

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 December 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 private prosecution procedures.
2. The Ministry of Justice (MoJ) asked for confirmation of the requester's identity, which they declined to give. The MoJ refused to deal with the request, citing section 8(1)(b) (request for information) of FOIA.
3. The Commissioner's decision is that, in the circumstances of this case, the MoJ was entitled to consider the request did not meet the criteria for a valid request at section 8(1)(b) of FOIA without confirmation of the complainant's identity.
4. The Commissioner does not require the MoJ to take any steps as a result of this decision.

Request and response

5. On 8 February 2021, the complainant wrote to the MoJ and requested information in the following terms:

"Would you please provide the following;

1. Any procedures held in relation to the laying of an information (commencement of prosecution) in HMCTs courts. (please provide all historic copies too).

2. Any procedures within Cambridge Magistrates court or the HMCTs region for the laying of an information (commencement of prosecution) in HMCTs courts. (please provide all historic copies too)".

6. The request was made using the 'whatdotheyknow' website.
7. The MoJ responded on 7 March 2021. It refused to process the request for information, citing section 8(1)(b) of FOIA. The MoJ advised that, in order to deal with the request, the complainant would need to provide evidence of their real name as it had reason to believe that they had provided a pseudonym.
8. Following an internal review, the MoJ wrote to the complainant on 9 April 2021 in which it maintained its original position and further explained:

"I believe that there are two known pseudonyms that is [sic] being used [name redacted and name redacted], in total 222 questions have been asked. The repetitiousness and relentlessness of these questions are verging on vexatious".

Scope of the case

9. The complainant contacted the Commissioner on 11 April 2021 to complain about the way his request for information had been handled. He told the Commissioner:

"The data controller has cited a claim that [the] request is from a pseudonym, and has refused the request for information. It would seem that this is based on similar requests for information from another individual".

10. The analysis below considers whether the MoJ was entitled to refuse to deal with the request unless confirmation of identity was provided in light of the requirement of section 8(1)(b) of FOIA.
11. This decision notice does not examine whether the complainant stated his real name when making the request and the Commissioner has not sought confirmation of his identity from the complainant.

Reasons for decision

Section 8 Request for information

12. Section 8(1) of FOIA sets out the requirements for a request to be valid for the purposes of that Act. Section 8(1)(b) requires that a request must state the name of the applicant and an address for correspondence.
13. The Commissioner, in his guidance on section 8¹, states:

"The requester can be an individual, a company or an organisation but in each case they must provide their real name. A request made under a pseudonym will be invalid".
14. This means that a public authority is not obliged to deal with a request made under a pseudonym, and someone who uses a pseudonym when making a request cannot enforce the rights provided by FOIA in respect of that request.
15. The Commissioner explains further:

"In our view, the intention of the legislation is for the requester to provide their real name so their request could be processed in accordance with the requirements of the FOIA.

This is supported by the fact that there are circumstances under the FOIA where a requester's true identity can be relevant, for example, where an authority is considering aggregating the cost of requests or refusing a request as vexatious or repeated".
16. The Commissioner does not expect identity verification to become a routine part of FOIA request handling. However, as noted above, there are circumstances under FOIA where a requester's true identity can be relevant. In such circumstances the identity of the requester will be relevant and where the public authority has reason to believe that a requester may not be using their own name, the Commissioner accepts that it may seek confirmation of their identity.

¹ <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

17. Inevitably, this means that requesters who **are** using their real names may also be asked to confirm as such.
18. The Commissioner acknowledges that the complainant disputed the requirement to provide identity documentation to the MoJ "*in exchange for publicly held information*".
19. Regarding the request in this case, the Commissioner accepts that his guidance '*Consideration of the identity or motives of the applicant*'² states that when determining whether a request is valid it will be permissible for a public authority to enquire about the identity of the requester if it has reason to believe that they have not provided their real name.
20. The question for the Commissioner to consider is not whether the applicant used their real name, but whether the MoJ acted proportionately in asking them to confirm their identity before it would consider the request.
21. During the course of his investigation, the Commissioner asked the MoJ to explain the reasons behind the decision to ask for proof of identity in this particular case.
22. In its submission, the MoJ explained that it considered that the request is being submitted under a pseudonym:

"... with a view to evading the vexatiousness exemption".
23. In its correspondence, the MoJ told the Commissioner that it considered it had '*ample grounds*' for concluding that the name used by the requester in this case is a pseudonym and that it was, therefore, appropriate to seek proof of identity.
24. The Commissioner accepts that the MoJ told the requester that the reason for believing they were using a pseudonym:

"...derives from the striking similarity between this request and others under this name, with other requests, correspondence, defences, and Facebook posts under two other names, and the shared possession of documents".

² <https://ico.org.uk/for-organisations/consideration-of-the-applicant-s-identity-or-motives/>

25. In the same way that, in correspondence with the complainant, it referred to its belief that there were two known pseudonyms being used, the MoJ confirmed that view in its correspondence with the Commissioner. Regarding the rationale for seeking proof of identity in this case, the MoJ provided arguments and evidence in support of its view that the name of the complainant is a pseudonym. Citing the same two names it believed to be pseudonyms that it had cited in its correspondence with the complainant, the MoJ drew the Commissioner's attention to a number of other FOI requests it had received, noting the issues raised and the subject matter that is the focus of those requests.
26. The Commissioner recognises that, in most cases, authorities should consider FOI and EIR requests without reference to the identity or motives of the requester. Their focus should be on whether the information is suitable for disclosure into the public domain, rather than the effects of providing the information to the individual requester.
27. The Commissioner has considered the MoJ's grounds for concern regarding the request in this case and the reasons given for believing that the requester has not used their real name. In that respect he notes the evidence of the similarities between requests, submitted by ostensibly different requesters, including the particular focus and persistence of those requests. He has also considered the specific nature of a document which was described as having been shared and the MoJ's rationale for believing that it supported its view that the requester is using a pseudonym.
28. He has also taken into account that the complainant told the MoJ:

"It is without question that other people will have interests in the same matters and this does not preclude the public body to refuse to provide this information and demand identity documents".
29. The Commissioner accepts that it is entirely possible that multiple requesters may be interested in the same subject matter.
30. He is mindful, however, that, as noted above, the identity of the requester becomes relevant under FOIA where a public authority may otherwise be entitled to refuse requests as vexatious or repeated, or would be entitled to aggregate the costs of dealing with linked requests.
31. From the evidence he has seen, the Commissioner is satisfied that the MoJ has demonstrated that it had grounds to seek to confirm the requester's identity before considering the request in this case and has explained why the requester's identity is relevant to how it deals with the request. He considers that by taking steps to ascertain the identity of the requester, the MoJ was acting in accordance with his guidance.

32. In the circumstances of this case, he considers that it was reasonable and proportionate for it to ask the requester to provide confirmation of his identity before considering his request. It follows that he is satisfied that the MoJ was entitled to consider that the request was not valid under section 8(1)(b) of the FOIA without proof of the complainant's identity.

Right of appeal

33. 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

34. 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.
35. 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
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