

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

### **Decision notice**

**Date:** 19 December 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 information about the selection process for jury service. The Ministry of Justice (the 'MOJ') initially refused the request citing section 31(1)(c) of FOIA (the exemption for the administration of justice). However, it subsequently issued a revised response in which it explained that the requested information was not held at the time of the request, and was created from staff knowledge on receipt of the request. Whilst the MOJ maintained that that document would remain exempt under section 31(1)(c), the Commissioner must consider the MOJ's revised position. FOIA does not require public authorities to create recorded information in order to respond to requests.
2. The Commissioner's decision is that, on the balance of probabilities, the MOJ did not hold the requested information at the time of the request.
3. No steps are required as a result of this notice.

#### **Request and response**

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4. On 20 June 2022, the complainant wrote to the MOJ and requested information in the following terms:

"I have recently been called for jury service for the fourth time in 35 years (0.026% chance)

I am writing to you to make a request under the Freedom of Information Act 2000 and in accordance with the Data Protection Act 2018 'Automated individual decision-making'.

I would like to know:

- 1) What are the details of the algorithmic / mathematical method that is used to determine who is 'randomly' selected from the electoral register?
  - 2) Does the method weight its selection criteria based on the number of times a person has previously been summoned for and / or served on jury service or not?
  - 3) If it is weighted per (2) what are the details of the method?
  - 4) If it is not weighted per (2), has this been considered since 1990 as a change to the selection process?
  - 5) If considered as a change per (4) what were the reasons for the conclusion?
  - 6) What substantive changes have been made to the algorithm / mathematical method for jury selection since 1990, if any?"
5. The MOJ responded on 27 June 2022. It said that it held all the information requested but refused to provide it due to its concern about security risks, citing section 31(1)(c) of FOIA (the exemption for the administration of justice).
  6. The complainant requested an internal review on 3 August 2022 in which he argued he had not requested any information that he accepted would pose a security risk (such as IT systems, security protocols etc) ; rather he had asked for information on the "logic" behind jury selection.
  7. The MOJ provided its internal review result, late, on 23 September 2022. It maintained that section 31(1)(c) applied but provided some detail about jury selection on a discretionary basis outside FOIA.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 6 October 2022 to complain about the way his request for information had been handled. He raised the following point:

"...there is also a personal right to disclosure in accordance with the Data Protection Act 2018 [DPA] 'Automated individual decision-making' provisions. This request was ignored by the MOJ."
9. Any individual wishing to exercise any of their rights under the DPA, including the right not to be subject to automated decision making,

should raise this separately with the data controller and has made further comment in the 'Other matters' section of this notice.

10. On 22 November 2022, the MOJ issued a revised response to the complainant, copying that to the Commissioner. It said:

"I can confirm that at the time of receiving your request, the MOJ did not hold the information that you requested.

Upon receipt of your request, the relevant searches were made, and it was identified that the information was not recorded. A document was then created on the basis of the knowledge of staff, after your request was received.

The FOIA does not oblige a public authority to create information to answer a request if the requested information is not held. The duty is to only provide the recorded information held.

The document that has since been created is exempt from disclosure under section 31(1)(c) of the FOIA and applies to the whole document."

11. The Commissioner must consider the MOJ's revised position, the key point being that it has explained that the requested information was not held at the time of the request and was "created" on receipt of the request.
12. The Commissioner will, therefore, consider whether, on the balance of probabilities, the requested information was held at the time of the request.

## **Reasons for decision**

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13. The MOJ has explained that the requested information was not held at the time of the request and that it was created from the knowledge of some of its staff once the request was received. FOIA does not require public authorities to create recorded information in order to respond to requests. The Commissioner does not consider that the MOJ would create information to respond to this request if it already held it.
14. Having considered all the circumstances, the Commissioner accepts the MOJ's position that it did not hold recorded information that would address the complainant's request at the time the request was made. As such, the Commissioner has decided that the MOJ has complied with section 1(1) of FOIA.

15. Although the Commissioner has not formally considered the MOJ's reliance on section 31(1)(c) of FOIA, he considers it likely that the requested information now held would be caught by this exemption.

### **Section 10 – time for compliance**

16. 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.”

17. Section 10(1) of FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.
18. The Commissioner notes that the MOJ's internal review result apologised for the delay in it providing a substantive response to the request, and that the complainant raised this as part of his grounds of complaint.
19. However, the dates detailed in the internal review record the substantive response being due on 18 July 2022 and not provided until 19 July 2022. These do not tally with the correspondence submitted to the Commissioner. From the evidence provided to him, the request was submitted on 20 June 2022 and responded to on 27 June 2022.
20. From the available evidence, the Commissioner finds that the MOJ responded to the request within 20 working days and that it, therefore, complied with the requirements of section 10(1) of FOIA.

### **Other matters**

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21. However, the Commissioner has noted that the MOJ failed to provide its internal review result within the recommended 20 working days' time frame. He has therefore made a record of this delay.
22. The Commissioner separately considered the automated processing aspect of the complainant's complaint under the DPA. He found that the complainant does not have an entitlement to the automated processing information and has separately written to him and provided him with the reasons for this position.

## Right of appeal

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23. 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)

24. 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.
25. 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**