

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 March 2016

Public Authority: Attorney General's Office
Address: 20 Victoria Street
London
SW1H 0NF

Decision (including any steps ordered)

1. The complainant requested information relating to the Promissory Oaths Act 1868, impounding of court documents, contempt of court proceedings against a named company and information relating to the ability for court users to choose the level of judge to hear their case.
2. The Commissioner's decision is that, on the balance of probabilities, the Attorney General's Office (AGO) does not hold the requested information. He does not require the AGO to take any remedial steps to ensure compliance with the FOIA.

Request and response

3. On 8 April 2015, the complainant wrote to the AGO and requested information in the following terms:
 - "1. How many Prosecutions have been brought under the Promissory Oaths Act 1868 during the last 20 years.*
 - 2. How many times has the DPP for Crown Prosecution Service have impounded Court Documents during the Last 10 years.*
 - 3. Why did the HM Attorney General not authorise Contempt of Court Proceedings against Newlyn PLC as an Order was made in the Romford County Court.*

4. There is Section 23(1)(g) Fraud or Mistake, 38 (1), 76 of the County Court Acts 1984. As the County Court Circuit Judge can make any Order which could be made by the High Court Judge.

5. There is a decision given in the European Court of Human Rights in the Times Newspaper Ltd and [name redacted] Versus the United Kingdom

Article 25, 26 and 27 of the International Covenant of Civil and Political Rights signed at the United Nations in 1966, this is not mentioned in the Civil Procedure Rules Part 3, Part 7, Part8, Part 23, Part 54.

6. Why are there no Circuit Judges in many County Courts in the United Kingdom, as the Court Fees are being Increased by High Percentage, than the Citizens does have the Choice which level of Judge should hear and try the Claim, when the District Judge has no Jurisdiction Power to hear and try a claim arising from Direct or Indirect Discrimination."

4. The AGO responded to the request on the 7 May 2015. It denied holding the requested information. On the same day the complainant requested an internal review.
5. The AGO responded with the internal review outcome on the 4 June 2015 and maintained that the requested information was not held.

Scope of the case

6. The complainant contacted the Commissioner on the 9 June 2015 to dispute the response from the AGO that the information he had requested was not held. The analysis below covers whether the AGO was correct to state that the requested information was not held.
7. The Commissioner notes that some of the paragraphs within the complainant's 8 April 2015 correspondence do not include requests for recorded information. This decision notice addresses only paragraphs 1, 2, 3 and 6 from the 8 April 2015 correspondence, as these are the only parts of that correspondence which can be interpreted as requests for recorded information.
8. The internal review also covered a further request made on a different date. That further request is not covered in this notice.

Reasons for decision

Section 1 – Is the information held?

9. Section 1 of FOIA states that:

“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.”

10. The Commissioner has sought to determine whether, on the balance of probabilities, the AGO holds the information which the complainant believes it holds.

11. The Commissioner has made this determination by applying the civil test of the balance of probabilities. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether requested information is held.

12. The Commissioner has investigated this complaint by asking the AGO a number of questions about the searches it has made to locate the information sought by the complainant and questions about its possible deletion/destruction. He has also taken into account explanations provided by the AGO as to why it should not be expected to hold the requested information.

13. The AGO explained that although the complainant’s correspondence contained six paragraphs, it only considered paragraphs 1, 2, 3 and 6 as requests for recorded information under the FOIA. The Commissioner agrees that points 4 and 5 are not requests for recorded information; they are statements made by the complainant.

14. In its submission, the AGO explained that in regards to the complainant’s first question, the Promissory Oaths Act 1868 does not contain any offences for which prosecutions can be brought. The AGO explained that it does have functions in relation to criminal matters, including superintending the Crown Prosecution Service (CPS) and consenting to the prosecution of certain serious offences. However, the AGO explained that it does not have specific function in relation to the Promissory Oaths Act 1868 and therefore it would be very unlikely for it to hold any relevant information.

15. The AGO explained that although it did not expect to hold any information relating to prosecutions having been brought under the Promissory Oaths Act 1868, it still conducted a search for the requested information. The AGO stated that it maintains a paper filing system which is its official record and that it maintains a shared electronic folder system (known as the j drive) which contains working versions of electronic documents. The AGO explained that if it held information within the scope of the request there would be a record in the paper files (or a record of the relevant file destruction) or the j drive.
16. The AGO explained that it searched for the title of the legislation in the j drive and that this returned no results. It then explained that it performed a search of its electronic index system of its paper files using the term "promissory" as the index only permits single word searches and this also returned no results. The AGO explained that if there had been any prosecutions within the scope of the complainant's request that information would be more likely to be held by the CPS. The AGO confirmed that it had advised the complainant to contact the CPS.
17. In regards to the complainant's second question concerning the exercise of a power to impound court documents, the complainant asserts that this is vested in the Director of Public Prosecutions (DPP). The AGO explained that it believed this request might relate to Part 39.7(1)(b) of the Civil Procedure Rules which provides that where a court has impounded documents, they may only be released if a written request is made by a Law Officer or the DPP in the absence of a court order requiring their release. Therefore, the AGO explained that the DPP's power relates to the release of documents which the court has impounded, rather than an ability to impound documents him/herself.
18. The AGO explain that the DPP's exercise of this power is not something that the AGO would monitor or keep a record of and therefore it would be highly unlikely that it would hold any relevant information.
19. The AGO stated that it carried out a search on the j drive using the terms "impounded", "impound", "DPP impound", "impounded court", "impounded court documents", "civil procedure rules", "CPR and CPR 39" and returned no relevant results. It also explained that it searched "cardbox", its electronic index of paper files, using the words "impound" and "impounded" and that this also returned no results. The AGO explained that it again referred the complainant to the CPS, who, had this power been exercised, would be more likely to hold information within the scope of the request.
20. The complainant's third question relates to the role of the AGO in authorising proceedings for contempt of court. The complainant

specifically asks about the AGO deciding not to authorise contempt proceedings against an organisation called Newlyn PLC.

21. As a background the AGO explained that the complainant has previously had dealings with Newlyn PLC in his capacity as a litigant.
22. The AGO confirmed that it is able to bring proceedings for contempt of court and had it been asked to consider authorising a contempt of court proceedings against Newlyn PLC, the AGO states that it is highly likely that it would hold information relevant to the scope of the request.
23. The AGO therefore searched for the terms "Newlyn PLC", "Newlyn", "Newlyn contempt", "Newlyn court" and "contempt PLC" on the j drive of electronic resource. It also carried out a search of "cardbox" for "Newlyn" and a search for a spreadsheet on the j drive used to record the existence and progress of recent contempt cases referred to the AGO for consideration. It explained that no evidence was found that the AGO had been asked to consider authorising contempt of court proceedings against Newlyn PLC, and therefore no recorded information relevant to the request was held.
24. The AGO state that the complainant's sixth question relates to levels of staffing in the judiciary and the ability for court users to choose the level of judge to hear their case. The AGO states that it has no role in relation to this and that there would be no business purpose for which this information would be held.
25. The AGO explained that although it has no role in relation to the requested information, in the interests of being thorough it carried out searches on its electronic databases, electronic filing system and electronic file index system. The AGO confirmed that there was no record of information being held within the scope of the complainant's request.
26. The AGO also confirmed that there is no record of relevant information being deleted or destroyed within the scope of the complainant's requests.
27. The AGO explained that the only information it would hold for business purposes would be in relation to the complainant's third question about being able to bring proceedings for contempt of court. The AGO confirmed that there are no other reasons why it would hold any of the information requested by the complainant.
28. Given the explanations provided by the AGO, the conclusion of the Commissioner is that, on the balance of probabilities, the AGO does not hold the requested information and, therefore, it complied with section 1(1)(a) of the FOIA when it stated that this information was not held.

Right of appeal

29. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

30. 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.
31. 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

Ben Tomes
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