

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 and correspondence exchanged between the MoJ, the Judicial College and the judiciary. The MoJ refused this request as vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the MoJ correctly applied section 14(1) to the request. He does not require any steps to be taken.

Request and response

3. On 17 October 2014, the complainant wrote to the MoJ and requested information under the FOIA. Full details of the request can be found in the annex to this decision notice.
4. The MoJ responded to the complainant's request on the 11 November 2014 and refused it as vexatious under section 14(1) of the FOIA.
5. The complainant requested an internal review on the 11 January 2015. The MoJ's internal review upheld the refusal under section 14(1).

Scope of the case

6. The complainant contacted the Commissioner on 29 April 2015 to complain about the refusal of his information request. The complainant indicated that he did not agree that his request was vexatious.

Reasons for decision

Section 14

7. Section 14(1) provides that a public authority is not obliged to comply with a request that is vexatious. Consistent with an Upper Tribunal decision which established the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious, the Commissioner's guidance for section 14(1)¹ confirms that the key question to ask when weighing up whether a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
8. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.
9. The Commissioner's guidance makes it clear that section 14(1) can only be applied to the request itself, and not the individual who submits it. An authority cannot, therefore, refuse a request on the grounds that the requester himself is vexatious. Similarly, an authority cannot simply refuse a new request solely on the basis that it has classified previous requests from the same individual as vexatious.
10. As in many cases which give rise to the question of whether a request is vexatious, the Commissioner is aware of a history of previous information requests and various encounters between the parties.
11. Clearly in this case, MoJ considers that the context and history strengthens their argument that the request is vexatious. To a large extent, MoJ relies on this history when characterising this request as vexatious.
12. In reaching a decision in this case, the Commissioner has considered the arguments put forward both by the complainant and MoJ as well as the context in which the request was made.

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

13. The Commissioner notes the MoJ's previous dealings with the complainant. MoJ has been able to demonstrate that it has engaged to a significant extent with the complainant's correspondence over a number of years. The Commissioner is prepared to accept that, cumulatively, MoJ has spent a significant amount of time and resources in dealing with the complainant's information requests, in addition to separate complaints and other correspondence and contacts from the complainant.
14. It is also clear to the Commissioner that the complainant is not satisfied with MoJ and how it conducts itself. In that respect, the Commissioner understands that, over time, the complainant has made a number of complaints to MoJ, including about how his previous complaints have been handled.
15. The Commissioner is mindful that, if the problems which a public authority faces in dealing with a request have, to some degree, resulted from deficiencies in its handling of previous enquiries by the same requester, then this will weaken the argument that the request, or its impact upon the public authority, is disproportionate or unjustified.
16. However, in the circumstances of this case and on the basis of the evidence provided, the Commissioner considers that it is reasonable to conclude that the complainant will continue to submit requests, and/or maintain contact about the subject matter regardless of any response provided to the request in question. The disruption to MoJ resulting from any continuing correspondence would be disproportionate. The Commissioner is therefore satisfied that, in the context of MoJ's previous and ongoing dealings with the complainant, compliance with the request would result in a disproportionate burden on its resources.
17. Consequently the Commissioner is satisfied that the MoJ has correctly relied on section 14(1).

Right of appeal

18. 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

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

19. 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.
20. 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

Ben Tomes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

Request dated 17 October 2014

"Dear Sir,

1. I note that in a decision notice issued today by the ICO it is stated at paragraphs 35-37:

'35. Following the explanations provided by the MOJ, the Commissioner formed a preliminary view that the MOJ does not hold the requested information to any extent for its own purposes. The Commissioner wrote to the complainant setting out his preliminary view on 24 June 2014 with a view to resolving the case informally.

36. The complainant replied on 14 July 2014, disagreeing with his preliminary view. He submitted lengthy arguments and a significant number of questions in response.

37. With the complainant's consent, on 28 July 2014 the Commissioner forwarded the response to the MOJ, asking it if it wished to comment prior to the decision notice being drafted. On 11 August 2014, the MOJ said it had consulted with the Judicial College and did not wish to add to its previous submissions.'

2. Please therefore provide a copy of all correspondence and information exchanged between the MoJ, the Judicial College and the judiciary (if there was any such correspondence with the judiciary - for the avoidance of doubt please inform if there was/was not) in this matter and all information held as to the reasons the MoJ/Judicial College (and the judiciary - if canvassed) preferred not to address the issues disclosed by my challenges or reply to the requests for information therein.

3. Furthermore, as the ICO forwarded you requests for information on my behalf please explain why you have failed to provide a reply compliant with the requirements of the FOIA and supply the same to me by return.

4. For the avoidance of doubt, I request an internal review of your decision not to supply the information requested and/or treat the requests in accordance with the FOIA.

5. For the further avoidance of doubt, those requests for information are outstanding and are repeated. I therefore attach the document containing the requests and also repeat the content of that document herein below.

