

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

### **Decision notice**

**Date:** 29 March 2016

**Public Authority:** Ministry of Justice

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

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

---

1. The complainant requested information from the President's Office (Employment Tribunals England and Wales) relating to the minutes of meetings of judges.
2. The President of the Employment Tribunals in England and Wales (the President) provided the complainant with some information within the scope of the request – information which is publically available - but did not provide the information requested relating to the minutes of Regional Employment Judge meetings. It was explained that the reason for this is that the judiciary is not a public authority for the purposes of the FOIA.
3. After investigation, the Commissioner has found that the Ministry of Justice (MoJ) stated correctly and in accordance with section 1(1)(a) of the FOIA that it did not hold the requested information as the MoJ only holds this information on behalf of another person and so under section 3(2)(a) of the FOIA it does not hold it for the purposes of that Act. He requires no steps to be taken.

### **Background**

---

4. The President's Office is a division of Her Majesty's Courts and Tribunals Service (HMCTS). HMCTS is an executive agency of the Ministry of Justice (MoJ) and falls within its remit for the purposes of FOIA. MoJ is therefore the appropriate public authority in this case.
5. Minutes of the employment tribunal national and regional user group meetings for England and Wales, and Scotland are available from HM

Courts and Tribunals Service (HMCTS) on the gov.uk website<sup>1</sup>. Those minutes cover a range of dates. For the minutes of previous such meetings, visitors to the website are provided with a contact email address.

## Request and response

---

6. On 15 September 2015 the complainant wrote to the President's Office (Employment Tribunals England and Wales) and requested information in the following terms:

*"Please could you send me copies of all of the Minutes of previous meetings*

*For minutes of previous meetings, please email:presidents\_office\_employment\_e&w@hmcts.gsi.u*

*England and Wales user group minutes*

*Under the same heading could you please send me the minutes of meetings for the Regional Employment Judges, the most recent being Friday 11th September".*

7. The President's Office responded on 26 October 2015 by way of a letter from the President dated 20 October 2015. In that letter, the President explained that the judiciary are not subject to the provisions of the FOIA.
8. He said that he had considered whether to release each category of minutes nevertheless. The requested Regional Employment Judge Meeting minutes were not provided. However, the complainant was advised that the National and Regional User Group Meeting minutes are publically available, and the relevant link was provided. Where he was able to do so, the President provided the complainant with copies of the minutes, from earlier meetings of those groups, that are not included on the website.
9. The complainant expressed dissatisfaction with the way his request had been responded to. He wrote back to the President saying:
- 

<sup>1</sup> <https://www.gov.uk/government/collections/employment-tribunal-national-user-group-minutes>

*"I would like you to reconsider your decision, as I cannot see in my wildest dreams how open and frank discussions can remain private and confidential?*

*Please explain?"*

10. The Judicial Conduct Investigations Office wrote to the complainant on 30 October 2015. It advised him how to contact the Information Commissioner if he was dissatisfied with the President's handling of his request.

### **Scope of the case**

---

11. The complainant contacted the Commissioner on 2 November 2015 to complain about the way his request for information had been handled.
12. In subsequent correspondence with the Commissioner, he expressed his view that the judiciary are covered by the FOIA for the following reasons:

*"... [The President] and his fellow judges are without any shadow of doubt salaried employees of the MoJ and whilst on the payroll, as I see it subject to the FOIA;*

*My understanding of judicial independence, is that the judiciary are independent from central government and interference from members of parliament. I, we members of the public do not fall into either category nor does my request;*

*There is no doubt in my mind that the judiciary are a very public authority, an intricate part of the MoJ and in my view their independent status does not excuse them from my request under the FOIA [sic]"*.

13. Regarding its handling of this request for information, MoJ told the Commissioner:

*"The MoJ did not treat this under FOI as the information in scope was Judicial information and the national and regional user group minutes were publicly available and therefore were not contentious. The MoJ considered a [business as usual] response more appropriate on the basis that it would be a do not hold under the FOIA".*

14. In light of the above, the following analysis considers whether the judiciary is a public authority for the purposes of the FOIA and, if not,

whether any of the information within the scope of the request is held by MoJ and, if so, whether that information is held for the purposes of the MoJ, or whether it is held by the MoJ only on behalf of the President's Office.

## Reasons for decision

---

15. The FOIA gives members of the public the right to access recorded information held by public authorities and places a duty on public authorities to respond to requests for such information.

