

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 October 2017

Organisation: Coroner's Society of England and Wales
Address: HM Coroner's Court
Gerard Majella Courthouse
Boundary Street Liverpool L5 2QD

Decision (including any steps ordered)

1. The complainant has requested information relating to memorandums of understanding (MOUs) agreed with a number of public authorities.
2. The Coroner's Society of England and Wales (The Coroners' Society) has explained that it is not a public authority for the purposes of the FOIA. It has therefore refused to respond to this request under the FOIA.
3. The Commissioner's decision is that The Coroners' Society is not a public authority for the purposes of the FOIA. She therefore upholds The Coroners' Society's position and does not require any steps to be taken in this case.

Request and response

4. On 28 July 2017, the complainant wrote to The Coroners' Society and requested information in the following terms:

"Please answer the following questions within 20 days:

IPCC 1. When did the Coroners' Society release the MOU service level agreement between Coroners' Society and Independent Police Complaints Commission to all the Coroners in England & Wales?

2. As Coroners retire and new Coroners takeover, how does the Coroners' Society release information about the MOU service level agreement between Coroners' Society and Independent Police Complaints Commission to the new Coroners?

3. Due to changes to the Coroner system a few years ago, the role of the Chief Coroner was created by an Act of Parliament. The Chief Coroner became a honorary member of the Coroners' Society, however, did the Coroners' Society formally make known to the Chief Coroners the existence of the MOU service level agreement between Coroners' Society and Independent Police Complaints Commission?

4. As the Coroners' Society informs all the Coroners jointly in one go about issues which affect them, when did the Coroners' Society inform by training / meeting or get together about the MOU service level agreement between Coroners' Society and Independent Police Complaints Commission?

CQC 5. Please answer questions 1 to 4 substituting Independent Police Complaints Commission for Care Quality Commission, one of your other MOUs?

HSE 6. Please answer questions 1 to 4 substituting Independent Police Complaints Commission for Health & Safety Executive, one of your other MOUs?

CPS 7. Please answer questions 1 to 4 substituting Independent Police Complaints Commission for Crown Prosecution Service, National Police Chiefs' Council and the Chief Coroner, one of your other MOUs?"

5. The Coroners' Society responded the same day and stated:

"The Coroners' Society is a private judicial association of coroners and is not a public authority, the Society is not an arm of the state and has no statutory function".

6. The complainant requested an internal review, and received a further response, also on the same day stating:

7. *"The address of the Coroners' Society of England & Wales is Liverpool coroner court and information held by the court for investigations and inquests is governed by the Coroner and Justice Act 2009 and its subordinate legislation. The Coroners' Society of England and Wales is an unincorporated private judicial association which has no statutory function nor is it an arm of the state. The Society is separate and distinct from the Liverpool and Wirral Coroner's Area."*

Scope of the case

8. The complainant contacted the Commissioner on 28 July 2017 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of this case to be concerned with the question of whether The Coroners' Society is a public authority for the purposes of the FOIA.
10. In the case of *Fish Legal v Information Commissioner & Others* (GIA/0979/2011 & GIA/0980/2011) ("Fish Legal"), the Upper Tribunal Administrative Appeals Chamber (the "UT") ruled that the Commissioner has jurisdiction to both investigate and decide whether a body is a public authority.
11. The Commissioner therefore has jurisdiction to decide this question. The First Tier Tribunal (the "FTT") may also hear appeals against the Commissioner's decisions and the UT may hear appeals against the decisions of the FTT.

Reasons for decision

12. The FOIA gives members of the public the right to access recorded information held by public authorities and places a duty on public authorities to respond to requests for such information.
13. If a public authority receives a request for information they are usually legally obliged to provide it within 20 working days, unless any of the exemptions contained within the FOIA apply. If a public authority believes an exemption does apply to the information that has been requested then the public authority must explain why the exemption applies.
14. The definition of 'public authority' is given in section 3(1) of the FOIA. In particular it states that under the FOIA a "public authority" means-
 - (a) subject to section 4(4), any body which, any other person who, or the holder of any office which-
 - (i) is listed in Schedule 1, or
 - (ii) is designated by order under section 5, or
 - (b) a publicly-owned company as defined by section 6.
15. Section 5 allows the Secretary of State to designate a public authority by order.
16. Section 6 states that a company is a "publicly-owned company" for the purposes of section 3(1)(b) if it is wholly owned by the Crown or is

wholly owned by any public body listed in Schedule 1 (other than a government department or any authority which is listed only in relation to particular information).

