

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 November 2022

Public Authority: Ministry of Justice

Address: 102 Petty France

London

SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested specified policy, procedural and complaints information relating to the Judicial Conduct Investigations Office (the 'JCIO'), which falls under the remit of the Ministry of Justice (the 'MOJ'). Ultimately, MOJ provided some of the requested information, some of it with redactions under section 40 (the exemption for personal information) and section 21 (information accessible to applicant by other means). As the complainant has not challenged or commented further on the disclosed information or the redactions, the Commissioner has not considered these aspects further. For parts 1b) and 4 of the request, the MOJ said that it did not hold any of the information requested by the complainant.
2. The Commissioner's decision is that, on the balance of probabilities, the MOJ does not hold the requested information for these parts of the request.
3. No steps are required as a result of this notice.

Request and response

4. The complainant submitted three requests in succession to the JCIO/MOJ. The request below is the second of those.
5. On 30 March 2021, the complainant wrote to the MOJ and requested information in the following terms:

1. Please provide **all** procedures, guidance, best practices, instructions, rules, standing orders, procedures, monitoring systems, quality control/compliance and auditing systems, and the like whatever they are called which JCIO has, related to:-
 - a) the FOIA & EIR, and JCIO compliance with the FOIA & EIR.
 - b) Dealing with complaints to the JCIO about judicial conduct. Please ensure **all** information relating to the scope of the JCIO remit are [sic] included. This request does not include any information which the JCIO has provided to the requestor as part of the original request referred to above [ie Request 1].

2. Please provide **all** information on annual monitoring and aggregated analysis of JCIO's handling of FOIA/EIR requests, over three year [sic] and individual requests, for each of the last three years and this year to date. Including dates and details of:-
 - a) Requests.
 - b) JCIO requests for clarifications.
 - c) Information provided.
 - d) Information refused & reasons.
 - e) Reviews.
 - f) Outcome from reviews.
 - g) Consequential complaints to the ICO.
 - h) Outcomes from complaints to the ICO.
 - i) Consequential Appeals to the FTT [First tier tribunal] GRC [General Regulatory Chamber].
 - k) [Sic] Outcomes of Appeals to FTT GRC.Note details are requested not to breach DPA [Data Protection Act].

3. Please provide the above information as requested in 2. above but specific to requests related to the remit of the JCIO.

4. Please provide details of annual monitoring and annual aggregation related to the last three years and this year to date relating to complaints about judges. Please include but not be limited to the following:
 - a) Number of complaints received.
 - b) Number of complaints which JCIO found were not within its [sic] remit.
 - c) Analysis of b) showing reasons why not within JCIO remit.
 - d) Number of complaints found to be within its remit.
 - e) Number of complaints on category d) where complaint upheld, and include nature of misconduct if available.

- f) Number of complaints in category d) not upheld and reasons why if available.

It is anticipated that the above information is readily available, and already in electronic format, as it appears to be basic information necessary to manage the JCIO service."

6. The MOJ responded on 29 April 2021. For parts 1a), 2 and 3 of the request, the MOJ said it held some of the information but that to provide it would exceed the cost limit in section 12 of FOIA (cost of compliance).
7. For parts 1b) and 4 of the request the MOJ said the information was held but refused it under section 21 (information accessible to applicant by other means). It provided the relevant URLs.
8. The complainant requested an internal review on 8 June 2021.
9. The MOJ provided the outcome of its internal review on 6 July 2021 and maintained its original position.

Scope of the case

10. On 15 August 2022, during the course of the Commissioner's investigation, the MOJ issued a revised response to the complainant in which it no longer relied on section 12 to refuse to provide the information requested at 1a), 2 and 3.
11. For part 1a) of the request, the MOJ confirmed it held some of the information regarding FOIA procedures and attached the Judicial Office guidance on FOIA requests. The complainant has made no further comment on this part of the request so the Commissioner has excluded part 1a) from any further consideration.
12. For parts 2 and 3, the MOJ confirmed it held the information and provided some Excel spreadsheets and attachments. It explained that the data did not include those requests made via the WhatDoTheyKnow.com website and that some of the information was exempt by virtue of section 40 of FOIA (personal information). It said that FOIA requests and internal review requests submitted via WhatDoTheyKnow.com were exempt under section 21 of FOIA (information accessible to applicant by other means) and provided the URL and details of how to filter the required information.
13. For parts 1b) and 4 of the request, the MOJ said it should not have responded under FOIA, stating:

"The information you have requested at point 1b and 4, are not held by the MOJ for the purposes of the FOIA. If held at all it is held by the JCIO which is an independent arms-length body of the MOJ, and which supports the Lord Chief Justice and Lord Chancellor in their joint responsibility for judicial discipline.

The FOIA provides a general right to members of the public to request information from a public authority as defined by section 3 of the Act. The JCIO is not a public authority within the meaning of section 3 because: a) it is not listed in schedule 1 of the Act; b) it has not been designated by order under section 5 of the Act; and c) it is not a publicly-owned company as defined by section 6 of the Act. For this reason, any information held by the JCIO which was provided to you in the past should have been provided on a discretionary basis outside the scope of the FOIA."

14. The MOJ also said:

Additionally, section 139 of the Constitutional Reform Act 2005 (CRA) establishes a duty of confidentiality on those who have responsibilities in relation to matters of conduct and discipline involving judicial office holders, where information is provided under, or for the purposes of, a relevant provision of the Act. Information which is obtained for the purposes of a function under Part 4 of the CRA is confidential by virtue of section 139 of that Act.

Any information or links that were provided to you should have been provided outside the scope of the FOIA. The links to information that you were previously given remain relevant."

15. Whilst the complainant wrote to the Commissioner on 14 November 2022 requesting a decision notice, he did not raise any concerns about the disclosed redacted information (for parts 2 and 3 of his request). Therefore, the Commissioner has disregarded this aspect together with the MOJ's reliance on section 40 of FOIA from further consideration.
16. Similarly, the Commissioner has received no objections from the complainant to the information exempted under section 21 of FOIA, so he has not considered this aspect any further.
17. Therefore, the Commissioner has considered the MOJ's final position in relation to parts 1b) and 4 of the complainant's request, where the MOJ said the information was not held for the purposes of FOIA.
18. The Commissioner notes that the complainant addressed his request for information to the JCIO. The Commissioner understands that the JCIO is not a public authority in its own right, but ultimately falls under the remit of the MOJ. It is not in dispute that the MOJ is a public authority

for the purposes of FOIA. Nor is it disputed that the judiciary is not a public authority for the purposes of FOIA.

Reasons for decision

19. The Commissioner has sought to determine whether, on the balance of probabilities, the MOJ holds the requested information requested in parts 1b) and 4 of the complainant's request.
16. The MOJ has explained that it does not hold the requested information for the purposes of FOIA.
17. Having considered the MOJ's explanation set out above, the specific wording of the request and, on the balance of probabilities, the Commissioner is satisfied that the requested information is not held by the MOJ.
18. The Commissioner also considers that, regardless of whether the information is held or not, in the event that the JCIO did hold any or all of the requested information, then section 3(2) of FOIA would apply.
19. Section 3(2) sets out the legal principles that establish whether information is held by a public authority for FOIA purposes.
20. In his guidance, the Commissioner recognises that:

"When information is held by a public authority solely on behalf of another person, it is not held for FOIA purposes. However, information will be held by the public authority if the information is held to any extent for its own purposes".
21. The Commissioner has not been presented with any arguments that the requested information in this case is held by the MOJ, to any extent, for its own purposes.
22. Having considered all the factors applicable to this case, the Commissioner is also satisfied that the requested information, if it were held, would not be held by the MOJ for FOIA purposes by virtue of section 3(2)(a).

Right of appeal

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

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

Laura Tomkinson
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