

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 January 2025

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

Decision (including any steps ordered)

1. The complainant requested information relating to warrants of control. The Ministry of Justice (MoJ) denied holding the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the MoJ does not hold the requested information and has complied with section 1(1)(a) of FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 6 May 2024, the complainant wrote to the MoJ and requested information in the following terms:

"How many Warrants of Control have been issued for distress concerning non payment of a council tax liability order?

In the last 3 years I forgot to add sorry".
5. The MoJ responded on 31 May 2024. It denied holding information in scope of the request, on the basis that it could not be obtained from the administrative systems held for the public authority purposes of HMCTS [HM Courts and Tribunals Service] and MoJ.

6. Following an internal review, the MoJ wrote to the complainant on 1 July 2024 maintaining its position and citing section 3(2) (public authorities) of FOIA.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. During the course of the Commissioner's investigation, the MoJ revisited its handling of the request and issued the complainant with a revised response. It said:

“Whilst warrants of control are typically issued by courts, for example for unpaid debts, this does not apply to council tax matters. Under the Local Government Finance Act 1992, local authorities are authorised ... to enforce non-payment of council tax. Before they can use this power, it is necessary for a magistrates' court to issue a liability order ... The making of the liability order empowers the council to take a number of enforcement steps ... This activity is carried out by the council under its statutory powers. It is not carried out by courts ... Consequently, neither the courts nor MOJ hold any information on the number of warrants of control issued ...”.
9. The complainant remained dissatisfied. They set out, in extensive correspondence to the Commissioner, the reasons why they are dissatisfied with the MoJ's revised response.
10. In the course of their correspondence with the Commissioner, the complainant raised a number of issues which are outside the scope of the Commissioner's remit. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part I of FOIA.
11. With respect to the concerns raised by the complainant which are the subject matter of this decision notice, the analysis below considers whether, on the balance of probabilities, the MoJ holds the requested information.

Reasons for decision

Section 1 - general right of access to information held by public authorities

12. Under section 1(1) of FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.

The complainant's view

13. The Commissioner recognises that the complainant believes that the MoJ does have access to, and is obliged to hold, the requested information.

The MoJ's view

14. In its submission to the Commissioner, the MoJ explained:

"A warrant of control is an order used in the enforcement of civil matters, created by Schedule 12 of the Tribunals Courts and Enforcement Act 2007. It allows a bailiff or enforcement agent to seize and sell goods owned by a debtor to recover the debt owed. Prior to the 2007 Act, it was called a 'distress warrant'. Warrants of control are typically issued by courts, for example, for unpaid debts. However, under the Local Government Finance Act 1992, local authorities are authorised to use the same procedure under section 12 to enforce non-payment of council tax.

Before they can use this power, it is necessary for a magistrates' court to issue a liability order, which is a formal finding that the tax is due and has not been paid. The making of the liability order empowers the council to take a number of enforcement steps, of which the section 12 procedure is one. This activity is carried out by the council under its statutory powers. It is not carried out by courts and therefore, HM Courts and Tribunals Service has no involvement in it".

The Commissioner's view

15. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
16. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

17. In reaching his decision in this case, the Commissioner has taken account of the views put forward by the complainant. He has also considered the explanation the MoJ provided as to why the information is not held.
18. Based on the evidence provided to him, the Commissioner is satisfied that, on the balance of probabilities, the MoJ does not hold recorded information falling within the scope of the request.
19. He is therefore satisfied that the MoJ has complied with the requirements of section 1 of FOIA in this case.

Other matters

20. The Commissioner recognises that the MoJ tried to assist the complainant with their query, outside of FOIA, by suggesting that they may wish to contact the relevant local authority to determine whether they hold the requested information.
21. It is not clear whether the complainant has followed this advice.

Right of appeal

22. 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

23. 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.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Carolyn Howes
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