

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 28 November 2022

**Public Authority:** Ministry of Justice

**Address:** 102 Petty France  
London  
SW1H 9AJ

### Decision (including any steps ordered)

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1. The complainant requested specified policy, procedural and complaints information relating to the Judicial Conduct Investigations Office (the 'JCIO'), which falls under the remit of the Ministry of Justice (the 'MOJ'). Ultimately, the MOJ said some of the information regarding FOIA procedures was held and had been provided to him in response to his previous request. As the complainant has not challenged or commented further on the disclosed information, the Commissioner has not considered this aspect any further. The MOJ also said that it did not hold any of the information requested by the complainant at part 1b) of his request.
2. The Commissioner's decision is that, on the balance of probabilities, the MOJ does not hold the requested information at part 1b) of the request.
3. No steps are required as a result of this notice.

### Request and response

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4. The complainant submitted three requests in succession to the JCIO/MOJ. The request below is the third of those.
5. On 7 May 2021, the complainant refined his second request (part of which was refused on cost grounds in accordance with section 12 of FOIA) and wrote to the MOJ in the following terms:
  - "1. Please provide **all** procedures, guidance, best practices, instructions, rules, standing orders, procedures, monitoring

systems, quality control/compliance and auditing systems, and the like whatever they are called which JCIO has, related to:-

- a) the FOIA & EIR, and JCIO compliance with the FOIA & EIR.
- b) Dealing with complaints to the JCIO about judicial conduct. Please ensure **all** information relating to the scope of the JCIO remit are [sic] included. This request does not include any information which the JCIO has provided to the requestor as part of the original request referred to above [ie Request 1].

I note that for item 1b) is given published [sic] (on the JCIO website). However, it is clear that you have misread the above information requests. This information is normally held in electronic format on an organisation's intra-net. It contains all the procedures, rules, guidance, procedures, monitoring systems, orders necessary for it to function and manage its business, employees etc, and how it discharges its responsibilities. For example, all guidance, rules , procedures etc. should be there to instruct, train, inform [sic] monitor etc its investigation officers on how to deal with an investigation.

Request 1a) is as 1b) but related to FOIA, EIR and JCIO compliance with FOIA and EIR.

Since these documents, in requests 1a) and [sic] 1b) which are numerous, should be centrally electronically held on an intranet(s): then the selection of relevant documents from the intranet or equivalents index should take no more than 30 minutes."

6. The MOJ responded on 1 June 2021. For part 1a) of the request, the MOJ said that the JCIO/MOJ did not hold any information in scope. It explained that this is because neither the MOJ or the JCIO are the policy holders on the subject and suggested that the complainant might wish to contact the Information Commissioner's Office with his request.
7. For part 1b), the MOJ said it had responded to this previously in relation to the complainant's second request on 29 April 2021. It refused to respond citing section 14(2) of FOIA – repeated request.
8. The complainant requested an internal review on 8 June 2021.
9. On 6 July 2021, the MOJ provided its internal review outcome and maintained its original position.

## Scope of the case

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10. On 15 August 2022, during the course of the Commissioner's investigation, the MOJ issued a revised response to the complainant.

11. For part 1a) it confirmed that it held some of the requested information but said this had been provided to the complainant in response to his second request of 29 April 2021.

12. For part 1b), the MOJ said:

"The remainder of the information requested, is not held by the MOJ for the purposes of the FOIA. If held at all it is held by the JCIO which is an independent arms-length body of the MOJ, and which supports the Lord Chief Justice and Lord Chancellor in their joint responsibility for judicial discipline.

The FOIA provides a general right to members of the public to request information from a public authority as defined by section 3 of the Act. The JCIO is not a public authority within the meaning of section 3 because: a) it is not listed in schedule 1 of the Act; b) it has not been designated by order under section 5 of the Act; and c) it is not a publicly-owned company as defined by section 6 of the Act. For this reason, any information held by the JCIO which was provided to you in the past should have been provided on a discretionary basis outside the scope of the FOIA."

13. Whilst the complainant wrote to the Commissioner on 14 November 20220 requesting a decision notice, he did not raise any concerns about the disclosed redacted information for part 1a). Therefore, the Commissioner has disregarded this aspect from further consideration.

14. Therefore, the Commissioner has considered the MOJ's final position in relation to part 1b) of the complainant's request, where the MOJ said the information was not held for the purposes of FOIA.

15. The Commissioner notes that the complainant addressed his request for information to the JCIO. The Commissioner understands that the JCIO is not a public authority in its own right, but ultimately falls under the remit of the MOJ. It is not in dispute that the MOJ is a public authority for the purposes of FOIA. Nor is it disputed that the judiciary is not a public authority for the purposes of FOIA.

## Reasons for decision

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16. The Commissioner has sought to determine whether, on the balance of probabilities, the MOJ holds the information requested at part 1b) of the complainant's request.
17. The MOJ has explained that it does not hold the requested information for the purposes of FOIA.
18. Having considered the MOJ's explanation set out above, the specific wording of the request and, on the balance of probabilities, the Commissioner is satisfied that the requested information is not held by the MOJ.
19. The Commissioner also considers that, regardless of whether the information is held or not, in the event that the JCIO did hold any or all of the requested information, then section 3(2) of FOIA would apply.
20. Section 3(2) sets out the legal principles that establish whether information is held by a public authority for FOIA purposes.
21. In his guidance, the Commissioner recognises that:

"When information is held by a public authority solely on behalf of another person, it is not held for FOIA purposes. However, information will be held by the public authority if the information is held to any extent for its own purposes".
22. The Commissioner has not been presented with any arguments that the requested information in this case is held by the MOJ, to any extent, for its own purposes.
23. Having considered all the factors applicable to this case, the Commissioner is also satisfied that the requested information, if it were held, would not be held by the MOJ for FOIA purposes by virtue of section 3(2)(a).

## Right of appeal

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

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

**Laura Tomkinson**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**