

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 10 July 2008

**Public Authority:** Ministry of Justice  
**Address:** Selborne House  
Victoria Street  
London  
SW1E 6QW

### Summary

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The complainant made a request to the Ministry of Justice for dates on which ten named judges were both nominated and authorised to preside over court cases involving family law. The public authority provided the complainant with the dates for some of the judges but explained that it did not hold some of the information. The complainant has argued that the information provided was incorrect. The Commissioner has investigated the complaint and has found that the public authority has disclosed all of the information it holds falling within the scope of the request and requires no steps to be taken. The Commissioner also found that the public authority breached section 17(1) of the Act by failing to deal with two earlier requests within 20 working days.

### The Commissioner's Role

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1. 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 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. On 17 March 2006 the complainant wrote to the public authority to make the following request for information:

*"...can you please supply me as soon as possible with the current list of judges nominated by the principal registry of the Family Division to preside over Child Custody/Contact applications within the Midland Circuit.*

*i.e. To meet the terms of the latest Family Proceedings (Allocation to Judiciary) Direction*

*Please also provide for each judge the dates such a nomination was allocated."*

3. The public authority acknowledged the request on 20 March 2006.
4. The public authority responded to the request on 19 May 2006. At this point it confirmed that it held information falling within the scope of the complainant's request but said that to provide the information would require it to trawl through a significant number of files in order to identify which judges had presided over which child custody cases. Therefore it refused the request under section 12 of the Act on the basis that the cost of complying with the request would on estimate exceed the appropriate limit which is set at £600 for central government departments. The public authority invited the complainant to refine his request and suggested some examples of how this could be achieved.
5. The complainant wrote back to the public authority on 27 May 2006. The complainant said that the public authority had misinterpreted his request as a request for the names of judges that had been nominated to preside over child custody cases, rather than judges that actually had presided over such cases. The complainant said that, to save work, there would be no need to filter out the names of judges working within the Midland region as the full national list would suffice.
6. The public authority explained that it was treating the complainant's letter of 27 May 2006 as a new request rather than a request for an internal review and responded on 20 July 2006. Although the complainant had said that a national list of judges would suffice, the public authority provided the complainant with a list of judges for the Midlands Family Judiciary given that the complainant had specifically asked for this in his original request.
7. The information that was disclosed did not include the dates when the judges were nominated and authorised to preside over child custody cases and so once more the complainant asked the public authority for this information. At this point the public authority said that the request would be refused under section 12 of the Act for the reason stated above. The complainant was invited to refine his request to select a number of judges from the list already provided. The complainant contacted the public authority as he was concerned that if he were to request the details of too many judges his request would again be refused under section 12.
8. The public authority wrote to the complainant on 5 October 2006. It said that it had carried out an extensive search of the information and that it estimated that it could provide information on 30 judges within the appropriate limit. It said that if the complainant were to provide the names of judges he was interested in then it would carry out a search to assist the complainant with his request.
9. The public authority also provided further explanation on the procedure for nominating and authorising judges to sit in family proceedings and the manner in which this information is held. It said that a judge's nomination can be just a few weeks prior to his or her authorisation and in other cases it can be up to 12 months between nomination and authorisation; depending on training courses. It

- went on to say that the date on which a judge is nominated is not recorded on a judge's personnel file. In respect of, what it referred to as, approval dates, it said that these could be found in the subject files or electronically in the form of business case letters for nomination to the Family Division Liaison Judge telling each judge of their authorisation, which is approved by the President of the Family Division.
10. It also informed the complainant that it may not be possible to provide a full list of all nomination dates in all cases. It said that this is down to the fact that where nominations were authorised more than 5 years ago the nominations dates will not be available as they are contained within subject files which are only retained for 5 years.
  11. The complainant wrote to the public authority on 25 October 2006 and said that, in order that the public authority might comply with his request without further delay, he was prepared to limit his request to the details of just 10 named judges ("the ten named judges").
  12. On 20 November 2006 the public authority provided the complainant with information on the ten named judges in the form of a table of four columns. This included the name of the judge, the type of authorisation, the date of nomination and the date of authorisation. For all but one of the named judges the date of nomination was recorded as "not available". For three of the judges the date of authorisation was recorded as "not available (pre Children Act)". For one judge the date of authorisation was recorded as "not available" but the year when he received his training was given.
  13. On 26 November 2006 the complainant formally requested that the public authority carry out an internal review of its handling of his request. He argued that, notwithstanding the fact that the information was incomplete due to the destruction of files, the information was inaccurate because he believed that not all of the judges on the list were properly authorised to preside in family cases. The complainant produced evidence in support of his position.
  14. Despite several reminders, the public authority did not present the findings of its internal review until 12 July 2007. In the meantime, a member of the public authority's staff, whilst in the process of confirming that all of the judges on the list were properly authorised, explained to the complainant that sometimes judges can be informed that they have been authorised orally rather than in writing.
  15. In its internal review the public authority explained why it had refused the initial request under section 12 of the Act, a decision it upheld. Where the complainant had agreed to refine his request to just the ten named judges the public authority said that it had only been able to provide the nomination date for one of the ten judges and the reason why it could not provide the dates for the other nine judges is because that information is not held on the judges' regional files.

## The Investigation

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### Scope of the case

16. On 12 December 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. At this point the public authority had not completed its internal review of its handling of the request. Once the internal review had been completed this was made available to the Commissioner who was then in a position to commence his investigation.
17. The complainant specifically asked the Commissioner to consider his argument that the information he had received in response to his refined request for the ten named judges was inaccurate.
18. In correspondence with the complainant the Commissioner explained that he could not make a decision on whether information a public authority holds is inaccurate or misleading because the Act provides for access to official information, however it is recorded. The Commissioner said that he would be able to consider whether the public authority had withheld any information in response to the complainant's request. The Commissioner suggested that he limit the scope of any investigation to cover only the complainant's refined request of 25 October 2006, for details of the ten named judges and this approach was agreed with the complainant. Therefore the Commissioner will not seek to question the public authority's reliance on section 12 of the Act in response to the complainant's initial request although he will consider the delay in the handling of the request.

### Chronology

19. The Commissioner wrote to the public authority with details of the complaint on 18 February 2008. He explained that his investigation would focus on its handling of the complainant's request for the ten named judges on 25 October 2006. The Commissioner asked the public authority to explain:
  - what steps it took to search for the information requested by the complainant.
  - why it did not hold the nomination dates for nine of the ten named judges.
  - why it did not hold the authorisation dates for four of the ten named judges.
20. The public authority responded to the Commissioner's enquiries on 20 March 2008. It explained that upon receiving the complainant's request it had established that the office of the President of the Family Division at the Royal Courts of Justice held information, on behalf of the President of the Family Division, about which judges had been authorised to sit in Children's Act proceedings. It said that the "President's list" does not contain full details of nomination and authorisation for the ten named judges.

21. The public authority went on to say that it was not possible to provide the complainant with complete information on nomination and approval dates because the information is no longer held. It said that this is because it was kept in, what it referred to as, subject files and such files are only kept for five years in accordance with retention schedules.
22. On 26 March 2008 the Commissioner wrote to the public authority to ask that it provide him with a copy of the relevant retention schedules and to ask it to explain the reference to "subject files" from its earlier letter.
23. The Commissioner also asked the public authority to comment on what he saw as an apparent contradiction between its response to his enquiries and its earlier responses to the complainant. It appeared to the Commissioner that the public authority was now saying that information regarding judges appointments would be destroyed after five years and that this is the reason why nomination and authorisation dates could not be provided. This appeared to be at odds with the public authority's earlier position where it had been able to provide the complainant with authorisation dates for most of the ten named judges. In all but one case the dates given were considerably more than five years old.
24. The Commissioner asked the public authority to describe how it holds information on a judge's authorisation date and asked it to confirm whether the information is held separately from the information on nomination dates.
25. The public authority responded to the Commissioner on 10 April 2008. It provided the Commissioner with a copy of the relevant retention schedules and made the following statement about the way in which it holds judicial records which is worth quoting in full.

*'The department has provided [the complainant] with all the information it holds on the relevant judges' nominations to hear family proceedings.*

*I should clarify that there are various potential sources of information about judges. The former Department of Constitutional Affairs held personal files for all serving members of the paid judiciary; these were transferred to the Lord Chief Justice as a consequence of the Constitutional Reform Act 2005 and are now kept by the Judicial Office for England and Wales on his behalf. These files are retained at least while the judges still hold office. At the same time files relating to the appointment of individual judges were transferred to the Judicial Appointments Commission. These files are similarly retained. Neither the personal files nor the appointments files would usually hold information about which "tickets" or authorisations the judges concerned had been given after appointment.*

*The different regions or circuits into which Her Majesty's Court Service and the judiciary are organised also maintain their own records. These would include, for example, information about the dates on which particular judges were nominated to sit in family proceedings, but these records are only retained for five years. The judges whose information we were unable to provide complete information for: such as [names redacted] were nominated more than 6 years ago. Files*

*holding records on their nomination dates will have therefore been destroyed in accordance with the Department's guidelines. We were able to provide information in full for [name redacted] only because he was nominated within the 5 year period. For your information please find attached the relevant guidelines.*

*However, the President of the Family Division's Office has a list of which judges have been given the specialist family tickets. This information is also held by the different Judicial Secretariat Offices in the Regions and so was given to [the complainant]. The President's list does not necessarily record nomination dates - because they are not relevant and there is no business need to record such information on the list. Therefore there is no contradiction in a certain records being destroyed but the Department still being able to provide most of the information [the complainant] requested. [The complainant] has been given the information that exists.*

26. The public authority provided some further information on the meaning of "nomination" and "authorisation" within the context of judicial appointments. Again it is worth quoting the response in full.

*'On the final point of nomination and authorisation dates, [the complainant] seems to be assuming there is a difference between authorisation and nomination but there is not. Nomination is the same as authorisation. The Family Proceedings (Allocation to Judiciary) (Amendment) Directions refer to judges being 'nominated' to hear certain proceedings rather than 'authorised'.*

*The nomination system arises under section 9 of the Courts and Legal Services Act 1990, which, as amended, provides that the President may give directions that family proceedings, or particular kinds of family proceedings, in the county courts shall be dealt with by specified judges or specified kinds of judge. Accordingly, the President has given The Family Proceedings (Allocation to Judiciary) (Amendment) Directions, which say that various types of family work can be done by various types of nominated judge. But this is merely a matter of administrative convenience, to ensure that judges who regularly deal with family cases can be appropriately trained and so on. The underlying position is that all judges sitting in the county court have jurisdiction in family cases, whether they have been nominated or not, and this is specifically recognised by section 9(3) of the 1990 Act, which says that:*

*"Where any directions have been given under this section allocating any proceedings to specified judges, the validity of anything done by a judge in, or in relation to, the proceedings shall not be called into question by reason only of the fact that he was not a specified judge."*

*So judges can deal with family cases even if they are not nominated. This is an important flexibility most often useful when there are emergency applications out of hours or (perhaps) when a judge is unexpectedly absent (e.g. illness) and it is vital that a scheduled hearing goes ahead. To the extent that [the complainant]'s underlying point appears to be an attempt to show that various judges had not been properly authorised to sit in family cases, it is therefore fundamentally misconceived, as well as factually mistaken in relation to the individual judges concerned.'*

27. The Commissioner contacted the public authority for a final time on 13 May 2008. He queried the public authority's most recent response in which it had suggested that there was no difference between when a judge is nominated and when he/she is authorised. The Commissioner contrasted this with the public authority's response to the complainant's request when it had provided two distinct sets of figures for nomination and authorisation. The Commissioner invited the public authority to clarify its position.
28. The Commissioner went on to say that he was still unclear what the source was for the information on authorisation dates for the ten named judges and asked the public authority for clarification on this point. He also asked the public authority to confirm when the transfer of files to the Lord Chief Justice and the Judicial Appointments Commission took place.
29. The public authority responded to the Commissioner on 28 May 2008 and provided a crucial point of clarification. It said that in its response to the request on 20 November 2006 it had differentiated between nomination and authorisation dates but now acknowledged that this was "strictly incorrect". Elaborating on the points it had made in its response to the Commissioner of 10 April 2008 it said that technically the process is one of nomination to sit in family proceedings by the President of the Family Division and that this is the same as being authorised. It said that it was in this sense that the term "authorisation" was used in its response to the complainant of 20 November 2006.
30. It said that what the response of 20 November 2006 meant by the reference to "nomination" was the date on which the Midland Circuit Office wrote to the President of the Family Division to suggest that certain judges be nominated. It described this process as "merely part of the behind the scenes working of the system, not a statutory process, and...not significant".
31. The public authority provided the complainant with details of the source of the information for what it had referred to as "authorisation dates". It also confirmed the dates when the transfer of files took place.

### **Findings of fact**

32. The "authorisation dates" disclosed to the complainant on 20 November 2006 were provided by the Midland Circuit Office of HM Courts Service (an agency of the public authority). The source of the information was the judges' personal files and a file referred to as "Children Act 1989 – nominations – schedules". This file held in the Midlands Regional Office (former Circuit Office) holding schedules and copy letters of family authorisations for District and Circuit Judges.
33. The President of the Family Division and Head of Family Justice presides over panels in the Court of Appeal, and is also administrative head of the Family Division of the High Court. The President of the Family Division is not subject to the Act.
34. The Family Proceedings (Allocation to Judiciary) (Amendment) Directions issued by the President of the Family Division set out what types of judge may preside

over certain types of family cases. The Direction refers to judges being “nominated” to preside over family law cases.

35. Subject files on judicial appointments held by HMCS regional offices are retained for 5 years only.
36. The transfer of personnel files to the Office of the Lord Chief Justice and the Judicial Appointments Commission took place on 3 April 2006.

## Analysis

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37. A full text of the relevant statutes referred to in this section is contained within the legal annex.

## Procedural matters

### Delays in the handling of the request

38. The complainant made his initial request on 17 March 2006. Despite acknowledging the request on 20 March 2006 the public authority failed to respond substantively until 19 May 2006 when it issued the complainant with a refusal notice, thereby exceeding the 20 working day limit required by the Act.
39. The complainant asked for an internal review of this initial request on 27 May 2006. The public authority said that they would treat this as a new request for information rather than a request for internal review. The Commissioner's concerns about this approach are detailed in the 'Other Matters' section of this Notice. Having said that it would treat this as a new request the Commissioner would expect the public authority to respond within 20 working days. Having failed to do so already, the Commissioner is disappointed that the public authority did not respond to the complainant until 20 July 2006 thereby exceeding the twenty working day limit for a second time.

### The request of 25 October 2006

40. After correspondence between both parties the complainant made a new request for the details of when the ten named judges were both nominated and authorised to preside over Child Custody/contact cases in the County Court. It is the public authority's response to this request that is the focus of this decision notice.
41. The investigation of this complaint has not been helped by the fact that the public authority has, at times, presented confusing and contradictory answers to the complainant and the Commissioner. Terms such as “nomination” and “authorisation” which are crucial to the understanding of the request have been used interchangeably, adding to the confusion.
42. In respect of the request for details of when the judges were nominated, the dates for nine of the judges were given as “not available”. For only one of the ten



named judges was the nomination date available and this was from 2005. It now appears that the term “nomination” was used to refer to the date at which the Midland Circuit Office wrote to the President of the Family Division to suggest that a particular judge should be allowed to sit in or preside over family proceedings. Having viewed the relevant retention schedules the Commissioner accepts that information regarding the nomination dates of the ten named judges would only ever be retained for five years and that this is the reason why the information could not be disclosed. The Commissioner is also mindful of the public authority’s statement that “nomination” in this sense is not a statutory process and that therefore there is unlikely to be a business need to retain this information. The Commissioner is satisfied that the complainant has received all of the information it holds regarding the nomination dates of the ten named judges.

43. In respect of the request for details of the authorisation dates of the ten named judges it now appears that the term “authorisation” was, strictly speaking, used incorrectly because the process whereby judges are approved to sit in family proceedings is one of nomination. As the public authority explained in its later submissions to the Commissioner, the Family Proceedings (Allocation to Judiciary) (Amendment) Directions refer to a judge being “nominated” to sit in family proceedings rather than “authorised”. It seems that the term “authorisation” has been used simply to differentiate between the date when a judge was actually nominated to sit in family proceedings and the date when the Midland Circuit Office wrote to the President of the Family Division to suggest that a judge be so nominated.
44. The complainant was provided with the dates on which six of the ten named judges were “authorised”. For three of the judges the date of authorisation was recorded as “not available (pre Children Act)”. For one judge the date of authorisation was recorded as “not available” but the year when he received his training was given.
45. The public authority has explained that there are various sources for information about judges and that these files have been searched. It has said that the personnel files do not contain the dates at which the judges were authorised. The Office of the President of the Family Division holds a national list of the judges who have been nominated to act in family proceedings but the President of the Family Division is not a public authority for the purposes of the Act. However the Midland Regional Office also holds a copy of this list. The public authority has confirmed that the source of the “authorisation dates” was the file referred to as the “Children Act 1989 – nominations – schedules” coupled with the judges’ personal files. The public authority has confirmed that where the information was held it was provided to the complainant. It is clear that for the three judges who were nominated before the Children Act came into effect their authorisation dates will not be held on the “Children Act 1989 – nominations – schedules” file and the Commissioner notes the public authority’s explanation that judges nominated before the Children Act came into effect “will have therefore just been carried over”. Without any evidence to the contrary the Commissioner is satisfied that the complainant has received all of the information held by the public authority regarding the “authorisation” dates of the ten named judges.

46. The Commissioner is concerned that the public authority has not always been clear what the source was for the information it disclosed to the complainant in response to the request of 25 October 2006. However the Commissioner is satisfied that the public authority has taken all appropriate steps to search for the information and is content that the complainant has received all of the information held.
47. The complainant has argued that, where the information on nomination and authorisation dates was provided, in some cases the information was incorrect. Indeed, the complainant has submitted evidence which he believes shows that at least one of the judges on the list is not authorised to sit in family proceedings and that therefore the dates he has been provided with are inaccurate or misleading. It seems to the Commissioner that this is at the heart of the complaint. However, the Commissioner has explained to the complainant that he will not consider these specific allegations as part of his investigation. All he can consider is whether the public authority has withheld any information in response to the complainant and, as has been noted above, the Commissioner has found that this is not the case.

## **The Decision**

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48. The Commissioner's decision is as follows:
- The public authority breached section 17(1) of the Act by failing to issue the complainant with a refusal notice within 20 working days in response to the complainant's request of 17 March 2006 and the request of 27 May 2006.
  - The public authority dealt with the request in accordance with section 1 of the Act to the extent that it provided the complaint with all of the information it held falling within the scope of the refined request of 25 October 2006.

## **Steps Required**

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49. The Commissioner requires no steps to be taken.

## **Other matters**

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50. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
51. On the 27 May 2006, the complainant explicitly asked the authority carry out an internal review of its decision to refuse his initial request for information. The

complainant also provided clarification in respect of the information he required. The request for review was acknowledged on the 1 June 2006; however at a later date the authority advised that it would be treating the complainant's letter as a fresh request rather than a request for review. The complainant expressed his dissatisfaction with this approach on the 26 June 2006. Despite this the authority continued to deal with the complainant's correspondence as a revised request only, and aside from an apology for the delay, did not address his internal review request in a manner which demonstrates conformity with the recommendations of part VI of the Section 45 Code of Practice.

52. On 27 November 2006 the complainant submitted further correspondence asking the public authority to conduct an internal review of its handling of his information request. The public authority did not present the findings of the internal review until 12 July 2007. Section VI of the *Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000* issued under section 45 of the Act says that it is good practice for a public authority to have a procedure in place to deal with complaints about the manner in which a request for information is handled. As he made clear in his *Good Practice Guide No 5*, the Commissioner considers that these reviews should be completed as soon as possible. Whilst no explicit timescale is laid down by the Act, the Commissioner is of the view that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take up to 40 days. In this case the public authority took over seven months to carry out the internal review and whilst the Commissioner acknowledges that the complainant requested an internal review before *Good Practice Guide No 5* was published, the Commissioner still considers this to be a significant delay and as such he considers that the authority has failed to conform to part VI of the section 45 Code of Practice.

## Right of Appeal

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53. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 10<sup>th</sup> day of July 2008**

**Signed .....**

**Gerrard Tracey  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### **Section 1(1)** provides 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.”

### **Section 10(1)** provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

### **Section 12(1)** provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

### **Section 17(1)** provides that –

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”