

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 March 2022

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

Decision (including any steps ordered)

1. The complainant requested an index of the content available on the judicial intranet.
2. The Ministry of Justice (MoJ) stated that the requested information was not held by the MoJ for the purposes of FOIA under the provisions of section 3(2)(a).
3. The Commissioner's decision is that the requested information is not held by the MoJ for the purposes of FOIA.
4. The Commissioner requires no steps to be taken as a result of this decision.

Background

5. The Judicial Office supports the judiciary across the courts of England and Wales, and the non-devolved tribunals across the UK, by providing training, legal and policy advice, human resources, communications and administrative support¹.

¹ <https://www.gov.uk/government/organisations/judicial-office>

Request and response

6. On 4 May 2021, the complainant wrote to the Judicial Office for England and Wales and requested information in the following terms:

“I gather that one of your functions includes maintaining the judicial intranet. Please can you provide me with an index of the content available on this intranet (eg there may be a "site map" feature, or some other form of structured navigation)”.
7. The request was made using ‘whatdotheyknow’.
8. The Judicial Office responded on behalf of the MoJ on 14 May 2021. It explained that the judiciary is not a public body for the purposes of FOIA. It told the complainant that, as a result, any information held on behalf of the judiciary, including the information that he had requested, is not eligible for release under FOIA.
9. The complainant was dissatisfied with that response. On 14 May 2021 he requested a review.
10. Following an internal review, on 22 June 2021 the complainant received correspondence (dated 8 June 2021) in which the MoJ maintained its original position.

Scope of the case

11. Following earlier correspondence, the complainant contacted the Commissioner on 22 June 2021 to complain about the way his request for information had been handled.
12. He disputed that the information is not held. He told the Commissioner:

“They claim not to hold the requested information, however I explained in my request for an internal review that they definitely did (and provided evidence)”.
13. He was dissatisfied that the internal review did not address any of the points he had raised when requesting a review.
14. The request was made to the Judicial Office for England and Wales (the Judicial Office). The Commissioner acknowledges that there are references to the Judicial Office for England and Wales, the MoJ, Judicial Private Offices and Judicial Office throughout the correspondence in this case.

15. During the course of his investigation, the MoJ confirmed:

“This request was handled by the Judicial Office on behalf of the Ministry of Justice (MoJ). The Judicial Office is an office or an arm’s length body of the MoJ which provides official and legal support to the Lord Chief Justice, the Senior President of Tribunals, and other senior judges”.

16. It is accepted that the judiciary is not a public authority for the purpose of FOIA. For the purposes of this decision notice, the Commissioner considers the public authority concerned is the MoJ.

17. During the course of his investigation, the MoJ confirmed that the requested information is held by the MoJ solely on behalf of the judiciary.

18. It told the Commissioner:

“The MoJ is a public authority for the purposes of the FOIA. However, Section 3 paragraph (2)(a) provides that ‘information is held by a public authority if it is held by the authority, otherwise than on behalf of another person’. In this case as demonstrated above, the information should not be considered held by the MoJ for the purposes of the FOIA”.

19. The analysis below considers whether the MoJ holds the requested information for the purposes of FOIA.

Reasons for decision

Section 3(2) – information held by a public authority

20. Section 3(2) sets out the two legal principles that establish whether information is held for the purposes of FOIA:

“For the purposes of this Act, information is held by a public authority if—

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority.”

21. This sets out a two part definition. Information is held by the public authority, and therefore within scope of a FOIA request, if the authority holds it (but not if it holds it only on behalf of another person), or if another person holds it on behalf of the authority.

22. The Commissioner's guidance 'Information held by a public authority for the purposes of the Freedom of information Act'² explains the circumstances in which information is considered to be held by a public authority for the purposes of FOIA.
23. His guidance also makes it clear that whether information is held by a public authority, or is held on behalf of a public authority, depends on the facts of the case.
24. As explained in the Commissioner's published guidance, each case needs to be viewed individually to determine whether a public authority holds information for its own purposes or solely on behalf of another person.
25. There are various factors that will assist in determining whether the public authority holds the information for the purposes of FOIA. The weight attached to each one will vary from case to case. In some circumstances, one factor may outweigh all the others.
26. As the Commissioner's guidance on this section explains:

"The Upper Tribunal considered the meaning of section 3(2)(a) in the case of University of Newcastle upon Tyne v the Information Commissioner and the British Union for the Abolition of Vivisection [2011] UKUT 185 (AAC, 11 May 2011). It explained that the concept of 'holding' information for FOIA purposes "is not purely a physical concept, and has to be understood with the purpose of the Act in mind". This means that information may be present on a public authority's premises (or even its IT network) but not held by the authority for FOIA purposes. To be considered 'held' for FOIA purposes, there has to be "an appropriate connection between the information and the authority".
27. The question to consider in this case, therefore, is whether the requested information is held by the MoJ, to any extent, for its own purposes.

The complainant's view

² https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf

28. The complainant disputes that information relating to the judicial intranet is only held on behalf of the judiciary and therefore is not held for the purposes of FOIA.
29. When requesting a review, he told the Judicial Office:

“... I'm afraid it is simply untrue to say that you do not hold this information except on behalf of the judiciary. The Judicial Office (and its parent department, the Ministry of Justice) is actively responsible for creating and maintaining this material”.
30. By way of evidencing that view, the complainant referred to an article in 'Tribunals' magazine, the Judicial Office business plan for 2014-15 and job adverts available online. With respect to the latter, he said:

“And a number of job adverts are available online in which the Ministry of Justice sought to recruit a Reform Content Manager and a Reform Communications Officer to the civil service, whose roles would include *"drafting and clearing content for the judicial intranet"*”.

The MoJ's view

31. Initially, the MoJ simply told the complainant:

“The judiciary of England and Wales is not a public body for the purposes of the FOIA as it is not listed under Schedule 1 of the act. As a result of this, any information held on behalf of the judiciary, including the information that you have requested, is not eligible for release under the FOIA”.
32. The MoJ acknowledged that it was not until the internal review that it further explained:

“Information such as the sitemap is considered Judicial information in order to assist the effective leadership and management of the judiciary and therefore as this is held on behalf of the judiciary it is not eligible for release under the FOI”.
33. During the course of his investigation, the Commissioner asked the MoJ to explain in more detail why it considers it does not hold the requested information for the purposes of FOIA. He also asked the MoJ to respond with respect to the points raised by the complainant when he requested an internal review.
34. In light of the complainant's concerns, the Commissioner asked the MoJ to explain where the Judicial Office sits in the MoJ organisational

structure and to explain the relationship between the Judicial Office and the Judicial Communications Team.

35. In support of its application of section 3(2)(a), the MoJ told the Commissioner:

"For the avoidance of doubt, the terms of use of the Judicial Intranet state [in full]:

'The Judicial Intranet is a private website for judicial office holders' use only. Information posted on the site cannot be assumed to be in the public domain and must not be re-published without permission'."

36. While the MoJ did not address the matter of the job adverts mentioned by the complainant, in its submission it did address the point he raised about the magazine article. The MoJ confirmed that the magazine article states:

"The Judicial Communications Team is responsible for the Judicial Intranet, external website, email bulletins and direct emails you may receive from the senior judiciary."

37. The MoJ told the Commissioner that further explanation for this is provided on the 'Corporate communications' webpage³:

"... which explains that 'the [Judicial Communications] team is responsible for developing and maintaining ...the judicial intranet'."

38. Regarding the relationship between the MoJ and the Judicial Office, the MoJ told the Commissioner:

"I can confirm that the relationship between MoJ and the Judicial Office is that the Judicial Office is an arm's length body of the MoJ. In line with the independence of the judiciary whom they support, Judicial Office officials operate at arm's length to government, with judiciary.uk email addresses (rather than justice.gov.uk), physical offices located at court (rather than at the MoJ) and report to the Lord Chief Justice (rather than the Lord Chancellor)".

