

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 31 October 2022

**Public Authority:** Judicial Appointments and Conduct Ombudsman

**1st Floor, the Tower  
102 Petty France  
London  
SW1H 9AJ**

#### **Decision**

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1. The complainant asked a series of questions relating to complaints handling by the Judicial Appointments and Conduct Ombudsman ("the JACO"). The Commissioner's decision is that, on a balance of probabilities, the Judicial Appointments and Conduct Ombudsman does not hold the further information requested by the complainant.

#### **Request and response**

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2. The complainant made the following information request to the JACO on 22 November 2021:

"1. The actual rules related to complaints about Judicial misconduct (made by appellants) that are used by a relevant Senior Judicial Office Holder to evaluate such complaints: I am looking for a set or specific rules or actual standards in a sequence or order that a Senior Judge has to follow to evaluate a complaint about another Judge: This can be in a form of one (or a set of) list(s), table(s) or diagram(s).

2. What are the actual process steps followed in item 1 above during an assessment of a complaint: I am again looking for one (or a set of)

list(s), table(s) or diagram(s) of enumerated sequential steps showing the process steps and connections between them.

3. Exactly how evidence is collected and weighted: again I am looking for one (or a set of) list(s), table(s) or diagram(s) which explain this and the standard used to weight the evidence (balance of probability / civil standard / other standard?).
  4. What actual investigations (after the collection of evidence) have to be made to consider a complaint properly and fairly (again in the form of one (or a set of) list(s), table(s) or diagram(s) of enumerated investigation steps and their contents).
  5. What is the actual quality assurance standards framework followed in the handling of such a complaint by a Senior Judge.
  6. What is the exact standard operating procedure (if not included in the actual process item 2 above) followed in the handling of such a complaint by a Senior Judge.
  7. The full and precise prescribed procedures as referred to (but unfortunately lacking any meaningful or useful detail) at the Constitutional Reform act 2005, section 110, in detail.
  8. What is the exact definition of the term: merits of a decision, as used by the JACO?
  9. What are the other factors taken into account (over and above evidence) in an evaluation of such a complaint by a Senior Judge, what is excluded and why? How are these factors weighted (what is the standard of weighting?)?
  10. The rules, process steps, evidence collected and weighted, quality assurance standards framework, standard operating procedure and other factors' weighting followed by the JACO in evaluating complaints brought by appellants who complain about prescribed procedures not potentially followed (in part or in full) by Senior Judicial Office holders when they consider complaints about potential misconduct of a Tribunal Judge. That is just similar information to items 1, 2, 3, 5, 6 and 9 above but instead of the Senior Judicial Officer, this time for the JACO (analogous information)."
3. The JACO answered each point in turn and included links to further information to help assist the complainant with their enquiry.

4. The Commissioner wrote to the JACO on 23 February 2022 in order to reiterate the JACO's obligations under FOIA. Despite this intervention, the JACO failed to provide a further response.

### **Reasons for decision**

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5. This reasoning covers whether the JACO is correct when it says that it does not hold any further information in scope of the complainant's request.
6. The Commissioner understands that the complainant does not feel that the information that has been provided adequately answers the questions they have raised. However, JACO's obligation under FOIA is to provide the information it holds in recorded form. The Commissioner's role is to determine whether the JACO holds any further information beyond that requested
7. There is no requirement for the JACO to create information in order to answer a requester's questions, their obligation is to supply information they held at the time of the request. The Commissioner sees no reason to believe that the JACO held further information and is therefore satisfied that, on the balance of probabilities, the JACO supplied all the relevant information to the requester and does not hold any further information in scope of the request.

### **Other matters**

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8. There is no obligation under the FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one, the section 45 code of practice sets out, in general terms, the procedure that should be followed.
9. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
10. However, the JACO failed to provide an internal review response despite the Commissioner's intervention and guidance on 23 February 2022. The Commissioner considers this to be poor practice.

## **Right of appeal**

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11. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

12. 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.
13. 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 .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**