

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 20 September 2023

**Public Authority:** Ministry of Justice

**Address:** 102 Petty France  
London  
SW1H 9AJ

#### **Decision (including any steps ordered)**

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1. The complainant requested a copy of a form from the Ministry of Justice (the MoJ).
2. The Commissioner's decision is that the MoJ breached section 17(1) by failing to issue an appropriate refusal notice within 20 working days.
3. The Commissioner does not require further steps, as the requested information has since been disclosed.

#### **Request and response**

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4. On 15 July 2023, the complainant wrote to the MoJ and requested information in the following terms:  

"Please provide the SEND 45 Case Review Form. This is used in the Special Educational Needs and Disability Tribunal."
5. The MoJ responded on 21 July 2023. It stated that the complainant needed to request the information from the customer service team directly.
6. Following an internal review, the MoJ wrote to the complainant on 25 July 2023. It stated that the information was not recorded information and to access the form, the complainant should contact the customer service team.

## Scope of the case

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7. The complainant contacted the Commissioner on 24 July 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to consider whether the requested information was recorded information and whether the MoJ issued an appropriate refusal notice.

## Reasons for decision

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### What is recorded information?

9. The ICO's broad interpretation of 'recorded information' reflects the view taken by the Upper Tribunal in Independent Parliamentary Standards Authority (IPSA) v Information Commissioner and Leapman UKUT 0033 (ACC)<sup>1</sup>.
10. A request for a copy of a document is a valid request for all the 'recorded information' in that document.
11. 'Recorded information' can be defined as any feature or characteristic of a document that imparts information or knowledge to the viewer.
12. This means that the term 'recorded information' doesn't just apply to the text; it covers any component of the document that conveys information, for example:
  - **Design and layout:** this can reveal something about the nature of the document. For example, whether it is recorded in the form of a report, spreadsheet or letter.
  - **Logos and letterheads:** these can tell the viewer something about the authenticity and legitimacy of the document.
  - **Emphasised wording:** the use of underlining, italics or bold font tells the viewer something about the significance of the emphasised words.
  - **Handwriting:** this includes both the writer's handwriting style and their signature.

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<sup>1</sup> [Social Security & Child Support Commissioners \(tribunals.gov.uk\)](https://tribunals.gov.uk)

- **Annotations and headers and footers:** this includes handwritten and electronic comments, markings such as crossed out or circled words and annotations made outside the main body of the text. Any text in headers and footers also qualifies as information recorded in the document.
  - **Images:** images such as diagrams, photographs and pie charts usually convey some form of information to the viewer.
  - **Email transmission details:** the time and date of transmission and electronic signature are part of the recorded information in an email.
13. Having reviewed his own guidance and the request for information, the Commissioner is satisfied that the request was a valid request for recorded information.

### **Section 17 – writing a refusal notice**

14. Sections 17(1) and 17(3) state:

“(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.”

15. In the circumstances of this case, the MoJ failed to rely on any exemptions to withhold the requested information and did not provide the complainant with an appropriate refusal notice, as required under section 17.
16. The Commissioner’s decision is that the MoJ has breached section 17 by failing to state which exemption(s) it was relying on to withhold the requested information and by failing to issue an appropriate refusal notice.
17. As the MoJ has now disclosed the requested information, he requires no further action on this matter. The response was provided on 12 September 2023.

## **Other matters**

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18. The Commissioner would like to take this time to remind the complainant and the MoJ, that if information is reasonably accessible outside of FOIA, then it will be exempt under section 21.
19. In the circumstances of this case, the MoJ did advise the complainant that an alternative access regime was available to them for the requested information but did not specify the section 21 exemption. This means that the information was likely exempt under section 21.

## Right of appeal

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20. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

21. 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.
22. 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**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**