

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 October 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 an Employment Tribunal process or procedure. The Ministry of Justice (MoJ) denied holding the requested information.
2. The Commissioner's decision is that the information is not held by the MoJ for the purposes of FOIA and that the MoJ is entitled to rely on section 3(2) (public authorities) of FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. Following earlier correspondence, on 20 August 2023, the complainant wrote to the Employment Tribunals Service and requested information in the following terms:

"I am aware that judgment [reference redacted] has been deleted from the register. [...].

The judgment can only have been removed from the register lawfully, so it is my belief it can only have been removed under The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 Rule 94.

I would like to submit a further FOI to establish if there is any information held by the Employment Tribunal Service that gives guidance or further information about the process an Employment Tribunal makes and reviews orders under rule 94.

1. How is such an order considered, and reviewed? Rule 94 or 50 was not discussed during a hearing. The judgement seems to have been deleted retrospectively.
2. Can an application be made by a party to review an order made under rule 94?
3. What is the threshold for national security, and if the threshold is reached, is the order decided by a single judge or multiple judges at a hearing? Can parties attend this hearing?
4. What are the processes or procedure for reviewing orders made under rule 94, in the event a judge that made such an order is incapacitated?
5. Is it possible for a judgement to be removed from the register under rule 50, without an application or without good reason?
6. In an MoJ open justice call for evidence, there is a section on Public Legal Education which seeks to ensure both the media and public are aware of the rules in place to protect the fair administration of justice. [...]. What Public Legal Education can be provided by a judge deciding this was acceptable and removing the judgment from the register?

Other than the employment tribunal rules and accompanying explanatory notes, I kindly request any material held that might help answer my questions”.

5. The MoJ responded on 14 September 2023. Confirming that it had handled the correspondence under FOIA, it denied holding information within the scope of the request.
6. Following an internal review, the MoJ wrote to the complainant on 12 October 2023. It variously told the complainant that it does not hold recorded information within the scope of the request, and that the request appears to be asking for explanations rather than recorded information. The MoJ also clarified, that, if any relevant information was held, it would be held on behalf of the judiciary. It told the complainant that the judiciary is not listed under Schedule 1 of FOIA and requests for information held by, or on behalf of, the judiciary are therefore outside the scope of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 12 October 2023 to complain about the way their request for information had been handled. They told the Commissioner that they believe that information is held that would satisfy their request.
8. The Commissioner considers that the scope of his investigation is to determine whether the MoJ holds the requested information for the purposes of FOIA.

Reasons for decision

9. The Commissioner considered a similar request for information, from the same complainant, in case reference IC-248371-V6C1. The request in that case was also addressed to the Employment Tribunal Service and the subject matter of the request also related to the judgement referred to in the preamble to the request in this case.
10. The Commissioner was satisfied in that case that the MoJ was the appropriate public authority to respond to the request.
11. The Commissioner's decision in that case was that the information sought by the complainant is not held by the MoJ for the purposes of FOIA and that the MoJ is entitled to rely on section 3(2)(a) of FOIA.
12. Having considered the factors applicable to this case, the Commissioner is satisfied that the similarity between this case and IC-248371-V6C1 is such that he is able to reach the same decision without the need for further analysis.
13. The decision notice in case reference IC-248371-V6C1 is attached for reference.

Right of appeal

14. 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

15. 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.
16. 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

Michael Lea
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