

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 23 July 2024

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

#### **Decision (including any steps ordered)**

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1. The complainant requested information relating to the recording of court proceedings. The Ministry of Justice (MoJ) denied holding the requested information.
2. The Commissioner's decision is that the MoJ does not hold the requested information, namely audio recordings, for the purposes of FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

#### **Request and response**

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4. On 8 March 2023, the complainant wrote to the MoJ and requested information in the following terms:  

"I now require access to the Audio of the Court's own recording of the Hearings [for specified dates]".
5. There followed lengthy correspondence between the parties, during which the complainant also requested CCTV footage for a specified date.
6. Following the Commissioner's intervention, the MoJ wrote to the complainant on 11 July 2024. It said that it had already provided a

response as part of regular court business, including informing the complainant that the requested CCTV footage is no longer held.

7. In providing a response under FOIA, the MoJ stated that it does not hold any information within the scope of the requests.
8. The complainant expressed dissatisfaction with that response.
9. The MoJ confirmed its position on 12 July 2024, saying:

“Neither the MoJ nor HMCTS [HM Courts and Tribunals Service] holds the information you have requested for the purposes of the FOI”.

### **Scope of the case**

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10. Following earlier correspondence, on 5 March 2024 the complainant provided the Commissioner with a substantial amount of correspondence in support of their complaint.
11. The Commissioner acknowledges that there are references within that correspondence to CCTV footage as well as audio recordings.
12. With regard to which specific aspect of the handling of their request they are dissatisfied with, the complainant clearly stated on their complaint form that it was the request dated 8 March 2023, for the County Court’s audio recordings of hearings on three specific dates.
13. In light of the above, the Commissioner progressed his investigation on that basis.
14. In its submission to the Commissioner, the MoJ confirmed that the request, originally made on 8 March 2023, has now been handled as an FOI request.
15. The Commissioner acknowledges that the complainant provided further correspondence in support of their complaint following receipt of the MoJ’s response under FOIA.
16. 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.
17. The analysis below considers whether the MoJ holds the requested audio recordings for the purposes of FOIA.

## Reasons for decision

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

18. 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.”

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

19. 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.”

20. This sets out a two part definition. Information is held by the public authority, and therefore within scope of a 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.

21. The Commissioner’s guidance<sup>1</sup> ‘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.

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

22. 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 MoJ's position**

23. The MoJ told the complainant:

“The MOJ does not hold any information in the scope of your request. This is because the information is held only on behalf of a court or only on behalf of a judge acting in their judicial capacity.

The information if it is held, is only held on individual case records, by the Court. FOIA legislation applies to the MOJ and HMCTS as public authorities, but not to records held by Courts and Tribunals”.

### **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 guidance<sup>2</sup>.
25. The Commissioner acknowledges that 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. As such, information held by the courts, or held by a public authority on behalf of a court, is not within the scope of FOIA.
26. He also accepts that the requested information is of interest to the complainant, that they consider that their request is perfectly reasonable and that they should be provided with the information.
27. However, from the evidence he has seen, and in accordance with his published guidance, the Commissioner is satisfied that the MoJ does not hold recorded information within the scope of the request in its capacity as a public authority.
28. It follows that he is satisfied that the MoJ does not hold information for the purposes of FOIA and that the MoJ was entitled to rely on section 3(2) to refuse the request.

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

## **Other matters**

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29. The Commissioner recognises that, during the course of its lengthy correspondence with the complainant, the MoJ has advised them about the appropriate access regime through which to request a transcript of a hearing and provided details of the practice direction governing release of audio recordings.

## Right of appeal

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30. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Michael Lea**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**