commissioner is required to make a finding on the balance of probabilities.
34. Based on the explanation provided by the MOJ, the Commissioner is satisfied, on the balance of probabilities, that no recorded information within the scope of the request is held.
35. The Commissioner is therefore satisfied that, on the civil standard of the balance of probabilities, that the MOJ does not hold the requested information.

Right of appeal

36. 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

37. 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.
38. 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

Carolyn Howes
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