

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 August 2021

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

Decision (including any steps ordered)

1. The complainant requested information about the existence of procedures relating to specified criminal proceedings. The MOJ initially failed to respond to the request. When the MOJ provided its response, it said that the request had not been considered under FOIA because it was not for recorded information. However, the MOJ provided some information "*outside the Act*". The Commissioner has considered whether the request was valid for the purposes of section 8 of FOIA (request for information).
2. The Commissioner's decision is that the request was valid for the purposes of section 8 of FOIA and, therefore, she finds that the MOJ should have handled it under FOIA. As the MOJ has failed to respond to a valid request within the 20 working days' statutory timescale required by FOIA, it has also breached sections 1 and 10 of FOIA.
3. Given that the MOJ has already provided the requested information, the Commissioner does not require the MOJ to take any steps to ensure compliance with the legislation.

Request and response

4. On 20 November 2020, the complainant wrote to Her Majesty's Courts and Tribunals Service ('HMCTS') which is part of the MOJ and requested information in the following terms:

"Under the provision of the Freedom of Information Act 2000, I make the following two-part request of the HMCTS;

part 1. I request that the HMCTS confirm or deny the existence of any procedure(s) by which an individual may instigate criminal proceedings.

part 2. If part 1 of my request results in confirmation of existence of procedure(s), then I request details of the procedures including details of all requirements that must be met."

5. The MOJ failed to provide a substantive response to the request.

Scope of the case

6. The complainant contacted the Commissioner on 7 January 2021 to complain about the lack of a response to his request.
7. The Commissioner wrote to the MOJ on 27 January 2021 and asked it to either confirm that a substantive response had been sent and to provide a copy of that response, or to issue its substantive response within ten working days.
8. On 20 January 2021, the MOJ informed the Commissioner that it had responded to the request that day and provided her with a copy. The MOJ told the complainant that his request had not been considered under FOIA because it was not for "recorded information". However, the MOJ responded to the request "outside the Act" and addressed the questions asked by the complainant. It advised him that he would not be entitled to an internal review because his request was "not a request under the FOI Act".
9. The complainant submitted further correspondence on 8 February 2021, which the Commissioner has reviewed. Whilst the content does not relate directly to the MOJ's response *per se*, the Commissioner has considered whether the complainant's request of 20 November 2020 should have been handled under FOIA.

10. Under the circumstances, the Commissioner has used her discretion and considered this complaint without an internal review having been undertaken.

Reasons for decision

Section 1 – Right of access to recorded information

11. 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."

Section 8 - Request for information

12. 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".

13. 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, ie details of a procedure he wished to be provided with, if held. Therefore the requirements of section 8(1)(a), (b) and (c) were satisfied.

14. The MOJ's subsequent response to the complainant provided "outside the Act" includes the following statement:

"The FOI Act requires public authorities to provide recorded information. Recorded information includes printed documents, computer files, letters, emails, photographs, and recordings. As you have not asked for recorded information but requested information on law and procedures, the FOI Act does not apply."

15. The Commissioner's guidance on FOIA¹ mirrors the first sentence above in relation to defining 'recorded information'. In her view, this will depend on how a request is worded and what laws and procedures are being requested. The Commissioner does not agree that FOIA does not apply to "*requested information on law and procedures*" as stated by the MOJ.
16. Given that the MOJ's response "*outside the Act*" addressed the questions asked by the complainant, it is clear that information is held. In the Commissioner's view, this information constitutes 'recorded information' and meets the requirements of section 8.

Conclusion

17. 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.
18. As the request was one which was valid, the MOJ's section 1 obligations were engaged. By failing to communicate the recorded information it held under FOIA, the MOJ has also breached section 1.

Section 10 – time for compliance

19. Section 10 of FOIA states that a public authority must comply with its obligations under section 1 of the FOIA "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

Conclusion

20. As the MOJ has failed to issue a response to the request within 20 working days, it has breached section 10 of FOIA.

Other matters

21. In the correspondence submitted by the complainant on 8 February 2021, the Commissioner notes that he makes reference to another FOIA request and asks that this is responded to. The Commissioner has written separately to the complainant to advise him to submit a new complaint if this matter remains outstanding.
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¹ [guide-to-freedom-of-information-4-9.pdf](#) (ico.org.uk)

22. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft Openness by Design strategy² to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our Regulatory Action Policy³.
23. Given that the Commissioner has found that the request was valid under FOIA and should have been responded to within the statutory 20 working days' timeframe, she has made a note of both the MOJ's failure to handle the request under FOIA and the delay in this case.

² <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

³ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

24. 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

25. 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.
26. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF