

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 6 February 2012

**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 from the Ministry of Justice (MOJ) regarding the appointment and operation of management receivers. The MOJ stated that no information was held.
2. The Information Commissioner's decision is that the MOJ does not hold the requested information.
3. The Information Commissioner requires no further remedial steps.

#### Request and response

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4. On 23 February 2011, the complainant wrote to the MOJ and requested information in the following terms:

*" 1. Will there be any new conduct rules used in the appointment of management receivers since my case became the bench mark case,*

*2. Can you please supply me with the rules these people when appointed have to follow.*

*3. If a receiver has been allocated the work from an independent panel who decides the suitability of the appointment,*

*4. If a receiver has been chosen to look after certain types of cases i.e. fraud cases is it normal for the other management receivers on the independent panel not to be chosen and the majority of the work allocated to one man and his team of racketeers,*

*5. If a senior member of customs was the person handing out this mans work would some one of asked in time how come this man has been getting the work when we have a panel of suitable qualified men or women who could have done the appointments,*

*6. If there had been a breach of the 2010 bribery act, what would the MOJ do about this."*

5. The MOJ responded on 17 March 2011. It stated that the requested information was not held. The MOJ explained to the complainant that the appointment of management receivers was the responsibility of the Insolvency Service.
6. Following an internal review the MOJ wrote to the complainant on 13 July 2011. The internal review upheld the original decision and the MOJ suggested the complainant contact the Insolvency Service and the Crown Prosecution Service (CPS).

### **Scope of the case**

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7. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Information Commissioner to consider the fact that the MOJ had not provided the requested information to him. The complainant also brought a number of related issues to the attention of the Information Commissioner. These have been individually investigated in separate cases.

### **Reasons for decision**

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8. Section 1 of FOIA states 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."*

9. The Information Commissioner contacted the MOJ and made enquiries with regard to what information the MOJ may hold in relation to the request. He also researched the role and remit of management receivers

in order to understand whether it would be reasonable to assume that the MOJ would hold any related information.

10. In answer to his enquiries, the MOJ explained to the Information Commissioner that the following business areas had been contacted in its search for the requested information: Her Majesty's Court Service (HMCS), the Human Resources and Appointment Division, the Bribery Act Implementation Team, the Judicial Policy and Appointments Division, the Performance Management Division, the Criminal Policy/Criminal Law Division, HMCS Royal Courts of Justice (RCJ), the Operations and Performance Directorate and the Civil Operations Team.
11. The MOJ stated that the Criminal Policy Team had confirmed that there was no recorded information held in relation to question one. There are no Criminal Procedure Rules about the conduct of receivers appointed under the Proceeds of Crime Act 2002 and therefore the MOJ does not hold the requested information.
12. The same team also advised, with reference to question six of the request, which related to the Bribery Act 2010, that *"the Act had not yet been commenced and that an investigation of any alleged crime would be an operational matter for the Police"*. It stated that, for this reason, the MOJ did not hold the requested information.
13. With reference to questions two and three, policy officials *"advised that they would follow whatever legislation governs management receivers"* and having researched this, the MOJ confirmed that no recorded information was held. The same applied to questions four and five as they also related to legislation on governing appointments. The relevant business areas confirmed that no recorded information was held by the MOJ.
14. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Information Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the Information Commissioner must decide whether, on the balance of probabilities, a public authority held at the time of the request any information falling within its scope.
15. The Information Commissioner is satisfied that in this case the MOJ does not hold any recorded information relating to the request. The MOJ has demonstrated adequate and reasonable searches for the requested information and the Information Commissioner's own research and

investigation has shown that the appointment and conduct of management receivers is not within the remit of the MOJ.

16. The only information surrounding management receivers the Information Commissioner has found is located on the CPS website. The MOJ's website also makes no reference to management receivers which supports the MOJ's position that it does not hold any of the requested information.

### **Duty to provide advice and assistance**

17. Section 16 of FOIA states:

*"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."*

18. Having stated in its response that no information was held, the MOJ directed the complainant to the Insolvency Service. A letter from the Insolvency Service to the complainant, along with research conducted by the Information Commissioner as part of this investigation, evidences that the Insolvency Service does not govern the appointment or conduct of management receivers. Therefore, although the MOJ had intended to offer helpful advice and assistance, the Information Commissioner notes that it is not part of the Insolvency Service's remit to appoint and oversee the work of management receivers.
19. The MOJ confirmed this in correspondence to the Information Commissioner after carrying out its own further research. The MOJ stated that the Insolvency Service does:

*"not deal with the appointment of management receivers... the Insolvency Service and the Department of Business Innovation and Skills (BIS) only have responsibility for the legislation relating to the appointment of insolvency office holders."*

They do not have *"responsibility for the appointment of management receivers, who are appointed under the Provisions of Crime Act 2002"*. The Information Commissioner notes that this is correct; however, he accepts that the advice and assistance given at the time by the MOJ was believed to be accurate.

20. The MOJ has confirmed to the Information Commissioner now that the Crown Court has the discretion to appoint a management receiver and that this is done on application by the CPS.

21. The MOJ did correctly direct the complainant to the CPS (as well as the Insolvency Service) in its response to questions two, three and six of the request. It informed the complainant that there are no Criminal Procedure Rules about the conduct of management receivers appointed under the Proceeds of Crime Act 2002. Therefore, any request or query should be directed to the CPS in the future and not the MOJ.
22. For these reasons the Information Commissioner is satisfied that the MOJ has provided adequate advice and assistance to the complainant in answer to his request for information.

## Right of appeal

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23. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

24. 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.
25. 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 .....**

**Jon Manners  
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