

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 February 2017

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

Decision (including any steps ordered)

1. The complainant made three requests for information to the Ministry of Justice in which he requested information about the conduct of court proceedings by members of the judiciary.
2. The Ministry of Justice relied upon the section 14(1) exemption of FOIA to refuse the requests.
3. The Commissioner decided that the Ministry of Justice had applied the section 14(1) FOIA exemption correctly. She therefore does not require the Ministry of Justice to take any steps to comply with the legislation.
4. However, she also found that the Ministry of Justice had delayed its initial response to one of the requests (request 2 - FS50646503) for too long and, in so doing, had breached section 10(1) FOIA.
5. The Commissioner does not require the Ministry of Justice to take any steps to comply with the legislation.

Requests and responses

6. The complainant appealed to the Commissioner about the refusal by the Ministry of Justice (MOJ) of three information requests which he made via the public whatdotheyknow.com (WDTK) website.

Request 1 (FS50643992)

7. On 24 March 2016 the complainant asked MOJ:

Q. I would like any information held by the MoJ in appointing Deputy High Court judges, whether that concerns law or policy.

...

"I would like any information held by the MoJ which sets out the rules about how a person affected by such bias may be protected by the apparently unjust justice system"

8. On 25 April 2016 MOJ's Judicial Conduct Investigations Office (JCIO) told the complainant that the information in the first part of the request was not held but referred him to the Judicial Appointments Commission. For the second part of the request, JCIO at first said that the information was exempt under section 21 FOIA (information accessible by other means) and provided a link to the relevant website. Later, on 20 July 2016, MOJ determined the request to have been vexatious and refused it relying on the section 14(1) FOIA exemption.

Request 2 (FS50646503)

9. On 29 June 2016 the complainant asked JCIO to disclose what records it holds regarding the following and quoting from the outcome of an earlier complaint to JCIO:

"Further, although I note you state DJ [District Judge name redacted] was antagonistic and belittling, judges are entitled to respond to the parties' evidence and I confirm that DJ [name redacted] response to your submissions would not be a matter of misconduct because it relates to his handling of the case in court."

In theory then, every complaint could be invalidated on this basis as all misconduct can be associated with 'case handling'.

Can the Judicial Conduct Investigations Office therefore disclose what records it holds regarding the matter. For example any guidance given

[to] *investigators to decide when and when not to associate the complaint with 'case handling'.*

10. MOJ did not respond to the request despite reminders from the complainant and the Commissioner. On 21 December 2016 MOJ told the Commissioner that it was refusing the request relying on the section 14(1) FOIA exemption.

Request 3 (FS50650451)

On 28 June 2016 the complainant asked:

Q1. I would like disclosing whatever information the MoJ holds regarding instructions/ guidance etc., that judges must work to in order not to give an impression of favouring one party over another like for instances, what evidence to take into consideration and what not to consider and the weight to be placed upon each party's representations.

Q2. What are the consequences for a judge who obviously shows bias to one particular party

Q3. Is there a body from which a victim may claim compensation who has incurred substantial costs as a consequence of an unfair hearing"

11. On 28 July 2016 MOJ responded citing the section 14(1) FOIA exemption. A subsequent MOJ letter dated 9 September 2016 MOJ treated parts of the request as a general enquiry and made a 'business as usual' response providing information about the appellate process. Otherwise, MOJ held to its reliance on the section 14(1) FOIA exemption.

Scope of the case

12. The complainant contacted the Commissioner on 26 August 2016 to complain about the way MOJ had handled his request 1.
13. The complainant contacted the Commissioner on 14 September 2016 regarding the lack of a response to his request 2.
14. The complainant contacted the Commissioner on 11 October 2016 about the about the way MOJ had handled his request 3.
15. For each request, the Commissioner has considered representations from the complainant and MOJ and examined the relevant

correspondence to determine whether or not the request had been refused correctly relying on the section 14(1) FOIA exemption.

16. The Commissioner considered and determined all three requests separately and individually. However, she noted that they all arise from judicial proceedings regarding a single matter in which the complainant is an interested party and that he complains of misconduct by the judiciary during the course of the proceedings. She further noted that the representations from both the complainant and MOJ in respect of these requests are also very closely related and has accordingly issued her decisions in the form of a single decision notice.

