

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 November 2022

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant made a request to the Judicial Conduct Investigations Office (the 'JCIO'), which falls under the remit of the Ministry of Justice (the 'MOJ'). He asked for a copy of the formal misconduct decision for a named judge. The MOJ refused to provide this, citing section 40(2) of FOIA, the exemption for personal information. During the course of the Commissioner's investigation, the MOJ revised its position and advised the complainant that the requested information was not held for the reasons set out in this notice.
2. The Commissioner's decision is that, on the balance of probabilities, the MOJ does not hold the requested information. However, by failing to respond to the request within the statutory 20 working days' time limit, the MOJ has breached section 10 of FOIA.
3. No steps are required as a result of this notice.

Request and response

4. On 23 December 2021, the complainant wrote to the JCIO/MOJ and requested information in the following terms:

'I refer to an article in the Law society gazette (copied below) relating to HHJ [His/Her Honour Judge] [judge's name redacted] which states:

- "...disciplined for misconduct ... by the lord chancellor and lord chief justice..."

- "...His Honour Judge [name redacted] was issued with formal advice ... and that HHJ [name redacted] behaviour amounted to misconduct having fallen below the standards expected of a member of the judiciary..."

I am writing for your assistance to obtain a copy of the formal decision by the Lord Chancellor and Lord Chief Justice.

I am planning to insert the formal decision into a bundle into a forthcoming hearing which concerns other decisions made by HHJ [name redacted].

- Please can you confirm that you can obtain a copy of the formal decision
- or can direct me to a link when I can find a formal copy of this decision'

5. The MOJ initially responded on 10 January 2022 advising how the complainant could submit a complaint about a judge, but following reiteration of his request, the MOJ confirmed on 17 January 2022 that it would respond under FOIA.
6. The MOJ provided its substantive response on 4 February 2022. It refused to provide the requested report citing section 40(2) of FOIA, the exemption for personal information.
7. That same day, the complainant requested an internal review. He argued that information about the named judge having been disciplined for misconduct is readily available online such that he considered section 40(2) could not apply.
8. The MOJ provided its internal review on 25 April 2022 and maintained that section 40(2) applied.

Scope of the case

9. On 15 August 2022, during the course of the Commissioner's investigation, the MOJ issued a revised response to the complainant.

10. It said:

"The MOJ does not hold any information within the scope of the request for the purposes of the FOIA. If the information was held, it would be held on behalf of the Judicial Conduct Investigations Office (JCIO), which is an independent statutory

body which supports the Lord Chief Justice and Lord Chancellor in their joint responsibility for judicial discipline.

The FOIA provides a general right to members of the public to request information from a public authority as defined by section 3 of the Act. The JCIO is not a public authority within the meaning of section 3 because: a) it is not listed in schedule 1 of the Act; b) it has not been designated by order under section 5 of the Act; and c) it is not a publicly-owned company as defined by section 6 of the Act. For this reason, any information held on behalf of the JCIO which was provided to you in the past should have been provided on a discretionary basis outside the scope of the FOIA.

You can find the full text of the FOIA at: Freedom of Information Act 2000 (legislation.gov.uk).

Additionally, Section 139 of the Constitutional Reform Act 2005 (CRA) establishes a duty of confidentiality on those who have responsibilities in relation to matters of conduct and discipline involving judicial office holders, where information is provided under, or for the purposes of, a relevant provision of the Act. Information which is obtained for the purposes of a function under Part 4 of the CRA is confidential by virtue of section 139 of that Act."

11. On 7 November 2022, the complainant made a lengthy and detailed submission to the Commissioner setting out his view as to why the MOJ's revised stance is incorrect. Whilst noting the reasons the complainant has set out for requiring the requested information, FOIA is both purpose and applicant blind.
12. The Commissioner has reviewed the complainant's submission before reaching his decision in this case.
13. The Commissioner has considered the MOJ's final position in relation to the complainant's request, where the MOJ said the information was not held for the purposes of FOIA.
14. The Commissioner notes that the complainant addressed his request for information to the JCIO. The Commissioner understands that the JCIO 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

15. The Commissioner has sought to determine whether, on the balance of probabilities, the MOJ holds the requested information.
16. The MOJ has explained that it does not hold the requested information for the purposes of FOIA.
17. 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.
18. The Commissioner also considers that, regardless of whether the information is held or not, in the event that the JCIO did hold any or all of the requested information, then section 3(2) of FOIA would apply.
19. Section 3(2) sets out the legal principles that establish whether information is held by a public authority for FOIA purposes.
20. 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".
21. 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.
22. 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).

Section 10 – time for compliance

23. The complainant has not specifically complained about the delay in the MOJ issuing its substantive response; however the Commissioner notes that the response was issued outside the 20 working days' statutory limit. He therefore finds that the MOJ breached section 10(1) of FOIA.

Other matters

24. Additionally, the complainant did not specifically complain about the delay in the MOJ issuing its internal review outcome. The Commissioner

notes that the MOJ exceeded the recommended 20 working days for issuing its internal review outcome. He has, therefore, made a record of the delays in this case.

Right of appeal

25. 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

26. 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.
27. 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

Laura Tomkinson
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF