

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 November 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 cases heard by a specified individual, together with details of the defendants that had been on trial and had their verdicts considered by the specified individual. Ultimately, the Ministry of Justice (the 'MOJ') denied holding the requested information.
2. The Commissioner's decision is that the MOJ does not hold the requested information for the purposes of FOIA for the reasons set out in this notice.
3. The Commissioner requires no steps to be taken as a result of this decision.

Background

4. His Majesty's Courts and Tribunals Service ('HMCTS') is not listed as a public authority in schedule 1 of FOIA. However, HMCTS is an executive agency of the MOJ and falls within its remit for the purposes of FOIA. The MOJ is therefore the appropriate public authority in this case.

Request and response

5. On 29 June 2023, the complainant wrote to the MOJ and requested information in the following terms:

“Following on from your reply I would like to ask for the names, case details and the verdict for all the cases that have gone before LT Colonel [sic] [name redacted] who I was before at Uxbridge magistrates court. I understand from your reps once you do not ask or hold ethnicity details [sic] therefore I only ask all details of the defendants that have been on trial and the verdict in which LT Colonel [sic] [name redacted] was involved.”

6. The MOJ responded on 13 July 2023. It refused to provide the requested information citing sections 32(1)(a) and (b), (subsections of the exemption for court records etc) and section 40(2) (the exemption for personal information).
7. Following an internal review the MOJ wrote to the complainant on 8 August 2023. It maintained that section 32(1)(a) and section 40(2) applied to the requested information.

Scope of the case

8. The complainant contacted the Commissioner on 12 August 2023 to complain about the way their request for information had been handled.
9. During the course of the Commissioner’s investigation, the MOJ revised its position and wrote to both the complainant and the Commissioner on 27 October 2023. The MOJ now said that the requested information was not held for the purposes of FOIA.
10. On 4 November 2023, the complainant confirmed they remained dissatisfied with the MOJ’s revised response.
11. The analysis below considers whether the MOJ holds the requested information for the purposes of FOIA.

Reasons for decision

Section 1 general right of access to information held by public authorities

12. Section 1 of FOIA states:

“(1) 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.”

13. These rights only apply to the **information** a public authority holds.

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

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

15. This sets out a two part definition. Information is held by the public authority, and therefore within scope of an 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.

16. The Commissioner’s guidance¹ ‘Information you hold for the purposes of FOIA’ explains the circumstances in which information is considered to be held by a public authority for the purposes of FOIA.

17. His 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.

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/information-you-hold-for-the-purposes-of-foia/>

The complainant's view

18. The complainant considers that the MOJ is incorrect in stating that it does not hold any information in scope of the request.

The MOJ's position

19. In its revised response, the MOJ said:

"I must advise that as the result of further careful consideration, and checks regarding the information requested, that the MOJ can confirm that it does not hold for purpose [sic] of FOIA any information in the scope of your FOIA request. Therefore, the MOJ are not relying on any FOI exemptions, as that is unnecessary.

The FOIA does not oblige a public authority to create information to answer a request if the requested information is not held. The duty is to only provide the recorded information held.

The FOIA only applies to the information held by public authorities for their public authority functions, it does not apply to courts and tribunals. As such, information held by the courts, or held by a public authority on behalf of a court, is not within the scope of the FOIA.

HMCTS functions in more than one capacity, one as a court officer when conducting business for the court (under the direction of the court), and the other as a public authority (such as reporting and analytics of court services).

HMCTS and the MOJ do not hold any information within the scope of your request within its capacity as a public authority. The information you have requested cannot be obtained from the administrative systems held for the public authority purposes of HMCTS and MOJ, and if held, it can only be obtained by accessing the case records themselves which are held in the custody of the tribunal for the purposes of the tribunal only. It is therefore not held for purpose of the FOIA, and thus does not have to be disclosed under the FOIA.

You may wish to redirect your query to the Uxbridge Magistrates Court directly as they may hold some of the information that you have requested.

To contact a tribunal centre, please see the information that's published at: <https://www.find-court-tribunal.service.gov.uk>

A fee may be payable. If a fee is payable, the tribunal centre will be able to tell you how much money you need to pay.

Our retention policy for storing personal data is that it is held for no longer than necessary in accordance with the MOJ's Record Retention and Disposition Schedules (RRDS). For further information, please see:

<https://www.gov.uk/government/publications/record-retention-and-disposition-schedules>"

20. Acknowledging the nature of the requested information in this case, the MOJ explained that, while HMCTS may hold information of the type requested, it is held by HMCTS as a court officer (under the direction of the court), not in its public authority capacity. Therefore, the information requested is not held for the purposes of FOIA.

The Commissioner's view

21. It is not in dispute that the MOJ is a public authority for the purposes of FOIA. It is also well established that courts and inquiries are not subject to FOIA, as is recognised by the Commissioner in his guidance².
22. The Commissioner acknowledges the MOJ's position is that FOIA only applies to the information held by public authorities for their public authority functions: it does not apply to courts and tribunals. For this reason, information held by the courts, or held by a public authority on behalf of a court, is not within the scope of FOIA.
23. The Commissioner understands that the complainant may consider it contradictory to be told by the MOJ that it does not hold the requested information, while it also advises that tribunals, part of HMCTS, are responsible for enquiries about specific cases and that the complainant can request the information they are seeking by contacting the relevant tribunal. Whether or not that request is granted is outside of the Commissioner's jurisdiction.
24. He accepts the notion that, although the MOJ physically holds information of the nature requested, it does not hold this information for the purposes of FOIA, is a difficult concept.

² <https://ico.org.uk/media/for-organisations/documents/2021/2619028/s32-court-inquiry-and-arbitration-records.pdf>

25. However, from the evidence he has seen, the Commissioner is satisfied that the requested information is held by HMCTS in the course of exercising its function as a court rather than in its capacity as a public authority. It follows that he is satisfied that it is not held by the MOJ for the purposes of FOIA.
26. The Commissioner has reached the same decision in a number of other similar cases involving requests made to the MOJ. At present, two of the three decision notices are awaiting publication on the ICO's website, but the Commissioner has included the relevant case references here for future reference and information (IC-253754-Y8V8, IC-242885-P6K8 and IC-263625-H1J2³).

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4027225/ic-263625-h1j2.pdf>

Right of appeal

27. 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

28. 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.
29. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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