

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 June 2021

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

Decision (including any steps ordered)

1. The complainant requested information relating to his deceased father's tenure as a magistrate. The Ministry of Justice (the 'MOJ') did not handle the request under FOIA, but informed the complainant in writing that no information was held. The Commissioner has considered whether the request was valid for the purposes of section 8 of FOIA (request for information) and whether the MOJ has provided the information it holds in accordance with section 1 of FOIA.
2. The Commissioner's decision is that the request was valid for the purposes of section 8 of FOIA. She also finds, on the balance of probabilities, that the MOJ does not hold the requested information. The Commissioner does not require the MOJ to take any steps to ensure compliance with the legislation.

Background

3. The MOJ has advised the Commissioner that it did not handle the request under FOIA; instead Tameside Magistrates Court (the 'Court') dealt with the matter as a general enquiry and replied under what the MOJ refers to as "*business as usual*" correspondence (see the 'Scope' section of this notice for further details).

Request and response

4. On 21 October 2020, the complainant wrote to the MOJ via the Court and requested information in the following terms:

"I hope that you are well today. I am trying to find out a little information about my father, who was a Magistrate at Oldham for many years. He is gone now, so I cannot ask.

All I would like to know is when he began and ended his tenure on the Bench at Oldham. Ideally, if there is more I would like too.

I am very forthcoming with any identification, certificates, wills, etc that prove relationship.

Can you then please tell me where I can ask about my father's tenure as a Magistrate?"

5. After requesting full name and address details for the complainant's father, the MOJ responded as follows on 2 November 2020:

"...Unfortunately, we have checked and there is no trace of your Father [sic] on our records which indicates it must have been a number of years since he retired from the bench. I am sorry not to be able to assist you more".

6. On 2 November 2020, the complainant informed the MOJ that he was not satisfied with its response, which the Commissioner considers to have been a request for an internal review. He queried whether no records on his father are held and asked about their destruction. The MOJ replied on 3 November 2020; the officer who responded said she had asked her colleagues who recalled the complainant's father and provided some personal details (including his hair colour and vintage car etc). There followed further exchanges about the existence (or otherwise) of files on former magistrates which culminated on 6 November 2020 with the MOJ reiterating that the court and judicial office do not hold records for the complainant's father and suggesting that he might want to make "an official" FOI request.

Scope of the case

7. The complainant contacted the Commissioner on 23 November 2020 to complain about the way his request for information had been handled. He submitted the following grounds of complaint which the

Commissioner asked the MOJ to consider as part of its investigation response:

"My father was a magistrate at the now demolished Oldham courts. The files for these courts were moved to Tameside, or that was my presumption. Tameside is the most recent administrative centre for the courts. I contacted a [officer's name redacted] there and asked about my father's records. It was a very simple request to begin with: when he started and when he finished he [sic] Bench service. Instead of telling me, or sending me a request form [officer's name redacted] circulated through the offices obtaining personal accounts of my father. He left the bench 25 years ago... The stories were just silly. I was told that he was tall and dark. I was told that he drove a vintage car (hilarious). [Officer's name redacted] is sure that there are no files on my father, and therefore, by extension no files on any Magistrates? That cannot be true. How can it be true? [Officer's name redacted] reassured me that her staff would continue looking for any files on my father. So, this is crazy stuff. I would like to obtain the fullest file on my father's Magisterial activities."

8. As set out in the 'Background' section above, the MOJ has explained that the request was handled as *"business as usual"* correspondence, as opposed to under FOIA.
9. On setting out the scope of her investigation, the Commissioner told the MOJ that she had formed a preliminary view that the request was valid in accordance with section 8 of FOIA, (which requires the request to be in writing, to state the name of the applicant and an address for correspondence and to describe the information requested).
10. As part of its investigation response, the MOJ advised that the Court had already responded to the complainant before notifying the relevant officer at the MOJ. The MOJ confirmed that, to date, no formal response has been provided under FOIA, although it acknowledged that the request should have been handled under FOIA. It reiterated that no information was held pertaining to the request.
11. Given that the MOJ (through the Court) has informed the complainant that no information is held relevant to his request, and that there has been further consideration of the request in what would constitute an internal review, the Commissioner has decided there is little value in ordering the MOJ to formally respond under FOIA. This would only further delay matters. Instead, she has proceeded to consider under FOIA whether, the request was valid in accordance with section 8 of FOIA, and whether, on the balance of probabilities, the MOJ holds any of the requested information.

