

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 20 August 2015

**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 about small claims in the County Court. The Ministry of Justice (the 'MOJ') passed the request to Plymouth County Court to respond to under the 'normal course of business.' The Court then provided the complainant with a leaflet which it said addressed her request. The complainant, however, disagreed and twice requested the MOJ to carry out an internal review which the MOJ refused because it said that the request had not been handled under the FOIA.
2. Whilst the Commissioner is satisfied that the request constitutes a valid request under FOIA, he has concluded that the request was legitimately dealt with in the normal course of business. He also finds that the request has been answered and that the complainant did not suffer any detriment as a result of the way in which the request was handled by the MOJ. He does not require the public authority to take any steps.

### Request and response

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3. On 14 February 2015, the complainant wrote to the MOJ and requested information in the following terms:

*"After discussions with the Parliamentary and Health Service Ombudsman, it has been decided that detailed information relating to a persons [sic] right to choose to have either an oral or written hearing if they are the plaintiff who wishes to bring a small claim to the County Court is provided.*

*This letter should, therefore, be seen as my formal request for this information to be provided.*

*For the benefit of doubt, I require as much information on this as is possible; the rules followed, the technical mechanisms used, the procedures in place, how they are enshrined, the statutes they rely upon, etc, etc."*

4. The MOJ responded on 24 February 2015. It stated that it had passed the request onto Plymouth County Court as it did not consider that the request had been made under FOIA and that court procedures could be explained under "*normal court business*".
5. On 3 March 2015 Plymouth County Court wrote to the complainant enclosing a leaflet (EX306), highlighting a paragraph on page 5 "*Do I have to go to the hearing?*".
6. On 17 March 2015 the complainant wrote to request an internal review , stating that the information provided was not what she had requested.
7. The MOJ wrote to the complainant again on 23 March 2015. It refused to carry out an internal review because it said the request had not been considered under FOIA. It confirmed that it had passed the complainant's letter to Plymouth County Court who would respond in accordance with Her Majesty's Courts and Tribunals Service's (HMCTS) complaints procedure.
8. On 23 March 2015 the complainant again requested an internal review.
9. On 7 April 2015 Plymouth County Court wrote to advise the complainant that the leaflet it had provided is for individuals with a dispute which has been allocated to the small claims track, and that it explains what happens at court, the route a case may follow and what happens after a case has been heard. The Court said that if the complainant was unhappy with the information provided in the leaflet, then she should provide exact details of the court procedures she requires. It pointed out that the information is only intended as a guide and suggested that the complainant seek legal advice or contact the Citizens Advice Bureau.
10. The MOJ replied to the complainant's second request for an internal review on 15 April 2015 and said that it had nothing further to add to its previous response.

## **Scope of the case**

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11. The complainant contacted the Commissioner on 18 May 2015 to complain about the way her request for information had been handled.
12. On 18 May 2015 the Commissioner wrote to the MOJ asking it to review whether the request should have been considered under FOIA on the basis that the requested information may not be contained in the leaflet provided; he suggested that the MOJ carry out an internal review.
13. After initially declining to follow the Commissioner's suggestion, the MOJ subsequently revised its stance and, after some delay, it confirmed on 7 July 2015 that it would now undertake an internal review.
14. The MOJ subsequently provided its internal review result on 3 August 2015, in which it maintained that it had been correct to process the request as 'business as usual'.
15. In this case the Commissioner has considered below whether the MOJ dealt with the request correctly, subject to any section 16 advice and assistance given.

## **Reasons for decision**

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### **Section 8 – request for information**

16. Section 8(1) of the FOIA states that requests for information should be in writing, bear the name and address of the applicant, and describe the information requested. The Commissioner considers that the request in this case fulfilled these criteria, and therefore constituted a valid request under the FOIA for recorded information.

### **Section 16 – advice and assistance**

17. Section 16 of FOIA sets out the duty on public authorities to provide advice and assistance, as far as it is reasonable to expect the public authority to do so, to anyone who is considering, or has made, a request for information to it. It also states that any public authority which complies with the section 45 Code of Practice in relation to the provision of advice or assistance is considered to have carried out its duty under section 16.
18. A public authority's duty to provide advice and assistance is extensive and will apply to both prospective and actual applicants for information. This duty potentially applies to most, if not all, stages of the request process under the FOIA. The provision of advice and assistance is how a

public authority interacts with an applicant in order to discover what it is that the applicant wants and, where possible, assist them in obtaining this.

19. Generally, the Commissioner would not encourage a public authority to send a request down the 'normal course of business' route and apply lower standards (eg disclosing less information, or taking longer to deal with the request) when some section 16 advice and assistance could have brought the request into the scope of the FOIA.
20. The Commissioner considers that, in relation to 'normal course of business' responses generally, there are three basic scenarios:
  - a request may be **valid** under FOIA but handled under 'normal course of business', provided that all of the requested information is disclosed at least as quickly as it would have been under FOIA – the benefit to the public authority is that it does not have to follow its formal freedom of information process, so the request may be disposed of more efficiently;
  - a request is **invalid** under FOIA (eg a 'yes/no' response is required) or **ineffective** (eg the specific information is not held but could be easily created), but the public authority decides to provide a response under 'normal course of business' in order to be helpful;
  - a request is **defective** under FOIA, but advice and assistance under section 16 could remedy the defect.
21. In this case, the MOJ did respond within 20 working days. The Commissioner has read the leaflet EX306<sup>1</sup>. Whilst he cannot find any specific reference as to whether the plaintiff has the right to choose a written or oral hearing, he finds the following two extracts relevant:

***“Will there always be a hearing?”***

*No. If the judge wants to deal with your case without a hearing, you will be sent a **Notice of Allocation to the small claims track (no hearing)**. The notice will tell you that the judge thinks that your case can be dealt with without a hearing, using only written evidence. The notice will ask you to tell the court if you object, and will give you a date by which you must reply. If you or the other party objects, your*

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<sup>1</sup> <https://www.moneyclaimasuk.co.uk/PDFForms/EX306.pdf>

*case may be dealt with at a hearing. If you do not reply by the date given, the judge may treat your lack of reply as consent.*

***Do I have to attend the hearing?***

*No. If you don't want to attend the hearing, you can ask the court to deal with the claim in your absence. You must write a letter to the court, stating your claim number, the date of the hearing and the reason why you will not be attending. You should also ask the court to make a decision on the case in your absence using any written evidence you have provided to them. The letter must arrive at court no later than seven days before the hearing date.*

*You should also send a copy of the letter to the other party in the dispute."*

22. Based on the above, the Commissioner has concluded that it is the judge who decides whether such cases can be considered on the papers, or whether an oral hearing is required. He is therefore satisfied that the request has been answered and the MOJ's obligations under the FOIA have been discharged. He does not consider that the complainant has suffered any detriment by the MOJ having provided its response under its normal course of business route, particularly as it has also carried out an internal review in this case.
23. In addition, the Commissioner is satisfied that the MOJ (HMCTS) provided assistance to the complainant in that it responded to her question and provided the leaflet and also explained where she might seek further advice in an effort to assist the complainant.

**Other matters**

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24. The Commissioner acknowledges that public authorities may wish to handle requests as 'business as usual' requests. However, as outlined above, there is a duty under section 16 of FOIA to consider whether advice and assistance can be offered to remedy a defective FOIA request.

## Right of appeal

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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: 0300 1234504

Fax: 0870 739 5836

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

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

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