

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 February 2019

Public Authority: Ministry of Justice

Address: 102 Petty France

London

SW1H 9AJ

Email: data.access@justice.gov.uk

Decision (including any steps ordered)

1. The complainant requested information from a court file, together with information about the costs incurred in issuing a court Order.
2. The Commissioner's decision is that, on the balance of probabilities, the Ministry of Justice (MOJ) does not hold the requested information. The Commissioner requires no steps to be taken.

Request and response

3. On 24 July 2018 the complainant made a request for information under FOIA, which he subsequently amended on 13 October 2018 to read:

"1. The extended [redacted] order made at the public's expense on 13TH March 2017 which is based upon reading the court file which must remain within the court file for a minimum of 3 years.

Please tell me the costs involved within making this extended civil restraint order, this will include the length of time the judge spent reading the court file if it existed at the time of imposing the extended [redacted] order.

2. Your compliance to my F.O.I. request is vital due to the Ministry of Justice letter in an envelope post marked [place name redacted] & dated 11.10.18 claiming the court file under case number [number redacted] has been destroyed. Hence to quantify the contents of the extended [redacted] order being genuine & not made via false pretences the court file must be held within the court files to validate the order.

3. If the court has no such court file please submit to me an application for to apply for court orders to order the defendant to comply with the laws & regulations as made by Parliament, (ie) their duty as Highways Authority to assert & protect my rights as a disabled person to access all areas, & to comply with the England and Wales road hump regulations & the care act as we are a disabled family without adult social care support from the defendant."

4. In a refusal notice of 6 November 2018, confirmed in a further letter dated 29 November 2018 following internal review, MOJ denied holding the requested information.

Scope of the case

5. The complainant contacted the Commissioner on 1 and 3 December 2018 to complain about the way his request for information had been handled. He said that MOJ was denying him the right to access documents that had been referred to in extending the life of a court Order ("the Order") to which he was subject.
6. The Commissioner considered whether information falling within the scope of the request was held by MOJ. She has noted the contents of the complainant's connected correspondence with MOJ and, having regard for the context, interpreted the request as having been made for the information in the relevant file as well as information about the costs of making the Order.
7. MOJ told the complainant and the Commissioner that it did not regard parts 2 and 3 of the request as comprising requests for recorded information. The Commissioner agreed and regarded them as representations and a request for assistance respectively.
8. The Commissioner therefore considered whether, on the balance of probabilities, MOJ held information from which it could answer part 1 of the request.

Reasons for decision

Section 1 – general right of access

9. Section 1(1) FOIA states that any person making a request to a public authority for information is entitled to be informed by it whether it holds that information and if so, with certain exceptions, to have that information communicated to him.
10. In this case, the complainant clearly believes that information exists, only part of which has been disclosed. MOJ says that it does not hold any information falling within the scope of the request.
11. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner determines whether it is more likely than not that the public authority holds further information relevant to the complainant's request.

12. The Commissioner considered the complainant's evidence and representations. She also considered representations from MOJ and the actions taken by it to check whether the information was held and its explanation concerning why the requested information was not held. She also considered if it was inherently likely or unlikely that information was, or was not, held. For clarity, the Commissioner is not required to prove beyond doubt whether the information was held, she is only required to make a judgement using the civil standard of proof of the balance of probabilities.

The complainant's position

13. The complainant said that the relevant court file should relate to a court Order, the most recent of a succession of such Orders, which is due to remain in force until March 2019. He reasoned that the file should therefore have been retained at least until that time. He said he wanted access to that file and to see the evidence on which the current Order had been based.
14. He said he wanted to know the costs incurred by MOJ in making the Order and the length of time the judge had spent reading the file before imposing it.

MOJ's position

15. MOJ said that it did not hold any relevant information. MOJ understood that, when making the Order, the judge had considered the matter using papers delivered to the court by the complainant, some of these in February 2015 and others in February 2017. These bundles had been preserved separately from the original court files and were the only information held by the court.
16. MOJ added that the court file named in the request related to a case which had been discontinued in 2001; those records had since been destroyed in line with the MOJ court record retention and disposition schedule. MOJ does not now hold a record of its destruction.
17. MOJ explained that, to assist the Commissioner's investigation and in response to her enquiries, MOJ court staff had made a search of its electronic 'Caseman' court records system. MOJ had answered the Commissioner's detailed queries and had confirmed that the only MOJ generated information held by the court relating to the complainant was the Orders. In addition, MOJ's local manual records had been reviewed.

MOJ had found that the only information held there consisted of documentation that the complainant himself had provided.

18. The complainant has asked about the cost of making the Order; also the length of time that the judge had spent in considering the matter before making a decision. MOJ said that there was no fee associated with making the relevant Order and that it did not hold information about the cost of making it. As regards the length of time taken by the judge to reach a decision, MOJ said that it had no business need to hold information about the length of time that judges spent reading court files and confirmed to the Commissioner that it did not hold that information.

The Commissioner's conclusion

19. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that the authority holds no further relevant information. In most instances therefore, the Commissioner makes a finding on the balance of probabilities.
20. The Commissioner is satisfied that MOJ provided a sufficiently detailed and coherent explanation to support a reasonable belief that it does not hold information that falls within the scope of the request. MOJ explained how relevant information is held and why the particular searches it carried out would be expected to identify further information, if any were held.
21. A particular concern for the complainant is that the Order, which is one of a succession of such Orders, is still current and does not expire until March 2019. He reasoned that MOJ must therefore hold a file which was still live and would remain so for the next three years in line with the MOJ court records retention policy. MOJ said in response that it had destroyed the named file some years ago and now only held an electronic record of the dates of the current Order and its predecessors. Other than that, the only information held comprised documents that the complainant himself had provided.
22. The Commissioner found that MOJ has responded to the points of concern raised by the complainant and her own enquiries and provided reasoned explanations based on bespoke searches. In contrast, the complainant has not been able to provide any evidence to cast doubt on MOJ's position. Rather, he appears to be relying on a belief that further information should and therefore *must* be held.

23. The circumstances and timing of the destruction of the MOJ court file are now unclear, which is unsatisfactory. However there is no evidence that the Commissioner has seen which leads her to doubt MOJ's evidence that it has been destroyed.
24. Taking all the circumstances of the case into account, the Commissioner is satisfied that, on the balance of probabilities, MOJ does not hold information which falls within the scope of the request. The Commissioner therefore decided that MOJ had complied with section 1(1) FOIA.
25. For the avoidance of any doubt, the Commissioner makes clear that she has not considered either the court Orders or the substantive issues that led to the Orders being made.

Other matters

26. The Commissioner was disappointed to find that MOJ holds no record of the destruction of the relevant court file. Her guidance on the section 46 FOIA records Code of Practice makes clear that best practice is for disposal schedules to form a key part of the records disposal process. These are timetables that set out when individual records or groups of records are due for review, transfer to an archives service or destruction.
27. The Commissioner believes that a public authority should document what has happened to each record or piece of information falling within different categories. The Commissioner considers that it is important for an authority to keep records showing the location of the information it holds or has transferred to archives; or whether the information has been destroyed and if so, why and when. MOJ did not comply with the section 46 FOIA Code in this matter.¹

¹ <https://ico.org.uk/media/for-organisations/documents/1624142/section-46-code-of-practice-records-management-foia-and-eir.pdf>

Right of appeal

28. 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

29. 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.
30. 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

Dr Roy Wernham
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