12. 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 FOIA.
13. 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. 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 8 - Request for information

14. Section 8 of FOIA states:

"(1) In this Act any reference to a "request for information" is a reference to such a request which-

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested".

15. In this case, the complainant made his request in writing, stated his name and gave an address for correspondence. He also clearly described the information he was seeking. Therefore the requirements of section 8(1)(a), (b) and (c) were satisfied.

Conclusion

16. It follows that the Commissioner is satisfied that the request is a request for information, as per section 8 of FOIA. The complainant was entitled to receive a formal response and internal review in this case.

Section 1 – general right of access

17. Section 1(1) of 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."

18. 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.
19. 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.
20. 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.
21. The MOJ told the Commissioner that:

"Tameside Magistrates Court carried out an onsite search through their records. They contacted Judicial Office who also conducted a search of their records, both searches proved fruitless.

Requester states his father was a Magistrate 25 + years ago at Oldham Magistrates Court. Oldham Magistrate's Court shut down in 2016 and all the cases/records were transferred to Tameside Magistrates Court. The Court have confirmed that if any data was held at Oldham, it would have only been transferred to Tameside. Aside from the Court, the only other place information could be held is with Judicial Office. I have emailed Judicial Office for a second time (first request was from the Court) and they have again confirmed they do not hold anything."

22. The MOJ explained that any records held would be paper due to the length of time since the complainant's father was employed as a

magistrate. It confirmed there is no record of destruction or deletion of any such information by either the Court or Judicial Office.

23. The MOJ advised that it holds magistrates' expenses records for seven years. It also said:

"As the Magistrate left the bench 25 years ago, the only possible thing we could hold is the Magistrates Appointments Fiats (instruments). I have checked with the Magistrate's Appointment Team Manager and she states that the Magistrates' Appointments Fiats (Instruments) used to be kept in locked storage in filing boxes – this was before the HR restructure, so they are no longer held. We also hold an electronic extract of the old JAMS database which was replaced by E HR. This has been searched and there is no reference to the Magistrate. The JAMS database came into being around 2000 and as there is no record transferred over or recorded in the JAMS extract this indicates that they likely left the Magistracy before the database came into being."

24. The MOJ reiterated that there is no record of the complainant's father on any of its current systems; it also said:

"... if it was held, everything has been correctly destroyed. It's highly unlikely we would have any record of any Magistrate from 25 years ago. It would likely be considered excessive in the eyes of the ICO to retain data for that long, without any business or legal requirement to do so".

25. Additionally, the MOJ said that no physical records would have been transferred onto the electronic database due to their age, and that there is no business or statutory requirements for such records to be held, commenting:

"Magistrate's Court cases are only held for 3 years so there is no business justification to hold on to a Magistrate's records who left the bench 25+ years ago. It's also highly likely that the majority of records from that time period do not relate to a living individual, so again, it's highly excessive and disproportionate to retain the data."

26. The MOJ explained that the Court holds expenses records (for seven years) and the Judicial Office hold the HR records (which constitute the majority of records held). It also confirmed that:

"All of Oldham's records were sent to Tameside. If they are on paper, they would have remained on paper in storage until their destruction date."

Conclusion

27. 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 must hold, 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.
28. Based on the explanation provided by the MOJ and the age of the information, the Commissioner is satisfied, on the balance of probabilities, that no recorded information within the scope of the request is held.
29. The Commissioner is therefore satisfied that, on the civil standard of the balance of probabilities, the MOJ does not hold the requested information.

Other matters

30. The Commissioner notes that the MOJ has acknowledged that the request should have been handled under FOIA from the outset and that it has spoken to the Court in question to make it clear that any future requests should be sent to the relevant MOJ officer prior to a response being issued.
31. The MOJ has apologised for unintentionally causing the complainant distress through sharing personal recollections of his father. It said that the Court has been made aware that it should not share such information similarly in the future.

Right of appeal

32. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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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