

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 May 2022

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

Decision (including any steps ordered)

1. The complainant has requested information from the Ministry of Justice ("MOJ") regarding biographical details of a District Judge and a case they presided over. The MOJ explained that part of the request did not relate to recorded information and was therefore not covered by FOIA. It explained further that it did not hold some of the recorded information requested. The MOJ relied on section 21 of FOIA to withhold the requested information it did hold as it was already reasonably accessible to the requestor.
2. The Commissioner's decision is that the MOJ is entitled to rely on section 21 of FOIA – information already reasonably accessible by other means, to withhold the requested information.
3. The Commissioner does not require the public authority to take any further steps as a result of this decision notice.

Request and response

4. On 9 October 2020, the complainant wrote to the MOJ and requested information in the following terms:

"Under the Freedom of Information Act please supply biographical details of the District Judge Vanessa Baraitser overseeing the case of Julian Assange.

Ms Baraitser is listed on 1.7.19 on the Courts and Tribunal Judiciary website as a District Judge (Magistrates Courts) and according to the Courts and Tribunals Judiciary website 'The work of District Judges involves a wide spectrum of civil and family law cases such as claims for damages and injunctions, possession proceedings against mortgage borrowers and property tenants, divorces, child proceedings, domestic violence injunctions and insolvency proceedings.'

Please explain how the Assange case falls into any of the above categories and the ability of a District Judge to appear in this case. Is there a precedent? Has she been appointed a circuit judge or recorder? Why are Amnesty International excluded from the Court?"

5. For ease of reference while reviewing the case, the Commissioner has split this request into four parts, which are as follows:
 - Part 1: "Under the Freedom of Information Act please supply biographical details of the District Judge Vanessa Baraitser overseeing the case of Julian Assange"
 - Part 2: "Please explain how the Assange case falls into any of the above categories and the ability of a District Judge to appear in this case."
 - Part 3: "Has she been appointed a circuit judge or recorder?"
 - Part 4: "Why are Amnesty International excluded from the Court?"
6. On 21 October 2020, the MOJ responded, advising that it does not hold some of the requested information, as members of the judiciary are not included as a public authority under Schedule 1 of FOIA and, as such, are not covered by FOIA. It explained that Judges are their own data controllers and therefore the information cannot be provided.
7. The MOJ also explained to the complainant how two parts of the request as not considered a valid request for information under FOIA, as it is not a request for recorded information. The two parts that it was referring to are "explain how the Assange case falls into any of the above categories" and "Why are Amnesty International excluded from the Court?". However, on a discretionary basis, the MOJ provided the complainant with a link, which explains the role of a District Judge.
8. The MOJ applied section 21 to the following parts of the request and provided a link so that the complainant could access the information:

"Has she been appointed a circuit judge or recorder?"

9. Following the Commissioner's intervention, the MOJ wrote to the complainant on 13 January 2022 to provide its internal review response. It stated that it upheld its original position: part 1 of the request is not held as Judges are their own data controllers, parts 2 and 4 of the request are not valid requests under FOIA and part 3 of the request is held but section 21 is applicable as the information is already reasonably available.
10. During the Commissioner's investigation, the MOJ confirmed that it does not hold any of the requested information for part 1 of the request.

Scope of the case

11. The complainant contacted the Commissioner on 18 October 2021 to complain about the way their request for information had been handled.
12. The MOJ set out in both its initial response and its internal review why it considered that the information it held was reasonably available elsewhere and explained where other information may be held.
13. As detailed above, given the multiple elements of the request in question, the Commissioner will address each part separately for reasons of clarity. The Commissioner considers that the scope of his investigation is to determine whether the MOJ was correct to apply section 21 of FOIA to withhold the information it held within the scope of the request.

Reasons for decision

Section 1 – general right of access

14. Section 1(1) of FOIA states that any person making a request is entitled to be told whether the information they have asked for is held and, if so, to have that information communicated to them, subject to the application of any exemptions that are appropriate.

The complainant's position

15. The complainant considers that it is a simple query and that they do not believe the information is available to them from other sources.
16. They have asked for an explanation as to why the information is being withheld.

Part 1

17. The Commissioner considers part 1 of the request to be the following:

“Under the Freedom of Information Act please supply biographical details of the District Judge Vanessa Baraitser overseeing the case of Julian Assange.

18. The MOJ advised the complainant, in both the original response and the internal review, that members of the judiciary are not included as a public authority under schedule 1 of FOIA and are therefore not covered by FOIA.

19. The MOJ also advised that judges are their own data controllers and, therefore, even if the MOJ did hold information, they could not provide it as it is not their information to provide.

20. The MOJ confirmed to the Commissioner that it does not hold any information in any capacity for the judiciary in relation to this request.

21. The Commissioner is satisfied that the judiciary is not subject to FOIA and that the MOJ does not hold the information in relation to this request. As such, he is satisfied that the requested information for this part of the request is not held and, therefore, cannot be provided to the complainant.

Section 21 – information reasonably accessible to the applicant by other means

22. Section 21 of FOIA states that:

“(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

23. The purpose of section 21 is to protect the resources of public authorities. Public authorities do not have to respond to requests for information where the requestor could have found the requested information elsewhere. Section 21 also acts as an incentive for public authorities to be proactive in publishing information as part of their publication schemes.

24. It is reasonable for a public authority to assume that information is reasonably accessible to the applicant as a member of the general public until it becomes aware of any particular circumstances or evidence to the contrary.

Part 3

25. The Commissioner considers that part 3 of the request is as follows:

"Has she been appointed a circuit judge or recorder?"

26. The Commissioner understands that the requested information, in relation to the District Judge can be found, free of charge, on the link that the MOJ provided to the complainant in its response to the complainant's request.
27. The MOJ also provided information to the complainant, regarding the role of a District Judge, outside of FOIA and on a discretionary basis. However, this was in relation to part 2 of the request,
28. The Commissioner notes that the complainant has advised that they do not consider the information they requested to be reasonably accessible from other sources. However, he has used the links provided and is satisfied that they are valid and are accessible.
29. Upon review of the responses provided by the MOJ, including the links that were given to the complainant, the Commissioner is satisfied that the requested information in relation to part 3 of the request is readily available elsewhere and, as such, section 21 of FOIA was correctly applied by the MOJ.
30. The complainant has not indicated to the Commissioner (or the MOJ) that they cannot access the internet. The Commissioner's decision is that information within scope of the complainant's request is already reasonably accessible to them and is therefore exempt information under section 21(1) of FOIA.

Other matters

Parts 2 and 4 – Request not covered by FOIA

31. The Commissioner is in agreement with the MOJ that two parts of the complainant's request, parts 2 and 4, (referred to in paragraph 5) do not meet the requirements of FOIA as a valid request. This is because they are asking for opinions, rather than recorded information. FOIA does not require public authorities to create bespoke answers to questions that have been posed. In effect, that would entail the creation of new information. The Commissioner notes that the MOJ provided the complainant with appropriate advice about how to make a valid request for recorded information.
32. The MOJ advised the complainant that they may be able to obtain answers to their questions (not covered by FOIA as they did not relate to recorded information) from Westminster Magistrate Court. That matter is not within the remit of the Commissioner to adjudicate as he

may only issue decisions in relation to valid FOIA requests for recorded information.

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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF