

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 April 2021

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

Decision (including any steps ordered)

1. The complainant requested information relating to Trans Awareness Training delivered to Tribunal judges.
2. The Ministry of Justice (MoJ) stated that the requested information was not held for the purposes of FOIA.
3. The Commissioner's decision is that the requested information is not held by the MoJ for the purposes of the FOIA.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 18 March 2020, the complainant wrote to the HMCTS (HM Courts & Tribunals Service) and requested information in the following terms:

"In [sic] understand that the organisation Gendered Intelligence delivers Trans awareness training was recently delivered to judges in the Employment Tribunal (ET) and Asylum and Immigration Tribunal (AIT). (Tribunals Edition 3 2018 <https://www.judiciary.uk/wp-content/uplo...>)

Please can you provide dates and details of Trans Awareness Training delivered to the ET & AIT by Gendered Intelligence.

Including:

- *Cost of the training*
- *Contract/agreement/TORs for commissioning the training*
- *Copies of any presentation material and/or hand outs used*
- *Which judges attended the training”.*

6. The request was made using the ‘*whatdotheyknow*’ website.
7. The MoJ responded on 31 March 2020. It denied holding the requested information.
8. Expressing dissatisfaction with that response, the complainant asked the MoJ:

“Please confirm or deny whether this information is held by the Judicial college (which is covered by FOI) and provide the information please”.

9. Following an internal review, the MoJ wrote to the complainant on 30 June 2020 maintaining its position, and clarifying:

“All information on judicial training that is held by the Judicial College, is only held on behalf of the judiciary of England and Wales”.

Scope of the case

10. The complainant contacted the Commissioner on 25 July 2020 to complain about the way her request for information had been handled. She disputed the MoJ’s explanation as to why the information is not held.

11. With regard to the nature of her request, she explained:

“Please note that my FOI request is to the Judicial College which is covered under Schedule 1 of FOIA (under its previous name as the Judicial Board of Studies). Their FOI requests appear to be handled administratively by the Ministry of Justice, but the Judicial College is the institution that my request was made to”.

12. The complainant told the Commissioner:

"I believe that the Judicial College holds this information for its own purposes (delivering training), and as the Judicial College is covered by FOIA Schedule 1 it should disclose the information".

13. It is not in dispute that the judiciary is not a public authority for the purpose of FOIA.
14. Nor it is in dispute that the Judicial College is part of the Judicial Office¹ and that the Judicial Office is a department within the MoJ. The Commissioner also accepts that FOI requests to the Judicial Office are managed centrally via the MoJ.
15. The Commissioner acknowledges that, throughout the correspondence in this case, there are references to the MoJ, the Judicial Office and the Judicial College. She also notes that the request was made to HMCTS. For the purposes of this decision notice, the Commissioner considers the public authority concerned is the MoJ.
16. During the course of her investigation, the MoJ confirmed its position, and cited section 3(2) (public authorities) of the FOIA. It told the Commissioner:

"The position taken by the MoJ in the original response to this FOI and subsequent response to the internal review, is that it holds information on behalf of a body, i.e. the judiciary, which is exempt from the FOIA... although the MOJ may be the authority that is in possession of the information, it does not "hold it" within the definition of s3(2)".

17. In support of its position, the MoJ drew the Commissioner's attention to her earlier decision notice FS50538007 issued on 16 October 2014² which found the Judicial College's training material to be held on behalf of the judiciary.

¹ <https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/organisation-of-the-judiciary/>

² https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1042658/fs_50538007.pdf

18. The analysis below considers whether the MoJ holds the requested information for the purposes of the FOIA.

Reasons for decision

Section 3(2) – information held by a public authority

19. Section 3(2) sets out the two legal principles that establish whether information is held for the purposes of the FOIA:

"For the purposes of this Act, information is held by a public authority if—

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."

20. This sets out a two part definition. Information is held by the public authority, and therefore within scope of a FOIA request, if the authority holds it (but not if it holds it only on behalf of another person), or if another person holds it on behalf of the authority.
21. The Commissioner's guidance "*Information held by a public authority for the purposes of the FOIA*"³ explains the circumstances in which information is considered to be held by a public authority for the purposes of the FOIA.
22. Her guidance also makes it clear that whether information is held by a public authority, or is held on behalf of a public authority, depends on the facts of the case.
23. As explained in the Commissioner's published guidance, each case needs to be viewed individually to determine whether a public authority holds information for its own purposes or solely on behalf of another person.
24. There are various factors that will assist in determining whether the public authority holds the information for the purposes of the FOIA. The

³ <https://ico.org.uk/media/for-organisations/documents/1148/information-held-by-a-public-authority-for-purposes-of-foia.pdf>

weight attached to each one will vary from case to case. In some circumstances, one factor may outweigh all the others.

25. As the Commissioner's guidance on this section explains:

"The Upper Tribunal considered the meaning of section 3(2)(a) in the case of University of Newcastle upon Tyne v the Information Commissioner and the British Union for the Abolition of Vivisection [2011] UKUT 185 (AAC, 11 May 2011). It explained that the concept of 'holding' information for FOIA purposes "is not purely a physical concept, and has to be understood with the purpose of the Act in mind". This means that information may be present on a public authority's premises (or even its IT network) but not held by the authority for FOIA purposes. To be considered 'held' for FOIA purposes, there has to be "an appropriate connection between the information and the authority".

26. The question to consider in this case, therefore, is whether the requested information is held by the MoJ, to any extent, for its own purposes.

The complainant's view

27. The complainant disputes that information on judicial training held by the Judicial College is only held on behalf of the judiciary and therefore is not held for the purposes of the FOIA.

28. In support of her complaint, the complainant referred the Commissioner to the 'Judicial College Strategy 2018-2020'⁴, specifically its objective "to provide training of the highest professional standard for judicial office holders using methods which represent value for money...".

29. She told the Commissioner:

"It is not possible to undertake this while claiming to know nothing about the cost or content of training".

30. In the circumstances of this case, regarding training provided by a third party, the complainant considered that information within the scope of

⁴ <https://www.judiciary.uk/wp-content/uploads/2017/12/judicial-college-strategy-2018-2020-1.pdf>

the request would have been used by the Judicial College itself. For example, she considered it would have been used to assess whether the training had been delivered and met the Judicial College's objectives.

The MoJ's view

31. The MoJ told the complainant:

"The information requested is not held by the MoJ. Statutory responsibility for the provision and content of training for the judiciary rests with the Lord Chief Justice as Head of the Judiciary in England and Wales, and the Senior President of Tribunals, in line with the Constitutional Reform Act 2005. This maintains the independence of the judiciary which also means that the government does not provide guidance or policy on how judges should operate in court. The judiciary are not a public body for the purposes of FOIA (they are not listed under Schedule 1 of the Act) and requests concerning training materials, the content of training for the judiciary, the providers of training and the names of judicial office holders who attended specific training events are therefore outside the scope of the FOIA".

32. It further explained:

"All information on judicial training that is held by the Judicial College, is only held on behalf of the judiciary of England and Wales, who are exempt from the provisions of the FOIA 2000 by not being cited as a public authority in Schedule 1 of the FOIA. Which is why it is not held by the MoJ".

33. In light of the complainant's concerns, the Commissioner asked the MoJ to explain in more detail why it considers it does not hold the requested information for the purposes of the FOIA.

34. In its submission, the MoJ confirmed its view that any training provided to the judiciary, whether 'in-house' training or training provided to the judiciary by external parties, is held for the purposes of the judiciary only.

35. The MoJ re-iterated what it had told the complainant, namely:

"The Lord Chief Justice, the Senior President of Tribunals and Chief Coroner have statutory responsibility for judicial training which is exercised through the Judicial College".

36. While it maintained that the requested information in this case was not held for the purposes of the FOIA, the MoJ confirmed that where the

Judicial College holds information other than on behalf of the judiciary, the FOIA will apply in relation to that information:

"For instance, the College regularly processes FOI requests that relate to its administration, finances and general operations in accordance with the expectations of the FOIA. By way of example, the number of judges trained, courses run and overall subject areas covered are often made publicly available..."