6. I also request that you supply the training module information/documentation as requested previously on a discretionary basis outside of the FOIA if you continue to consider it exempt having fully considered the challenges - which you chose not to engage with, or the requests for information - which you did not comply with, as repeated both herein below and as attached. In the alternative I invite you to supply the information anyway and in advance of the necessary full consideration and compliance. If you decline to supply the requested information/documentation on a discretionary basis I should be grateful for full information as to your reasons.

Payment

- 1.. Who pays judge's salaries?*
- 2.. Who actually paid for the training materials to be compiled?*
- 3.. As the public ultimately pay judge's salaries, the public therefore should have a right to scrutinise materials produced with its money.*
- 4.. Are the judges who compile the training materials paid extra over and above their standard judicial salaries?*
- 5.. Did the authors compile the materials outside of their standard contracted hours?*

Intellectual property

- 1.. Who owns the copyright of the intellectual property?*
- 2.. What copyright ownership information is contained in the course materials and any handbooks etc.?*
- 3.. What agreements have been signed as to the ownership of the course materials? He who pays owns?*
- 4.. The creator is automatically the copyright owner, unless the creator works for an employer and is employed to create that work. A judge must be employed by somebody, that somebody can only be the state, therefore the judiciary do not own or exclusively hold the requested information.*
- 5.. In what capacity are the various authors of the training materials said to be writing – this includes non-judicial office holding authors?*
- 6.. If all the training materials in question were written by 'the judiciary' then in what capacity were they acting when writing?*
- 7.. Was it in a private capacity (as individuals) or in a professional capacity as a member of the judiciary? Was it a personal authorship or a 'corporate' one?*

Who employs the judiciary?

- 1.. The MoJ advertises that it is in partnership with the judiciary. What are the implications of this partnership on the training materials?*
- 2.. The various 'Framework Agreement' documents published expand on this*

partnership. What are the implications of these agreements on the training materials?

3.. The MoJ are apparently subject to litigation from individual judge(s) apparently due to allegedly reneging on salary/pension agreements. If this understanding is correct, it implies an employer/employee relationship of some sort? How does this affect the MoJ's claim not to hold the requested materials?

4.. The MoJ has often claimed that judges are employed by the MoJ and carry out their work in the course of that employment. If that is the case then clearly any materials held by the Judicial College must fall to be assessed in that context. The MoJ cannot have it both ways claiming it both employs judges and does not employ judges dependent on what suits its agenda at any given time.

5.. The training materials are part of the wider court system. The court is a public authority. In any event the training materials requested could also be said to be held by the Court as a judge must and/or may use the same when considering Appeals or Civil Restraint Orders etc.

6.. Are the training materials accessible by members of administrative tribunals? If so, what are the consequences of this?

Other matters

1.. Judgments are published to the world. Why not publish the training materials that assist the Judges reach these public and authoritative judgments?

2.. Perhaps the judiciary would be agreeable to the release of the materials? Have the MoJ or the Judicial College actually asked them?

1) Please confirm whether my understanding that the requested information is produced by judges alone is correct?

3) Which body/organisation physically holds the requested information?

4) Where is this information held and how is it stored?

Presumably members of the judiciary who are not also staff of the college cannot routinely request work to be done on the system or be said to hold the information exclusively? Therefore, if this is the case, the storage; location and the system has a lot more to do with the Judicial College as a whole than the judiciary as a whole. Furthermore, if a judge – not holding a position on the staff of the college - is not currently enrolled on a course module does he/she have unlimited access to all information on the database?

5) Is the judiciary entirely separate from the Judicial College? Please explain how and where judges 'fit' into the system?

The MoJ therefore admits that the Judicial College is not exclusively run by members of the judiciary. Furthermore, only those members of the judiciary who also have an official role at the College are involved in its governance. Merely being a member of the judiciary does not confer additional College-relevant roles on a judge nor mean that every member of the judiciary runs the college. More information is required as to the selection process as to board membership. Who appoints the board members? Why is there a director who is not a member of the judiciary on the board? Is the Executive Director employed by the MoJ? What other employment, directorships and/or interests does this director hold and/or benefit from. As a director, is he salaried?

6) Please explain how the Judicial College, which is a public authority, appears to have elements which are not subject to FOIA? It may be helpful here to include some detail about how the organisation is structured and which parts of it are subject to FOIA.

7) Please explain what impact the Constitutional Reform Act 2005 has had on FOIA requests made to the Judicial College?

8) Who has access to this training material?

Why is this 'primary' access? In any event, the fact of any primary access does not remove the relevance of any other 'secondary' access. What are all the other forms of access? Why is access by the course tutors for the purposes of delivering the course lectures not a 'primary' access? If The College's tutors access the College's information to teach the College's curriculum, the College must be said to hold the information?

9) Is any of the requested information held on behalf of the MOJ/Judicial College for staff use independent of the judges' official functions? If so, please clarify.

10) If not, is all the information held for judicial purposes only?"