³ <https://www.judiciary.uk/about-the-judiciary/training-support/jo-index/corp-comms/>

39. With respect to the role and status of the Judicial Office, the MoJ referred the Commissioner to the judiciary website where it states⁴:

“The Judicial Office is a unique branch of the civil service, independent from the machinery which supports the Government, and dedicated to supporting the judiciary as the third arm of the state. We promote and safeguard judicial independence to maintain confidence in the rule of law.

We are answerable not to Ministers but instead, through our Chief Executive, to the Lord Chief Justice of England & Wales and the Senior President of Tribunals as we help them to fulfil their responsibilities to the judiciary”.

40. With regard to the relationship between the Judicial Office and the Judicial Communications Team, the MoJ explained that the Judicial Communications Team is a team within the Judicial Office, specifically within the staff headcount shown in the Judicial Office Business Plan 2020-2021⁵ under the heading of ‘Press and Communications’.
41. Confirming its view that the requested information is held by the MoJ solely on behalf of the judiciary, the MoJ told the Commissioner:

“I can confirm that the content on the Judicial Intranet is solely for the purposes of the judiciary. Much of the content is created by judges, or is created by officials solely on behalf of judges. The purpose of this content is to assist the effective leadership and management of the judiciary”.

The Commissioner’s view

42. The Commissioner recognises that each case needs to be viewed individually to determine whether a public authority holds information for its own purposes.

⁴ <https://www.judiciary.uk/related-offices-and-bodies/judicial-office/>

⁵ <https://www.judiciary.uk/wp-content/uploads/2020/09/judicial-office-business-plan-2020-2021-1.pdf>

43. As noted above, the MoJ did not comment on the complainant's observations about recruitment. However, from his own research, (in the absence of any links provided by the complainant), the Commissioner has viewed what he considers to be relevant online adverts, including for a 'Reform Communications Officer' and 'Reform Content Manager'. He accepts that the advertisements not only include references to the Judicial Office and the MoJ, but also to Her Majesty's Courts and Tribunals Service and the Civil Service.
44. In his guidance 'Information held by a public authority for the purposes of the FOIA', the Commissioner acknowledges:
- "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".
45. In accordance with his guidance, factors that would indicate that the information is held solely on behalf of another person include:
- the authority has no access to, use for, or interest in the information;
 - access to the information is controlled by the other person;
 - the authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; or
 - the authority is merely providing storage facilities, whether physical or electronic.
46. Likewise, factors that would indicate that the information is also held by the public authority include:
- the authority provides clerical and administrative support for the other person, whether legally required to or not;
 - the authority controls access to the information;
 - the authority itself decides what information is retained, altered or deleted;
 - the authority deals with enquiries about the information; or
 - costs arising from holding the information are included in the authority's overall budget.
47. The issue for the Commissioner to determine in this case is whether the information is held by the MoJ solely on behalf of the judiciary. He

accepts that the role of the Judicial Office, including its relationship with the MoJ, is relevant in this case.

48. The Commissioner has considered the arguments from both parties. He has consulted his guidance and considered the arguments with reference to the factors listed above.
49. The Commissioner is mindful that the terms of use state that the Judicial Intranet is a private website for judicial office holders use only. However, he does not consider that that statement resolves the question of whether there is an appropriate connection between the information requested in this case and the MoJ.
50. The Commissioner accepts that there are links between the MoJ and Judicial Office: he acknowledges that the Judicial Office is an administrative arms-length body of the MoJ.
51. However, he recognises that the purpose of the Judicial Office is to support the work of the judiciary, respecting the independence of the judiciary. He accepts that the Judicial Office Communications Team is a team that sits within the Judicial Office.
52. Notwithstanding the acknowledged relationship between the MoJ and the Judicial Office, the Commissioner has seen no evidence that the requested information is held by the MoJ, to any extent, for its own purposes. It follows that the information falls outside the definition of information held for the purposes of FOIA under section 3(2).

Right of appeal

53. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

54. 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.
55. 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

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