Reasons for decision

Section 14 - vexatious or repeated requests

17. Section 14(1) FOIA provides that a public authority is not obliged to comply with a request that is vexatious. Consistent with an Upper Tribunal decision which established the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious, the Commissioner's guidance for section 14(1)¹ FOIA confirms that the key question to ask when weighing up whether or not a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
18. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on them and balance this against the purpose and value of the request. Where relevant, public authorities take into account wider factors such as the background, context and history of the request.
19. The Commissioner's guidance makes clear that section 14(1) FOIA can only be applied to the request itself, and not to the individual who submits it. An authority cannot, therefore, refuse a request on the grounds that the requester himself is vexatious. Similarly, an authority cannot simply refuse a new request solely on the basis that it has classified as vexatious previous requests from the same individual.

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

20. In reaching her decision in these cases, the Commissioner considered the arguments put forward by both the complainant and MOJ as well as the context in which the requests were made.

The complainant's view

21. The complainant told the Commissioner that the issue underlying his requests concerned the conduct of proceedings in respect of alleged council tax arrears which he disputed. There had been proceedings in a named Magistrates' Court, the outcome of which he had unsuccessfully appealed to the High Court. He added that a witness statement by the council had caused him to suspect a deliberate intention to deceive the court.
22. The complainant said that he had complained to JCIO of judicial misconduct following his High Court matter. He said that the judge had decided he would side with the council and had not been prepared to listen to, accept or understand any evidence that did not fit the outcome he intended to deliver. The complainant said that the judge was lacking in objectivity and had so obviously been pro-prosecution that it was reasonable to infer an intention to pervert the course of justice. The complainant said that the judge had been antagonistic and belittling and had sought to discredit him. He added that the judge had raised irrelevant matters and had shown bias; he had distorted the facts of his case. He concluded by saying that the judge had acted outside his powers in granting an order that the council tax regulations did not permit.
23. The complainant argued that for MOJ to assume that his requests were unreasonable, persistent and futile was simply baseless. It was because of the intransigent way public bodies presented themselves that he had been driven to using FOIA as a means of attempting himself to identify the causes of numerous injustices and "stitch-ups" he had been subjected to. He said he felt under a public duty to highlight something which was endemic in public bodies. He did not consider it unreasonable or futile to want to hold to account those whose negligence and dishonesty had led to his now having a criminal record and a fine for an offence he was completely innocent of.
24. The complainant told the Commissioner that he was motivated by observing blatant bias on the part of judges and the intransigence of public authorities. FOIA was one avenue which entitled a UK citizen to lawful access to information for whatever purpose, and if use of it might assist someone seeking to overcome the MOJ's obstruction of justice, it was reasonable for that avenue to be taken advantage of.

The MOJ view

25. MOJ said that the volume of correspondence from the complainant had meant that a number of closely connected cases had been aggregated together in a single response to the Commissioner.
26. MOJ said that the complainant's information requests had placed an unreasonable burden on its resources. He had submitted 24 requests in the previous 12 month period. Nearly always each request had been met with an appeal. The requests all related to similar themes regarding the complainant's litigation matters or grievances with particular members of the judiciary.
27. MOJ said, while the burden the requests imposed on it alone satisfied the section 14 (1) FOIA criteria, it was important to note that the ICO guidance referred to the importance of public authorities giving a requester an opportunity to change their behaviour - which MOJ's numerous responses had done. A number of his previous matters had already been investigated by ICO and MOJ's refusals had been upheld. Regardless of the decisions issued, the explanations provided or guidance given, the requester had not changed the frequency, style, tone or scope of his correspondence with it. Instead he continued to submit further requests and general correspondence in respect of the issues relating to the complaints raised against the judiciary and which frequently concerned the JCIO processes and the functions of the judiciary. Some requests had been submitted within hours of one another or on consecutive days.
28. MOJ said it had concluded that any response provided by it on these matters was unlikely to alter the frequency of requests or provide an outcome which would satisfy the complainant. The requests were futile and simply served to keep MOJ in long and protracted correspondence about matters which either already had been, or should have been, addressed elsewhere.
29. MOJ added that, aside from the administrative burden, the complainant's correspondence was confrontational and littered with accusations of wrongdoing by officials and the judiciary – which was the rationale for WDTK suspending his relevant account.
30. MOJ said that the accusations of fraudulent or inappropriate actions were likely to have been due to the JCIO having dismissed his judicial complaint and met the unfounded accusations criteria. The requests indicated a belief that he had been the wronged party in litigation and that members of the judiciary had acted inappropriately towards him, eg *"how a person affected by such*

bias may be protected by the apparently unjust justice system".
The allegations were not factual, and had no merit.

