

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 May 2022

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

Decision (including any steps ordered)

1. The complainant requested information relating to how complaints are logged/recorded. The Ministry of Justice (MoJ) refused to deal with the request on the basis that it did not constitute a valid request for recorded information.
2. The Commissioner's decision is that the request was valid under section 8 of FOIA. Consequently the Commissioner finds that the MoJ has failed to comply with section 1(1) and section 10(1) of FOIA in failing to issue a substantive response.
3. The Commissioner requires the MoJ to take the following step to ensure compliance with the legislation:
 - issue a response to the complainant in accordance with FOIA.
4. The MoJ must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 16 March 2021, the complainant wrote to the MoJ and requested information in the following terms:

"1. Is a complaint directed to a court & dealt with only by that court also logged/recorded as a complaint by the Ministry of Justice and/or Her Majesty's Courts and Tribunals Service?"

2. For any complaint under 1. are written complaints and complaints by telephone treated differently as to whether or not they are also logged/recorded as a complaint by the Ministry of Justice and/or Her Majesty's Courts and Tribunals Service?
3. For any complaint made to Her Majesty's Courts and Tribunals Service, are there circumstances where it is not logged/recorded as a complaint by the Ministry of Justice?
4. If the answer to 3. is Yes, what are those circumstances?"
6. The request was made via 'whatdotheyknow'.
7. The MoJ responded on 31 March 2021. It advised the complainant that his enquiry does not fall under FOIA.
8. Following an internal review the MoJ wrote to the complainant on 1 July 2021. It maintained that the complainant's queries do not constitute requests for recorded information.

Scope of the case

9. The complainant contacted the Commissioner on 19 July 2021 to complain about the way his request for information had been handled.
10. He disputed that the answers to his queries are not contained in recorded information held by the MoJ.
11. The analysis below considers whether the MoJ was entitled to conclude that the complainant's request of 16 March 2021 was not a valid request for information under FOIA.

Reasons for decision

Section 8 Request for information

12. Section 8 of the FOIA deals with the validity of requests for information and states:

"...any reference to "a request for information" is a reference to such a request which-

 - (a) is in writing,
 - (b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested”.

13. While parts (a) and (b) are not in dispute in this case, the MoJ does not consider that the request describes the information requested.
14. Section 84 of FOIA defines ‘information’ for the purposes of section 1(1) of FOIA (ie information which an applicant can request under FOIA) as “information recorded in any form...”.
15. Therefore, not only must the complainant’s request satisfy the criteria in section 8 FOIA, it must also be a request for recorded information in order to constitute a valid request for information under FOIA.
16. In his guidance¹ on section 8, the Commissioner states:

“There is a low threshold for meeting the requirement to describe the information. A description will be valid if it contains sufficient detail for the requested information to be distinguished from other information held by the authority”.
17. The Commissioner also acknowledges that a request in the form of a question will be valid under section 8(1)(c), provided it still describes distinguishing characteristics of the information.

The Commissioner’s view

18. The Commissioner is mindful that the complainant’s request asks how different types of complaints are recorded.
19. The Commissioner considers that it should be clear to the MoJ that the complainant is seeking recorded information about its complaints process.
20. It follows that the Commissioner is satisfied that the request is a request for information, as per section 8 of FOIA. The complainant was entitled to receive a formal response.

Section 1 general right of access

Section 10(1) time for compliance

¹ <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

21. Section 1(1)(a) of FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
22. Section 10(1) requires that the public authority comply with section 1 promptly, and in any event no later than 20 working days after the date of receipt of the request.
23. As the MoJ did not accept that the request was valid, it did not confirm or deny that it holds the requested information, and has neither disclosed information nor provided a valid refusal notice.
24. The Commissioner therefore finds the MoJ in breach of sections 1(1) and section 10(1) of FOIA.

Right of appeal

25. 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

26. 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.
27. 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
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