*Is the judiciary a public authority?*

16. The definition of 'public authority' is given in section 3(1) of the FOIA. In particular it states that under the FOIA a 'public authority' means-

*"(a) subject to section 4(4), any body which, any other person who, or the holder of any office which-*

*(i) is listed in Schedule 1, or*

*(ii) is designated by order under section 5, or*

*(b) a publicly-owned company as defined by section 6".*

17. The Commissioner has considered the complainant's points and the relevant sections of the FOIA as stated above. He appreciates that judges are paid for by the public purse which may add to the complainant's belief that they should be subject to the FOIA.
18. The Commissioner is satisfied, however, that the judiciary is not listed in Schedule 1, nor brought under the provisions of FOIA as a result of being designated by order under section 5. He is also satisfied that it is not a publicly-owned company as defined by section 6.
19. He has therefore concluded that the judiciary is not a 'public authority' as defined by section 3(1) of the FOIA.
20. However, the Commissioner is mindful that the request in this case was made to the President's Office. The Commissioner has therefore considered whether MoJ holds the information and, if so, whether it is held to any extent for the MoJ's own purposes.

*Section 1(1) general right of access*

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

21. Section 1(1) of the 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."*

22. 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".*

23. The Commissioner's guidance "*Information held by a public authority for the purposes of the FOIA*"<sup>2</sup> explains the circumstances in which information is considered to be held by a public authority for the purposes of the FOIA. The guidance states that when a public authority holds information solely on behalf of another person it is not held for the purposes of the FOIA and that each case needs to be considered according to its specific circumstances.

24. With respect to factors that would indicate that information is held solely on behalf of another person, the Commissioner considers such factors include:

- the authority has no access to, use for, or interest in the information;
- access to the information is controlled by the other person;

---

<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1148/information-held-by-a-public-authority-for-purposes-of-foia.pdf>

- 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.
25. Factors that would indicate that the information is also held by the public authority for its own purposes 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.
26. During the course of his investigation, the Commissioner asked the MoJ to explain the relationship, if any, between the President's Office and HMCTS.
27. MoJ acknowledged that the President's Office supports the President of the Employment Tribunals:
- "As explained above, the President's Office supports the President in the same way as a private office in terms of administrative functions, the Employment Tribunals Service is a division of HMCTS – (Her Majesty's Courts and Tribunals Service). While some functions of the President's Office will fall within FOIA (processes undertaken for HMCTS purposes) there will also be information held on behalf of the President".*
28. The issue for this decision is whether the MoJ holds the information sought by the complainant under the terms of the FOIA. Therefore the Commissioner has considered whether, in this case, there are any grounds on which to find that the MoJ holds the requested information for its own purposes.
29. The Commissioner asked MoJ to explain on what basis it concluded that, although it may physically hold the requested minutes, it does not hold this information for the purposes of the FOIA – in other words, on what basis MoJ concluded that although it may physically hold the information, it is only held by it on behalf of the President's Office.

30. In response, MoJ said that, to the extent that it holds any information which might be relevant to the request, it holds such information solely on behalf of the President's Office:

*"The President's Office support the President of the Employment Tribunals (in the same way that a Ministerial private office support the SoS)[Secretary of State]. While it holds some information for MoJ purposes, it will also hold information which is classified as "judicial information" – information held belonging to and on behalf of the judiciary. The Employment Judges meeting is a Judiciary meeting for Judicial purposes and therefore the minutes are judicial information".*

31. In relation to any support provided to the President, the Commissioner has considered whether MoJ exercises any functions or duties in respect of the meetings at issue. In that respect, MoJ told the Commissioner:

*"The meetings are funded by the Judicial College as training events. The content is determined by the President, the meetings are not attended by members of his administrative team and the minutes are taken by a Regional Employment Judge".*

32. Where information is held by a public authority to any extent for its own purposes, then it holds that information otherwise than on behalf of another person, and therefore it holds the information for the purposes of the FOIA.
33. The only circumstance in which information physically in its possession would not be held by a public authority by virtue of section 3(2)(a) would be where information is only held on behalf of another person, and is not held at all for that public authority's own purposes.
34. The Commissioner has considered the arguments from both parties and consulted his guidance. Having done so, the Commissioner has seen no evidence that, for example, the MoJ has access to, use for or interest in the information or makes decisions about its creation, filing and retention. He has therefore concluded on the specific facts of this case that while MoJ may hold the information sought by the complainant, it has no reason to hold the requested information for its own purposes – rather it only holds it on behalf of the judiciary. It therefore does not hold the information under the terms of the FOIA.

## Right of appeal

---

35. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

36. 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.
37. 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**