31. MOJ said there was evidence in the requests and background correspondence of personal grudges. The requests were often directed at individuals. In instances where they were directed at a process, the requests meet the unreasonable persistence criteria. MOJ said that FOIA was not the correct route of redress in these matters.

The Commissioner's decision

32. The Commissioner has noted that the genesis of this and the complainant's other information requests to MOJ is his concerns about the adverse outcome of his court proceedings. These are matters that have to be addressed through the appropriate judicial channels.
33. The Commissioner has taken into account that the complainant considers that the requests he has been making have a serious purpose and value. From the correspondence she has seen, it is clear to the Commissioner that the complainant is not satisfied about the fairness of his judicial proceedings, their conduct and outcomes.
34. The Commissioner has seen no apparent serious purpose or value to the wider public in disclosure of the information sought in the substance of these requests. She has seen no evidence of wrongdoing by individual judges. The proper way to address concerns about the conduct of proceedings is through the judicial appeals process. The complainant has chosen not to appeal, that is a matter for him. The complainant appears to be pursuing a highly personalised matter which is of little if any benefit to the wider public.
35. The Commissioner considers that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance. The burden on MOJ in this matter arises principally from the resources and staff time that it has spent on addressing the complainant's information requests.
36. The Commissioner has seen that the effect of the frequent information requests and other correspondence from the complainant has been to impose a significant burden on MOJ and its staff. The context and history of the request suggested to her that responses to these requests would be likely to perpetuate the correspondence and impose a further consequential burden on MOJ and its staff.
37. In these requests and in his other correspondence with MOJ the Commissioner has noted that the requestor has taken up an unreasonably entrenched position and has shown no appetite for

compromise. She has also seen in these requests that the complainant is targeting his requests towards particular office holders against whom he appeared to adopt some personal antipathy.

38. The Commissioner was concerned at the tone of the complainant's correspondence with MOJ officials which went far beyond the level of criticism that MOJ and the judiciary should reasonably expect to receive. Some of the complainant's comments accuse office holders of 'blatant bias', selective consideration of the evidence, antagonism and other malpractice. They seemed to the Commissioner to have been intended to cause annoyance and offence.
39. The complainant told the Commissioner that FOIA entitled him to access information for any purpose, and that it was reasonable for him to use FOIA requests to highlight what he saw as members of the judiciary who were intent on perverting the course of justice in his matters.
40. FOIA provides fundamental rights to the public to request access to recorded information held by public authorities. However, it should not be used to vent dissatisfaction with matters which have already been, or are still in the process of being, dealt with or as an alternative to the correct legal appeals routes. The Commissioner found that, in making his request, the complainant has continued to press his matters long after they have been adjudicated and dismissed and was therefore unreasonably persistent.
41. In the light of her analysis of this matter, the Commissioner decided that the requests had been inappropriate and were an improper use of FOIA. Responding to them would be likely to cause MOJ further disproportionate and unjustified disruption. She therefore decided that the requests were vexatious and that MOJ had acted correctly in applying the section 14(1) FOIA exemption to them.

Section 10 – time for compliance

42. The Commissioner considered whether MOJ had responded to request 2 (FS50646503), the request of 29 June 2016, in line with the provisions of FOIA.
43. Despite reminders and the intervention of the Commissioner, MOJ did not respond directly to the complainant. However MOJ later told the Commissioner that it relied on section 14(1) FOIA to refuse the request.
44. Section 10(1) of the FOIA states that on receipt of a request for information a public authority should respond to the applicant within 20 working days.

45. From the information provided to the Commissioner in this case it is evident that MOJ did not respond to the complainant within the statutory time frame and so breached section 10(1) FOIA. As MOJ later correctly relied on the section 14(1) FOIA exemption, no further action is needed.

Other matters

46. As well as finding that MOJ breached section 10(1) FOIA, the Commissioner has also made a record of the delay in this case for monitoring purposes.
47. The complainant noted that he considers MOJ's approach to be inconsistent in refusing some requests under the FOIA, and responding to others as 'business as usual' (BAU) rather than simply as requests for recorded information. MOJ assured the Commissioner that it did not take a blanket approach to refusal under section 14(1) FOIA. MOJ said that it examined every request on its merits and also offers a requester the opportunity to change their approach. MOJ said that, in instances where a customer service BAU approach is relevant then, while a request may meet the vexatious criteria, MOJ still may fulfil its duty under section 16(1) FOIA to provide advice and assistance by other means; in some instances, a BAU response is the appropriate reply.

Right of appeal

48. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

49. 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.
50. 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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