

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 May 2024

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

Decision (including any steps ordered)

1. The complainant requested complaint related information about judges from the Judicial Conduct Investigations Office (the 'JCIO'), which falls under the remit of the Ministry of Justice (the 'MOJ'). The JCIO argued that it is an independent statutory body and is not a public authority for the purposes of the Freedom of Information Act 2000 ('FOIA') and is therefore not obliged to respond to FOIA requests.
2. The Commissioner's decision is that the JCIO is not a statutory body. He finds that the JCIO is part of the MOJ which is a public authority for the purposes of FOIA for the reasons set out in this notice. By failing to confirm whether it held the requested information within 20 working days, the MOJ has breached sections 1(1)(a) and 10(1) of FOIA.
3. The Commissioner requires the MOJ to take the following step to ensure compliance with the legislation:
 - To issue a fresh response to the complainant's request under FOIA.
4. The MOJ must take this step within 30 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 FOIA and may be dealt with as a contempt of court.

Background

5. It appears that the JCIO has recently begun taking the position, along with other parts of the Judicial Office (the 'JO'), that it is not a public authority as defined by FOIA and has started refusing to provide any requested recorded information under FOIA. The Commissioner disputes this position. He is aware that this issue will be considered in relation to an earlier set of complaints and decision notices about the JCIO which were appealed to the First-tier Tribunal.
6. Given that this matter is yet to be determined and that any outcome may be appealed to the Upper Tribunal (with no known timescales), the Commissioner considers it unfair to current complainants to 'stay' their complaints pending this process.

Request and response

7. On 27 June 2023, the complainant wrote to the JCIO and requested information in the following terms:

"Please state the number of complaints about hostile behaviour by judges, which the JCIO received, plus, the number of these upheld."
8. The JCIO responded, late, on 9 October 2023. It stated:

"The Judicial Conduct Investigations Office (JCIO) does not hold any information within the scope of the request for the purposes of the FOIA. The JCIO is an independent statutory body which supports the Lord Chief Justice and Lord Chancellor in their joint responsibility for judicial discipline."
9. In addition, the JCIO advised the complainant that:

"The JCIO is not a public authority within the meaning of section 3 because: a) it is not listed in schedule 1 of the Act; b) it has not been designated by order under section 5 of the Act; and c) it is not a publicly-owned company as defined by section 6 of the Act. For this reason, any information held by the JCIO which was provided to you in the past should have been provided on a discretionary basis outside the scope of the FOIA."

10. A link was provided to some of the requested information.¹
11. The complainant requested an internal review on 9 November 2023.

Scope of the case

12. The complainant contacted the Commissioner on 6 March 2024 to complain about the way his request for information had been handled.
13. The Commissioner will examine whether the JCIO is a statutory body independent of the MOJ and accordingly whether it is a public authority for the purposes of FOIA and, thereby, whether it should have responded to the request in accordance with FOIA.

Reasons for decision

14. The Commissioner's position as to whether the JCIO has obligations under FOIA is informed by the following considerations:
 - The JCIO is part of the JO and supports not just the Lord Chief Justice but also the Lord Chancellor in relation to judicial discipline.
 - Having reviewed a number of sources , including the Constitutional Reform Act ('CRA') 2005, the Concordat and Mini-Concordat and a range of tribunal decisions, the Commissioner has not been able to establish that the JCIO is a separate legal entity for the purposes of FOIA. The CRA did not in and of itself create the JCIO as a statutory body. The Commissioner notes that, where statutory bodies such as the Judicial Appointment and Conduct Ombudsman and the Judicial Appointment's Commission were created by the CRA, they were added to Schedule 1 of FOIA.² The MOJ has not made clear to the Commissioner what the statutory basis is for the JCIO.
 - The JO (of which the JCIO is part) considers itself to be an 'arms length body' ('ALB'). Based on his consideration of the Cabinet

¹ <https://www.legislation.gov.uk/ukpga/2000/36/schedule/1>

² Disciplinary Statements · Customer Self-Service (judicialconduct.gov.uk)

Manual³ and his own guidance⁴, the Commissioner considers it is not clear how the JO would fall under the categories of ALB set out set out in these sources. Even if it does, the Commissioner does not see how, given its unique position and the lack of statutory underpinning this would in and of itself mean that the JO (and therefore also the JCIO) is not part of the MOJ.

- The JO's website states that, 'the Lord Chancellor and the Lord Chief Justice are jointly responsible for judicial discipline'. The JCIO, therefore supports not just the Lord Chief Justice but also the Lord Chancellor in relation to such matters. This highlights how the structure of the JO and JCIO is not simply to support the judiciary, with wider public functions included within its ambit. The Commissioner further notes that the Judicial Appointment and Conduct Ombudsman, the statutory office sitting at the head of the complaints process of which the JCIO is part, was added by parliament to the scope of FOIA. In the Commissioner's view, it seems unlikely that it would have concluded that the operation of part of this process should fall in scope of FOIA, with others outside of it.
- FOIA provides strong protections in relation to the independence of the Judiciary, for example through the absolute exemption in s.32 (Court Records) of FOIA, which covers all information created by the judiciary in relation to any legal proceeding. This shows that parliament gave careful consideration to the need for these protections when it considered the legislation. At the same time it added existing statutory bodies, such as the Judicial Studies Board, during the passage of the FOI Bill to Schedule 1. It also added new statutory bodies relating to wider judicial functions when they were created by the CRA. There is no evidence to suggest that, had the JO or component bodies such as the JCIO been created in statute, as opposed to administratively following the passage of the CRA, parliament would not have taken the opportunity to add them to Schedule 1 of FOIA.
- Based on the summary above, the Commissioner's conclusion is that the JCIO is part of the JO, which, while operating at arms-length in practice, is still part of the MOJ for the purposes of FOIA. In light of this, it is not necessary for the JO or JCIO to be listed

³ <https://www.gov.uk/government/publications/cabinet-manual>

⁴ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/public-authorities-under-foia/> **and** <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-35-government-policy/>

separately in Schedule 1 FOIA for it to be within scope of the legislation.

15. The Commissioner's position is therefore that any information request made to the JCIO is effectively a request made to the MOJ and should be treated as such. This is important in order for the MOJ to carry out its functions under FOIA, and to enable individuals to exercise their statutory right to public information. For these reasons, requests made directly to the JCIO should not be refused on the grounds that the JCIO is not a public authority. Instead, the request should be considered and handled in line with information rights law.
16. The Commissioner has therefore issued a step at paragraph 3 of this notice.

Procedural matters

17. Section 1(1)(a) of FOIA obliges a public authority to confirm whether it holds information an applicant has requested.
18. Under section 10(1) of FOIA a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
19. In this case, the request was submitted to the MOJ/JCIO on 27 June 2023.
20. The Commissioner notes that the MOJ/JCIO's response of 9 October 2023 refers to the request as being made on 15 September 2023. However, the request is clearly dated 27 June 2023 and the complainant has complained about the response taking "three months".
21. Therefore, the Commissioner finds that the MOJ has breached sections 1(1)(a) and 10(1) of FOIA.

Other matters

22. The Commissioner would remind the MOJ to revisit its templates to stop making misleading statements.
23. Although not a statutory requirement, the MOJ failed to carry out an internal review in this case. This has been logged as has the delay with the substantive response.

Right of appeal

24. 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

25. 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.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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