

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 July 2020

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 (the MoJ) about child support data.
2. The Commissioner's decision is that the MoJ has breached section 10(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the MoJ to take the following step to ensure compliance with the legislation.
 - The MoJ must provide a substantive response to the request in accordance with its obligations under the FOIA.
4. The MoJ must take this step 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

5. On 4 February 2020, the complainant wrote to the MoJ and requested information in the following terms:

"1. Starting from the year the tribunal was first set up, please could you provide a year-by-year breakdown of the number of First-tier Tribunal (Social Security and Child Support) cases relating to the diversion of income by the Non-Resident Parent (NRP) through making excessive pension contributions. Of these cases, please could you provide the number where the tribunal deemed a diversion of income to have occurred. So for example, please could you provide the figures X & Y as follows:

2012: X cases, of which tribunal deemed Y cases where diversion occurred

2013: X cases, of which tribunal deemed Y cases where diversion occurred

2014: X cases, of which tribunal deemed Y cases where diversion occurred

Etc.

2. Please could you provide the same data in the same format for Second-tier Tribunal (Social Security and Child Support) cases."

6. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 17 May 2020 to complain about the MoJ's failure to respond to their request.
8. The Commissioner has considered whether the MoJ has complied with its obligations in relation to the time for compliance at section 10(1) of the FOIA.

Reasons for decision

9. 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."

10. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "*not later than the twentieth working day following the date of receipt*".
11. During the Covid-19 global health crisis, as a reasonable and proportionate regulator, the Commissioner took the decision to amend her casework approaches to reduce the burden on public authorities. On 30 June 2020 the Commissioner wrote to the MoJ, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days. The Commissioner also invited the MoJ to inform her if it was unable to comply with the FOIA due to any difficulties posed by the Covid-19 crisis.
12. The complainant contacted the Commissioner on 20 July 2020 to state that a response had still not been provided.
13. On 21 July 2020, in light of the partial relaxation of Covid-19 lockdown measures by the government, the Commissioner wrote a further letter to the MoJ to request an update on the outstanding request and to direct that a response should be provided within 4 working days.
14. On 23 July 2020 the MoJ contacted the Commissioner in reply to state that the complainant had made a series of similar requests and that the request in question had been overlooked. The MoJ requested a further two week extension to provide a response.
15. Given the similarity of the request to others which were answered previously, the Commissioner considers that a further extension is not appropriate in this case. No explicit factors relating to the Covid-19 pandemic were cited by the MoJ in its request for a further extension to respond.
16. From the evidence provided to the Commissioner in this case, it is clear that the MoJ did not deal with the request for information in accordance with the FOIA. The Commissioner finds that the MoJ has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

Other matters

17. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA.
18. The Commissioner notes, however, that a response to a request made on 4 February 2020 would be due several weeks before the worst of the coronavirus disruption began. This has been a necessary consideration in her decision to issue this notice.

Right of appeal

19. 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@justice.gov.uk

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

20. 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.
21. 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

Phillip Angell
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