

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 January 2019

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

Decision (including any steps ordered)

1. The complainant requested information from the Ministry of Justice (MoJ) relating to the Employment Tribunal. The MoJ responded to the requests advising that they were not valid under the FOIA and would instead be responded to as 'business as usual'.
2. The Commissioner's decision is that the three requests under consideration were valid for the purposes of section 8 (request for information) of the FOIA.
3. In failing to respond to those requests within 20 working days the MoJ breached section 10(1) (time for compliance) of the FOIA.
4. The Commissioner requires the MoJ to take the following steps to ensure compliance with the legislation:
 - respond to requests (1), (2) and (4).
5. The MoJ must take these steps within 35 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 the Act and may be dealt with as a contempt of court.

Request and response

6. The complainant made four separate requests for information to the MoJ, all of which were made via the '*whatdotheyknow*' website.

Request 1

7. On 4 March 2018, the complainant wrote to the MoJ and requested information in the following terms:

"I would like to know if it is the case that the Employment Tribunal has a duty to acknowledge, consider with due diligence and respond to all the applications it receives from a party in an Employment Tribunal case".

8. The MoJ responded on 5 March 2018. It advised the complainant that his enquiry did not fall under the Freedom of Information Act 2000 (FOIA) regime and had been rejected by the Disclosure Team. It further advised that the request had been forwarded to the relevant department for a response outside of the FOIA.
9. The complainant expressed dissatisfaction with that response on 5 March 2018. In the absence of a response, he formally requested an internal review on 27 March 2018.

Request 2

10. On 27 March 2018 the complainant requested information of the following description:

"I would like to know if it is the case that a party can ask the Employment Tribunal to reconsider any judgment, decision, direction or order".

11. The MoJ responded on 28 March 2018: it advised that his enquiry did not fall under the Freedom of Information Act 2000 (FOIA) regime and had been rejected by the Disclosure Team.
12. The complainant requested an internal review on 28 March 2018.

Request 3

13. On 27 March 2018, the complainant requested information of the following description:

"I would like to know where I can access the fee-paid Employment Tribunal judges "Memorandum on conditions of appointment and terms of service"".

14. The MoJ responded on 28 March 2018, as for Request 2.
15. The complainant requested an internal review on 28 March 2018.

Request 4

16. On 25 April 2018 you requested information of the following description:

"Where should concerns about tampering with the evidence in a court or tribunal be sent?"

17. The MoJ responded on 26 April 2018, as for Request 2.

Scope of the case

18. The complainant contacted the Commissioner on 24 July 2018 to complain about the way his requests for information had been handled. He told the Commissioner:

"The Ministry of Justice persistently breaks the law by refusing to respond to my Freedom of Information requests".

19. During the course of the Commissioner's investigation, the MoJ confirmed that it had answered all of the complainant's questions and that he was aware of the answers. However, it advised that it may not have advised the complainant that his correspondence was:

"...not being dealt as FOI but as Business as normal".

20. The MoJ provided the Commissioner with details of some of the responses it had provided to the complainant.

21. Where possible the Commissioner prefers complaints to be resolved informally and she asks both parties to be open to compromise. Despite the Commissioner's efforts to resolve all matters by way of informal resolution, this has not proved possible in this case.

22. The complainant confirmed that he was *"satisfied with the Commissioner's intervention for 'Request 3'"*. However, he disputed the MoJ's handling of the other three requests under consideration.

23. In correspondence with the Commissioner, he confirmed that he still sought from the MoJ:

" ... clear responses to the actual questions asked in Requests 1, 2 and 4 above".

24. The analysis below considers whether requests 1, 2 and 4 constituted valid requests in accordance with section 8 of the FOIA and whether the MoJ should have handled them as such.

25. Specifically, the issue for the Commissioner to consider is their validity in respect of whether they described the information requested – section 8(1)(c).

Reasons for decision

Section 8 Request for information

26. Section 8 of the FOIA states:

"(1) In this Act any reference to a "request for information" is a reference to such a request which-

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested".

