

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 November 2023

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

Decision (including any steps ordered)

1. The complainant requested information relating to a specified employment tribunal. The Ministry of Justice (the 'MOJ') denied holding the requested information.
2. The Commissioner's decision is that the MOJ does not hold the requested information for the purposes of FOIA for the reasons set out in this notice.
3. The Commissioner requires no steps to be taken as a result of this decision.

Background

4. The Commissioner notes that the complainant addressed his request for information to His Majesty's Courts and Tribunals Service ('HMCTS').
5. HMCTS is not listed as a public authority in schedule 1 of FOIA. However, HMCTS is an executive agency of the MOJ and falls within its remit for the purposes of FOIA. The MOJ is therefore the appropriate public authority in this case.

Request and response

6. On 25 June 2023, the complainant wrote to the MOJ via the WhatDoTheyKnow.com website and requested information in the following terms:

"I am seeking information held by the HM Courts and Tribunals Service and request this under the provisions of the Freedom Of Information Act 2000 (FOIA 2000).

The online tribunal claims database contains two types of information:

- 1) Employment tribunal decisions where cases have proceeded to full hearings,
and
- 2) Judgements dismissing claims that have been settled or withdrawn without going to full hearing.

The online database captures both, meaning that even if claims are resolved out of court, a record of that claim will be online for all to see. The database records claims from when an ET1 [Employment Tribunal] form is submitted – the very first step in lodging a claim – even where an employer eventually settles through a COT3 [Conciliation Agreement], or through a more formalised settlement agreement

In respect of the following information request, I have taken steps to locate the information requested, which should be in the public domain. I can confirm, the information is not in the public domain.

I have searched for this information using internet search engines and also the GOV.UK website for Employment Tribunal decisions below.

<https://www.gov.uk/employment-tribunal-d...>

The information I request has not been previously submitted into the public domain, but should be available to the public. The employment tribunal claim in question is as follows:

Claimant – [name redacted] - Case Number: [name redacted].

Respondent – [redacted]

Court - Newcastle Employment Tribunal, Newcastle Upon Tyne - NE1 8QF

Jurisdiction Code - Public Interest Disclosure

In relation to this employment tribunal claim, I request the following information:

- 1) The GOV.UK database captures all such employment tribunal claims in England and Wales. So why is case [redacted], not listed on the public database?
- 2) Case [redacted] is not listed on the database, but linked case [redacted] is listed on the same database. Why is [redacted] not listed, but case [redacted] is ?
- 3) What was the employment tribunal decision for the case of Claimant – [name redacted] - Case Number: [redacted]?
- 4) Please provide me with a full copy or link to the employment tribunal decision for the case of Claimant – [name redacted] - Case Number: [redacted]?

If any of the requested information is already in the public domain, I ask that you provide me with a link to the information and a hard copy of the employment tribunal decision...”.

7. The MOJ responded on 24 July 2023. It said that it did not hold any information in scope of the request, explaining that:

“This is because the information you have requested cannot be obtained from the administrative system held for the public authority purposes of HMCTS and MOJ and, if it exists, it can only be obtained by accessing the case records themselves which are held in the custody of the Tribunal for the purposes of the Tribunal only. That information, if in existence, is therefore, not held by the MOJ and not subject to the FOIA.”

8. The MOJ provided further advice “on a discretionary basis” outside FOIA and told the complainant that enquiries relating to specific cases should be directed to the relevant tribunal that dealt with the case.
9. The complainant requested an internal review on 25 July 2023, explaining that he had already written to the applicable tribunal (on 25 June 2023) and had received no response (see ‘Other matters’ section of this notice).
10. Following its internal review the MOJ wrote to the complainant on 22 August 2023, stating:

“I have carried out a review of the handling by the MOJ of your FOIA request. I confirm that relevant enquiries were made to establish if the information is held by the MOJ. The conclusion

that the MOJ does not hold the data sought was based on a correct interpretation of the relevant legislation.

The information you requested, if held, would be found wholly within documents filed with, or created by, the Tribunal for the purposes of proceedings in a particular cause or matter. I therefore conclude the information requested is court record information held by the Tribunal and its administrative staff. The Tribunal is not a public authority and the court record information it holds is not subject to the FOIA. The conclusion of my internal review is that the response you were given was correct. You were told the information you requested was not held for the purposes of the FoI Act, and my conclusion is that this is the case.

It is important to note the information you are seeking can only be accessed by obtaining case records directly from the custody of the Tribunal. However, for the purposes of the Tribunal and in compliance with the relevant legislation, this information is not subject to disclosure under the Freedom of Information Act (FOIA). It is important to clarify that if the requested data were available in the administrative records held for HMCTS's public authority functions, it would be considered as personal data. As such, individuals have a legitimate expectation that their personal data will be held confidentially and not disclosed to the public under the FOIA. Therefore, the requested information, even if it were available, would be exempt from disclosure under section 40(2) of the FOIA...

...I can advise that the FOIA is not the way to raise questions about a case or to pursue a judicial matter handled by a Court or Tribunal eg why an order has or has not been made on specific cases. These types of questions would need to be directed to the Tribunal for their consideration”.

Scope of the case

11. The complainant initially contacted the Commissioner on 25 July 2023 to complain about the way his request for information had been handled.
12. There followed further correspondence with the complainant to confirm his specific grounds of complaint in this case. He asked the Commissioner to consider whether the MOJ held the requested information.
13. The analysis below considers whether the MOJ holds the requested information for the purposes of FOIA.

Reasons for decision

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

14. Section 1 of FOIA states:

“(1) 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.”

15. These rights only apply to the **information** a public authority holds. This means there is no explicit right to copies of original documents.

Section 3(2) – information held by a public authority

16. Section 3(2) sets out the two legal principles that establish whether information is held for the purposes of FOIA:

“For the purposes of this Act, information is held by a public authority if—

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority.”

17. This sets out a two part definition. Information is held by the public authority, and therefore within scope of an FOIA request, if the authority holds it (but not if it holds it only on behalf of another person), or if another person holds it on behalf of the authority.

18. The Commissioner’s guidance¹ ‘Information you hold for the purposes of FOIA’ explains the circumstances in which information is considered to be held by a public authority for the purposes of FOIA.

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/information-you-hold-for-the-purposes-of-foia/>

19. His guidance also makes it clear that whether information is held by a public authority, or is held on behalf of a public authority, depends on the facts of the case.

The complainant's view

20. The complainant considers that the MOJ is incorrect in stating that it does not hold any information in scope of his request.

The MOJ's position

21. In its submission to the Commissioner, the MOJ said:

“HMCTS is an executive agency, sponsored by the Ministry of Justice. It operates on the basis of a partnership between the Lord Chancellor and the Lord Chief Justice. The Lord Chancellor is the minister responsible to Parliament for courts, tribunals and the justice system. He has a statutory duty to uphold the continued independence of the judiciary. His statutory responsibilities include ensuring that there is an efficient and effective system to support the business of the courts and tribunals, resourcing the system adequately, and ensuring that the judiciary is supported in undertaking its function to deliver justice independently. The Lord Chief Justice of England and Wales is the president of the courts in England and Wales and his statutory responsibilities include judicial deployment, the provision of welfare, training and guidance to the judiciary, and representing the views of the judiciary to the Lord Chancellor and ministers of the Crown. Please see link to the HMCTS framework - [Cm8882 HM Courts & Tribunals Service Framework Document \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

This Framework Document reflects an agreement reached by the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals on a partnership between them in relation to the effective governance, financing and operation of HM Courts & Tribunals Service. The Lord Chancellor and Lord Chief Justice will not intervene (whether directly or indirectly) in the day-to-day operations of the agency and have placed the responsibility for overseeing the leadership and direction of HM Courts & Tribunals Service in the hands of its Board. The Chief Executive is responsible for the day-to-day operations and administration of the agency.”

22. In the context of this case, the MOJ told the Commissioner:

“HMCTS functions in more than one capacity, one as a court officer when conducting business for the court (under the direction of the court), and the other as a public authority, (such

as reporting and analytics of court services). Even though HMCTS holds information, it does not necessarily mean it is always held under a public authority capacity.”

23. Acknowledging the nature of the requested information in this case, the MOJ explained that, while HMCTS may hold information of the type requested, it is held by HMCTS as a court officer (under the direction of the court), not in its public authority capacity. Therefore, the information requested is not held for the purposes of FOIA.

The Commissioner's view

24. It is not in dispute that the MOJ is a public authority for the purposes of FOIA. It is also well established that courts and inquiries are not subject to FOIA, as is recognised by the Commissioner in his guidance².
25. The Commissioner acknowledges the MOJ's position is that FOIA only applies to the information held by public authorities for their public authority functions: it does not apply to courts and tribunals. For this reason, information held by the courts, or held by a public authority on behalf of a court, is not within the scope of FOIA.
26. The Commissioner understands that the complainant may consider it contradictory to be told by the MOJ that it does not hold the requested information, while it also advises that tribunals, part of HMCTS, are responsible for enquiries about specific cases and that the complainant can request the information they are seeking by contacting the relevant tribunal.
27. He accepts the notion that, although the MOJ physically holds information of the nature requested, it does not hold this information for the purposes of FOIA, is a difficult concept.
28. However, from the evidence he has seen, the Commissioner is satisfied that the requested information is held by HMCTS in the course of exercising its function as a court rather than in its capacity as a public authority. It follows that he is satisfied that it is not held by the MOJ for the purposes of FOIA.

² <https://ico.org.uk/media/for-organisations/documents/2021/2619028/s32-court-inquiry-and-arbitration-records.pdf>

Other matters

29. The Commissioner notes that the complainant has contacted the relevant tribunal and has stated that he is yet to receive a response. The MOJ has said that the complainant has been advised twice to contact the applicable tribunal and suggested that he telephones. The Commissioner has relayed this advice to the complainant who remains concerned with the lack of any written response.
30. The Commissioner has explained that he has no remit over non-FOIA enquiries, ie requests to tribunals which are not subject to FOIA, so he is unable to assist further.

Right of appeal

31. 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

32. 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.

33. 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

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