17. In his correspondence to the Commissioner the complainant stated:

FOIA Section 5 says, "The Secretary of State or the Minister for the Cabinet Office may by order designate as a public authority for the purposes of this Act any person who is neither listed in Schedule 1 nor capable of being added to that Schedule by an order under section 4(1), but who

(a) appears to the Secretary of State or the Minister for the Cabinet Office to exercise functions of a public nature"

The Chief Coroner of England and Wales is a public authority under Section 5 of the FOIA. Examples of their public authority are seen here by response to FOIs

https://www.whatdotheyknow.com/body/office_of_the_chief_coroner

As the Chief Coroner of England and Wales, a public authority, is a Honorary Member of the Coroners' Society (evidence http://www.coronersociety.org.uk/local_coroners_offices/14640) having therefore "significant control" of this organisation, it makes Coroners' Society a public authority under FOIA Section 5, just as when Company A controls Company B by owning majority of its stocks and sits in meetings and provides significant information and training.

18. The Chief Coroner, an office created by the Coroners and Justice Act 2009, is head of the coroner system, providing national leadership for coroners in England and Wales.

19. The appointment of the Chief Coroner is made by the Lord Chief Justice in consultation with the Lord Chancellor.

20. The Chief Coroner has a number of roles but his main responsibilities will be to:

- Provide support, leadership and guidance for coroners in England and Wales;
- Set national standards for all coroners, including new inquest rules;
- Oversee the implementation of the new provisions of the Coroners and Justice Act 2009;
- Put in place suitable training arrangements for coroners and their staff;

- Approve coroner appointments;
- Keep a register of coroner investigations lasting more than 12 months and take steps to reduce unnecessary delays;
- Monitor investigations into the deaths of service personnel;
- Oversee transfers of cases between coroners and direct coroners to conduct investigations;
- Provide an annual report on the coroner system to the Lord Chancellor, to be laid before Parliament;
- Monitor the system where recommendations from inquests are reported to the appropriate authorities in order to prevent further deaths.

21. The Coroners' Society has the following objects: -

- a) the promotion of the usefulness of the office of coroner to the public;
- b) the ascertainment in questions of difficulty of the duties which devolve on coroners;
- c) the advancement of such amendments to the law as seem desirable;
- d) the establishment and maintenance of contact with HM Government and the Chief Coroner; and
- e) the protection of the rights and interest of coroners

The Coroners' Society is not a regulatory body.

22. Although the Office of the Chief Coroner may be a public authority this does not necessarily mean that The Coroners' Society itself is a public authority. The Commissioner has reviewed the information at the following link:

https://www.whatdotheyknow.com/body/office_of_the_chief_coroner

23. The Office of the Chief Coroner and The Coroners' Society are two separate legal entities. Despite the complainant's assertions that the Chief Coroner has "*significant control*" of this organisation" again this does not automatically make The Coroners' Society a public authority.

24. The complainant considers that because of this relationship, "*it makes Coroners' Society a public authority under FOIA Section 5, just as when Company A controls Company B by owning majority of its stocks and sits in meetings and provides significant information and training.*"

25. The Coroners' Society is not listed in schedule 1 of the FOIA, and is not a publicly owned company as defined by section 6. With regard to section 5 of the FOIA the Secretary of State has not designated The Coroners' Society as a public authority. The Coroners' Society is a private judicial association which has no statutory or regulatory function nor is it an arm of the state.
26. The Commissioner therefore finds that The Coroners' Society of England and Wales is not a public authority and has no duty to provide information in response to requests made under the FOIA.

Right of appeal

27. 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

28. 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.
29. 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

Pamela Clements
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