

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 February 2018

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant has requested a copy of the tribunal/judge's handwritten notes in relation to his employment tribunal hearing. The Ministry of Justice explained that it considered that the requested information was the complainant's own personal data and that it was dealing with it under the Data Protection Act 1998. The Ministry of Justice did not explain whether it held the information, the exemption it was relying on and why.
2. The Commissioner considers that the Ministry of Justice has breached section 17(1) (refusal of a request) of FOIA.
3. The Commissioner requires the Ministry of Justice to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant, confirming whether it holds the information or is neither confirming nor denying whether it holds it, the exemption it is relying on and why.
4. The Ministry of Justice must take these steps 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 24 October 2017, the complainant wrote to the Ministry of Justice (MoJ) and requested information in the following terms:

"As the ICO decision detailed below confirms that that Tribunals/Judge's Handwritten Notes are on the case file of Tribunal Case No: [number redacted] I would like to request a copy of all the said handwritten notes in accordance with the Freedom Of Information Act."

6. The MoJ responded on 25 October 2017. It explained that it was dealing with the request under the Data Protection Act 1998 (DPA), as it considered the request was a subject access request for the complainant's own personal data. It also asked him to pay a £10 fee, provide two types of personal identification and a location for it to conduct a search for his personal information (for example a particular court or tribunal)
7. The complainant responded on the same day, explaining that he did not have to pay a £10 fee.
8. On 26 October 2017 the MoJ responded, reiterating that it was considering the request under the DPA and explained that was asking for proof of identity, not a fee.
9. The complainant responded on 27 October 2017, explaining that as the notes in question were on a court file as previously confirmed by the First-tier Tribunal and the ICO, they were classed as a public record and were accessible under the FOIA. The MoJ responded on the same day reiterating that it needed proof of identity and if the complainant was dissatisfied, he could complain to the Commissioner.

Scope of the case

10. The complainant contacted the Commissioner on 30 October 2017 to complain about the way his request for information had been handled. He explained that as the tribunal's/judge's handwritten notes were a detailed reflection of the written Court Judgment, they should be accessible in the same way as the written Court Judgment in accordance with the FOIA.
11. Furthermore, the complainant explained that as the tribunal's/judge's handwritten notes were a more detailed account of the final written judgment which is a public record, they should be accessible under the FOIA, especially as the MoJ had confirmed that the tribunal's/judge's handwritten notes were on the court file.

12. The Commissioner will consider the way in which the MoJ has handled the request for information under the FOIA.

Reasons for decision

Section 17 – refusal of a request

13. Section 17(1) of FOIA states:

“(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies.”*

14. The Commissioner notes that in its response of 26 October 2017, the MoJ did not explain whether it was withholding the information or neither confirming nor denying whether it held it, which exemption it was relying on and why.
15. The Commissioner considers that the MoJ has breached section 17(1).
16. The Commissioner considers that the MOJ should issue a fresh response to the complainant, confirming whether it holds the information or is neither confirming nor denying whether it holds it, the exemption it is relying on and why.
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Right of appeal

17. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

18. 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.
19. 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

Deborah Clark
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF