

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 November 2022

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant has requested information about whether there has been any contact between a third party individual and Southeast Advisory ("SEA") or the Judicial Office ("JO") from January 2010 until 26 October 2021. They also requested information about whether the third party had re-applied to be a magistrate according to SEA and JO records. In addition, the complainant requested a copy of the list of duties performed by magistrates while serving on the supplemental list.
2. The JO is an independent arms-length body that falls under the remit of the Ministry of Justice ("the MOJ") and the MOJ is the appropriate public body for the purposes of FOIA. Therefore, the Commissioner has referred to the MOJ for the purposes of this decision notice.
3. The MOJ has said that it does not hold any of the information requested by the complainant.
4. The Commissioner's decision is that, on the balance of probabilities, the MOJ does not hold the requested information. No steps are required as a result of this notice.

Request and response

5. The complainant requested information in the following terms:

"On reviewing the correspondence, I note that in answer to my question, "Has there been any contact at all between [name redacted] and either South East Advisory [sic] or Judicial Office, according to your records, between January 2010 and when you say [name redacted] emailed you a few weeks ago", you initially answered, "According to our records, no contact was made between

[name redacted] and Judicial Office between January 2010", and you later updated this statement to explain that "the response was unclear: it should have stated that no information was held which indicated any contact between [name redacted] and the Judicial Office between January 2010 and March 2021"

I would ask you to update me further, and tell me whether there has been any contact, according to your records, since January 2010 up to and after March 2021 and up until today's date, between [name redacted] and either Southeast [sic] Advisory or Judicial Office.

You explained to me in a telephone conversation on 8 March 2021 that there was a two-year time limit for magistrates on the Supplemental List to return to being a magistrate, and that beyond that period a magistrate on the Supplemental List "must reapply as a magistrate again".

The question therefore arises; has [name redacted], on the Supplemental List since 2010 according to your [updated] records, reapplied to be a magistrate? To quote from [name redacted] current LinkedIn profile, under 'Volunteer experience'; "Magistrate May 2005 – Present; 16 yrs 6 mos [sic]. Civil Rights and Social Action. In the process of seeking permission to move my court sittings to London."

Does the above statement conform with your understanding of [name redacted] length of service and current situation?

I would ask you, further, to comment on the fact that [name redacted] has been, according to your records, on the Supplemental List for eleven years, since 2010, with, according to your records, little or no contact with you. How 'normal' is this?

The letter dated 13 January 2010, a partially redacted copy of which you attached to your email of 6 May, stated that it enclosed "a list of duties you may perform while serving on the Supplemental List". I should be most grateful if you would supply a copy of that list, which was not attached to the redacted copy of the letter referenced.

Your urgent response to the above points would be greatly appreciated. I very much look forward to hearing from you."

6. For the purposes of this decision notice, the Commissioner has identified five different parts to the request for information, numbered below for ease of reference:

1. The complainant requested information about whether there has been any contact between the third party and SEA or JO since January 2010 and up until 26 October 2021.
2. The complainant requested information about whether the third party has re-applied to be a magistrate according to SEA and JO records.
3. The complainant requested information to confirm JO's understanding of the third party's length of service and current situation.
4. The complainant asked, how normal it is for a magistrate to be on the supplemental list for eleven years with little or no contact from SEA/JO.
5. The complainant asked for a copy of the list of duties magistrates may perform while serving on the supplemental list.
7. The JO responded on behalf of the MOJ on 16 November 2021. At this point, it considered that parts 1 and 2 of the complainant's request were exempt from disclosure under section 40(2) of FOIA, as they contained personal information. It determined that part 5 of the complainant's request was also exempt by virtue of section 21 of FOIA as the information was reasonably accessible to the complainant. It also did not accept parts 3 and 4 of the request as valid information requests, as it did not consider them to be requests for recorded information.
8. On 10 December 2021, the MOJ provided an internal review response, maintaining the original position to withhold the information.

Scope of the case

9. The complainant contacted the Commissioner on 29 December 2021 to complain about the way their request for information had been handled.
10. During the course of the Commissioner's investigations, the issue surrounding JO's position in relation to FOIA arose. The Commissioner's position is that whilst there will be some information about JO that is subject to FOIA and held by the MOJ, information that is judicial information is either not held by the MOJ as a matter of fact or not held by MOJ for the purposes of FOIA.
11. The MOJ originally provided further submissions in confidence to the Commissioner and maintained its original position to withhold the information. However, in recent correspondence to the Commissioner, the MOJ confirmed that the information sought by the complainant is

judicial information and therefore is not held for the purposes of FOIA. If held at all it is held by the JO for judicial purposes.

12. The Commissioner notes that the complainant addressed their request for information to the JO. The Commissioner understands that the JO is not a public authority in its own right, but ultimately falls under the remit of the MOJ. It is not in dispute that the MOJ is a public authority for the purposes of FOIA. Nor is it disputed that the judiciary is not a public authority for the purposes of FOIA.

Reasons for decision

13. The Commissioner has sought to determine whether on the balance of probabilities the MOJ holds the requested information.
14. The MOJ has explained that it does not hold the requested information for the purposes of FOIA.
15. Having considered the MOJ's explanation set out above, the specific wording of the request and on the balance of probabilities, the Commissioner is satisfied that the requested information is not held by the MOJ.
16. The Commissioner also considers that, to any extent that the requested information is held by the JO, then section 3(2) of FOIA will apply.
17. Section 3(2) sets out the legal principles that establish whether information is held by a public authority for FOIA purposes.
18. In his guidance, the Commissioner recognises that:

"When information is held by a public authority solely on behalf of another person, it is not held for FOIA purposes. However, information will be held by the public authority if the information is held to any extent for its own purposes"
19. The Commissioner has not been presented with any arguments that the requested information in this case is held by the MOJ, to any extent for its own purposes.
20. Having considered all the factors applicable to this case, the Commissioner is also satisfied that the requested information, if it were held, would not be held by the MOJ for FOIA purposes by virtue of section 3(2)(a).

Right of appeal

21. 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

22. 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.
23. 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

**Esi Mensah
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**