27. In this case, the complainant made his requests in writing, stated his name and gave an address for correspondence. Therefore the requirements of section 8(1)(a) and (b) were satisfied.
28. The Commissioner considers that a request will meet the requirements of section 8(1)(c) as long as it contains a sufficient description of the information required. Each request has to be judged on its individual merits as to whether there were sufficient indicators provided to enable the information requested to be adequately described for the purposes of section 8. As long as a request attempts to describe the information it is likely to meet the requirements of section 8(1)(c) as it is always open to the public authority to seek further clarification to identify the information.

The complainant's view

29. The complainant told the Commissioner:

"It is clear that the MoJ refuses to provide information that it has a legal obligation to disclose by claiming that it "does not fall under the Freedom of Information Act 2000 (FOIA) regime" even when such a claim flies in the face of logic".

30. With respect to request 1, the complainant told the MoJ:

"[I asked] to be provided with a policy of Ministry of Justice. This is information that would be absurd not to be in possession of the

Ministry of Justice and information that the public is entitled to have access to.

My question is a simple and straightforward yes or no answer to whether the Ministry of Justice [has] a duty to acknowledge, consider with due diligence and respond to all the applications it receives from a party in an Employment Tribunal case, according to its own policy".

31. With respect to request 2, he told the MoJ:

"There must be an official Ministry of Justice policy that explains whether or not a party in an Employment Tribunal case can ask the Employment Tribunal to reconsider any judgment, decision, direction. You must be in possession of that policy and that policy must be made publicly available".

32. In relation to request 4, the complainant considered it:

"...unfathomable [that the request] does not fall under the Freedom of Information Act 2000 (FOIA) regime".

The MoJ's view

33. During the course of the Commissioner's investigation, the MoJ confirmed that the requests were deemed as 'business as usual' requests rather than Freedom of Information requests. It explained:

"This was because they were not asking for specific recorded information but for advise [sic] on the how the employment Tribunal is run and what their policies are".

34. In its correspondence with the Commissioner, the MoJ described the process that it follows when a request is received via the 'whatdotheyknow' website that does not fall within section 8 of the FOIA. It explained that its normal practice is to respond and let the requester know that it is not a valid request under FOI and that it has passed their request on to the relevant department which will be able to look into their request.

35. It acknowledged that it may not have followed this process with regard to all the requests under consideration in this case.

36. The MoJ also confirmed its view that the requests under consideration were not valid requests under the FOIA.

The Commissioner's view

37. In her guidance¹ for organisations on what they should do when they receive a request, the Commissioner states:

"Any genuine attempt to describe the information will be enough to trigger the Act, even if the description is unclear, or you think it is too broad or unreasonable in some way...."

"This is not a hard test to satisfy. Almost anything in writing which asks for information will count as a request under the Act. The Act contains other provisions to deal with requests which are too broad, unclear or unreasonable".

38. The Commissioner has considered the wording of the three requests under consideration in this case. She has also considered the reasons put forward by the complainant when requesting an internal review.
39. The Commissioner accepts that requests 1 and 2 are phrased as questions designed to obtain a 'yes' or 'no' response from the MoJ, while request 4 is seeking details of a contact point or address.
40. She considers that, although phrased as questions, the wording of requests 1 and 2 was sufficiently descriptive to allow the MoJ to identify the information sought.
41. Similarly, she considers that request 4, in which the complainant asked where to send his concerns, adequately described the information he was seeking.
42. It follows that she is satisfied that all three requests are requests for information as per section 8 of the FOIA.

Section 10 time for compliance

43. Section 1(1) of the FOIA states that upon receipt of a request a public authority must confirm or deny whether information is held, and if that information is held it must be communicated to the requester.
44. Section 10(1) of the FOIA states that public authorities must comply with section 1(1) within 20 working days of receipt of the request.

¹¹ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/>

51. In this case the MoJ did not respond to the complainant within the statutory time frame and so it is in breach of section 10(1) of the FOIA.

Other matters

45. The MoJ acknowledged that it may not have followed its own process with regard to all the requests under consideration in this case. The Commissioner accepts that the MoJ apologised if its normal practice was not followed. She also recognises that the MoJ has reminded staff of the process.

Right of appeal

46. 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: www.justice.gov.uk/tribunals/general-regulatory-chamber

47. 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.
48. 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
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