

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

### **Decision notice**

**Date:** 23 May 2023

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about complaints procedures from the Ministry of Justice ('the MoJ').
2. The Commissioner's decision is that, on the balance of probabilities, the MoJ does not hold the requested information and complied with section 1(1) of FOIA.
3. The Commissioner also finds that the MoJ breached section 10(1) by failing to confirm or deny if it held the requested information within the required timescale.
4. The Commissioner does not require further steps.

#### **Request and response**

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5. On 15 December 2022, the complainant wrote to the MoJ and requested information in the following terms:  

"Could you then provide me with a copy of a policy for complaint procedure which would include instructions on how to deal with the complaints which were just totally ignored."
6. On 16 January 2023, the MoJ asked the complainant to clarify their request.

7. The Complainant provided the additional clarification on 16 January 2023, in the following terms:  
  
"I meant a complaints against the clerks of courts."
8. The MoJ responded on 14 March 2023, it stated that some information was easily accessible to the complainant and advised the remaining information was not held.
9. Following an internal review, the MoJ wrote to the complainant on 28 March 2023 and stated that it was upholding its original decision.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 28 March 2023 to complain about the way their request for information had been handled.
11. The Commissioner considers that the scope of his investigation is to consider if, on the balance of probabilities, the MoJ holds any additional information within the scope of the request.

### **Reasons for decision**

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#### **Section 1 FOIA - determining whether information is held**

12. Section 1(1) of the FOIA states: "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." If a public authority does not hold recorded information that falls within the scope of the request, the Commissioner cannot require the authority to take any further action.
13. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, i.e., the balance of probabilities. In order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request.
14. The MoJ confirmed to the complainant in its internal review that while it does have a complaint policy, this policy clearly explains that all

complaints should be responded to. Due to this expectation, there is no internal or external policy regarding complaints that are not responded to, as this situation has not been envisaged by the MoJ and goes against the complaint policy it has.

15. The MoJ confirmed that there is only one set of guidance for His Majesty's Court and Tribunal Service (the HMCTS) staff, this ensures that all areas follow the same established three-stage complaint process.
16. The MoJ explained to the Commissioner that searches were carried out within the Customer Investigation Team (CIT), the HMCTS internet system (the intranet) and its complaint guidance. It advised that the Customer Investigation team holds the HMCTS complaint handling guidance and is also the author of this information. Therefore, if the information was held, it would be held by this department.
17. The MoJ informed the Commissioner that when searching its own intranet/internet system, the only document located was the complaints procedure, which was shared with the complainant. The MoJ advised that if the requested information was held, it would be located on the intranet.
18. The MoJ explained it searched its CIT digital shared folders as it does not hold paper copies of the any complaints guidance. MoJ concluded that if the information was held, it would likely be in electronic format and on its intranet and as no information was located it is satisfied that it doesn't hold the requested information.
19. When queried by the Commissioner regarding search terms, the MoJ explained that it used the phrasing "What to do if HMCTS don't reply to a complaint", to search its shared drive and intranet.
20. Based on the above information the Commissioner considers, that, on the balance of probabilities, the MoJ does not hold the requested information. The Commissioner does not require it to take any further steps regarding this matter.

## **Procedural matters**

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21. The MoJ breached section 10(1) of FOIA by failing to confirm or deny if it held the requested information within 20 working days.

## **Other matters**

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22. The Commissioner reminds the MoJ that it should ensure it is aware of each stage of a request before responding to it. In the circumstances of this case, the complainant was asked to provide additional clarification before a response to the request could be provided. The complainant provided this clarification on 16 January 2023 and the MoJ failed to acknowledge this clarification in their response of 6 February 2023.

## 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

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