37. In that regard, the MoJ referred the Commissioner to the College's annual activities report for 2018-19⁵. That report includes information about the type and number of courses presented, the number of participants who attended and a summary of the College's expenses.
38. In correspondence with the Commissioner, the MoJ considered the various factors outlined in the Commissioner's guidance and the more specific questions the Commissioner asked during her investigation.
39. With respect to the commissioning and cost of the training specified in the request, the MoJ told the Commissioner that it is a judicial, not official, decision as to whether an external speaker is required to address a judicial training seminar or training event. Similarly, it told her that it is also a matter of judicial decision to decide upon who to engage.
40. The MoJ told the Commissioner that there is a policy in place which sets out matters such as terms of engagement, fees etc. However, it also told her that the Judicial College does not publish details of its policies (which would include the policy on speakers) because all College policies are judicially approved and, therefore, are held by the MoJ on behalf of the judiciary.
41. It also explained:

"Cost information relating to individual and cohorts of training is generated for internal Judicial College purposes, to support the running of the judiciary. The Judicial Office reports high level financial information to the MoJ, but not the cost of individual or cohorts of training events"

⁵ <https://www.judiciary.uk/wp-content/uploads/2017/07/Review-of-Activities-2018-19.pdf>

42. The MoJ advised that if any judges who received the training had retained any training material, for example handouts, such information would be for their use only. In that respect, the MoJ told the Commissioner:

"...judicial training material in the possession of the judiciary is considered by MoJ and the College to be exempt from disclosure under the FOIA as the judiciary is not listed as a public body at Schedule 1 of the FOIA".

43. Similarly, with respect to the names of judges who attend specific training, the MoJ told the Commissioner that such information is retained and held by the Judicial College on behalf of the judiciary, for the judiciary.
44. Regarding the dates of training, the MoJ confirmed that that information is only held by the Judicial College on behalf of the judiciary.
45. With respect to the Commissioner's questions about who controls access to information relating to judicial training, the MoJ told the Commissioner:

"Ultimately it is the senior judiciary and the judicial Directors of Training at the Judicial College who determine the policy on access to judicial training material".

46. With regard to who decides what information is retained, altered or deleted, the MoJ told the Commissioner:

"The judges who direct the running and delivery of each training seminar for the judiciary and judicial office-holders decide on what material relating to that seminar or training event remains for retention, requires alteration or is ready for deletion".

47. Responding to her questions about individual aspects of its handling of the request, the MoJ told the Commissioner:

"The entire request relates to information pertaining to the training received by the independent judiciary to whom the FOI Act does not apply".

The Commissioner's view

48. The Commissioner recognises that each case needs to be viewed individually to determine whether a public authority holds information for its own purposes.
49. In her guidance '*Information held by a public authority for the purposes of the FOIA*', the Commissioner acknowledges:

"When information is held by a public authority solely on behalf of another person, it is not held for FOIA purposes. However, information will be held by the public authority if the information is held to any extent for its own purposes".

50. In accordance with her guidance, factors that would indicate that the information is held solely on behalf of another person include:
- the authority has no access to, use for, or interest in the information;
 - access to the information is controlled by the other person;
 - the authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; or
 - the authority is merely providing storage facilities, whether physical or electronic.
51. Likewise, factors that would indicate that the information is also held by the public authority include:
- the authority provides clerical and administrative support for the other person, whether legally required to or not;
 - the authority controls access to the information;
 - the authority itself decides what information is retained, altered or deleted;
 - the authority deals with enquiries about the information; or
 - costs arising from holding the information are included in the authority's overall budget.
52. The Commissioner has considered the arguments from both parties. She has consulted her guidance and considered the arguments with reference to the factors listed above. She has also taken into account the role of the Judicial College with regard to how the judiciary are trained which is explained on the Judiciary's website:

"An essential element of the philosophy of the Judicial College is that the training of judges, tribunals members and magistrates is under judicial control and direction⁶".

53. From the evidence she has seen, the Commissioner is satisfied that the requested information in this case was not held by the MoJ for the purposes of the FOIA.

⁶ <https://www.judiciary.uk/about-the-judiciary/training-support/judiciary-trained/>

Right of appeal

54. 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@justice.gov.uk

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

55. 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.
56. 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

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