

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 August 2023

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

Decision (including any steps ordered)

1. The complainant requested information relating to the procedure a complainant should follow when a court fails to comply with published complaints procedures. The Ministry of Justice (MoJ) denied holding the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the MoJ does not hold the requested information and has complied with section 1(1)(a) of FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 11 June 2023, the complainant wrote to the MoJ and requested information in the following terms:

"Please provide procedure/policy documents or relevant correspondence from/to/within HMCTS [HM Courts and Tribunals Service] /MOJ which set out the procedure a complainant should follow when a court fails to comply with your published complaints procedure."

5. The request was made using 'whatdotheyknow'.
6. The MoJ responded on 14 June 2023. It denied holding the requested information.
7. Following an internal review, the MoJ wrote to the complainant on 6 July 2023 maintaining its position.

Scope of the case

8. The complainant contacted the Commissioner on 7 July 2023 to complain about the way their request for information had been handled. They dispute that the MoJ does not hold recorded information relating to how to deal with the situation where courts do not comply with the MoJ's published complaints procedure.
9. The Commissioner considers that the scope of his investigation is to consider whether, on the balance of probabilities, the MoJ holds any information within the scope of the request.

Reasons for decision

Section 1 general right of access to information

10. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled, under subsection (a), to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
11. In this case, the MoJ confirmed that it does not hold information that satisfies the request. It told the complainant that its guidance explains the escalation process when a user says they are unhappy with its previous response. It also told them:

"We don't have a separate process for complainants when a court fails to comply".
12. It explained to the complainant that FOIA does not require a public authority to create information to answer a request if the requested information is not held.

13. In support of its position, the MoJ referred the complainant to a decision notice¹ issued by the Commissioner in a similar case. That case also concerned a request for information about the MoJ's complaints procedure. In that case, the Commissioner found that, on the balance of probabilities, the MoJ does not hold the requested information.
14. In its submission to the Commissioner in this case, the MoJ provided details of the searches conducted, and search terms used, to look for information within the scope of the request. It confirmed that no information was held as a result of those searches.
15. It said that there is only one set of Complaints Handling Guidance and it is this that HMCTS are advised to follow at all stages of a complaint.

The Commissioner's view

16. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
17. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
18. In reaching his decision in this case, the Commissioner has taken account of the views put forward by the complainant. He has also considered the actions taken by the MoJ to check whether it holds the requested information and the explanations it provided as to why the information is not held.
19. The Commissioner acknowledges that the complainant believes that the MoJ does hold the requested information. He accepts that they consider that the MoJ must, at least, hold guidance used by staff answering telephone queries as well as correspondence sent to courts advising on next steps when procedures are not followed.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4025355/ic-224343-s4c2.pdf>

20. However, while the complainant may believe that information must be held, the Commissioner has found no evidence which would indicate that the MoJ holds information that is relevant to their request.
21. Based on the evidence provided to him, the Commissioner is satisfied that, on the balance of probabilities, the MoJ does not hold recorded information falling within the scope of the request.
22. He is therefore satisfied that the MoJ has complied with the requirements of section 1 of FOIA in this case.

Other matters

23. It is not in dispute that the MoJ offered to try to assist the complainant with their query, outside of FOIA, if they provided further details and a contact email address.
24. The complainant told the Commissioner that they were unable to respond to the MoJ because the 'whatdotheyknow' website "hides their email address".
25. The Commissioner accepts that, for some reason, the MoJ's contact details were redacted on its internal review correspondence. However, its contact details are widely available in the public domain and were included, unredacted, in its correspondence to the complainant dated 14 June 2023.
26. He therefore considers that the complainant was able to take up the MoJ's offer of assistance, should they have chosen to do so.

Right of appeal

27. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.

29. 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

**Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**