

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 February 2016

**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 from the Ministry of Justice (the 'MOJ') about the cost of FOIA tribunals, which are heard in the First Tier Tribunal which is part of the General Regulatory Chamber ('GRC'). The MOJ said that the information is not held as the expenditure is not broken down by the types of tribunals heard by the GRC.
2. The Commissioner's decision is that, on the balance of probabilities, the MOJ does not hold the requested information. He does not require the MOJ to take any remedial steps to ensure compliance with the legislation.

#### Request and response

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3. The complainant first submitted her request via Twitter on 17 September 2015; however the MOJ did not receive it. On 1 October 2015 the complainant wrote to the MOJ via *WhatDoTheyKnow.com*, ('WDTK') and requested information in the following terms:

*"Since costs may rise for the public to challenge wrongful FOIA Decisions in the future:*

*(NB Here's an example of an overturned Decision ....*

*[http://www.informationtribunal.gov.uk/DBFiles/Decision/i1460/Oakley,%20Janet%20Treharne%20EA.2014.0093%20\(19.01.2015\)%20.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1460/Oakley,%20Janet%20Treharne%20EA.2014.0093%20(19.01.2015)%20.pdf) )*

*I wanted to know how much a Tribunal - such as the example given - costs the public purse."*

4. On 23 October 2015 the MOJ responded. It denied holding the requested information.
5. That same day, the complainant expressed dissatisfaction with the response, clarifying that her request was for the amount spent on FOIA tribunals and the number of those tribunals, specifically:
  - "1. The number of FOIA tribunals that you hold a year (2014/15 would be fine).*
  - 2. And the amount spent on them them [sic] – as costed within the MOJ accounts – for 2014/15."*
6. The MOJ treated the clarification as a new request and subsequently responded on 23 November 2015, providing her with some of the requested information.
7. The complainant then wrote to the MOJ again on 23 November 2015 reminding it of the need to carry out an internal review. The MOJ issued a brief response on 6 November 2015 which did not constitute an internal review.
8. Although the MOJ has not undertaken an internal review, the complainant has clearly asked for one so the Commissioner has used his discretion and investigated the case without one.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 23 November 2015 to complain about the way her request for information had been handled.
10. The Commissioner has considered the handling of the request and also whether, on the balance of probabilities, the requested information is held by the MOJ.
11. The Commissioner attempted to resolve this case informally (ie without the need for a decision notice to be issued) with the complainant. He wrote to her on 10 February 2016, setting out his preliminary view that, on the balance of probabilities, the MOJ does not hold the requested information. However, this resulted in further email exchanges between the Commissioner and the complainant. As it was becoming apparent that she did not want to withdraw her complaint, the Commissioner decided to proceed to a decision notice in order to progress matters.

## Reasons for decision

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12. Before determining whether the requested information is held, the Commissioner has considered the MOJ's approach to, and handling of, the request.
13. Her Majesty's Court and Tribunals Service ('HMCTS') is part of the MOJ and is responsible for overseeing the First Tier Tribunals. In its first response of 23 October 2015, the MOJ confirmed that HMCTS do not record the cost of a particular case or tribunal. It highlighted that the request provided an 'example' information tribunal and the MOJ considered that the recorded information requested related to this case, rather than, in its words, a more hypothetical "*how much tribunals cost*" which it believed would not meet the criteria set out in section 8 of FOIA.
14. The MOJ advised the Commissioner that it had therefore considered that the recorded information asked for was the cost of the specific example provided. It again confirmed that it does not hold costs of individual cases, as staff time, judicial time and building costs are not recorded against each case. The only costs that can be determined in a case would be specific aspects such as a legal aid bill or costs incurred by one of the parties involved, such as legal costs of a responding authority.
15. The MOJ told the Commissioner it considers this response is compliant with FOIA on the basis that it took an interpretation of the request which otherwise would have fallen outside the scope of FOIA, and also provided advice and assistance under section 16 of FOIA to assist the complainant in understanding what information is held by the MOJ.
16. Section 8(1) of 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.
17. The Commissioner's interpretation of the request is that the example was used simply to highlight that it was about FOIA tribunal costs. He considers that if in doubt, under section 1(3) of FOIA, the MOJ could have written to the complainant to clarify the information she required.
18. Following clarification, which the complainant submitted independently (as shown in paragraph 5 above), the MOJ responded again on 23 November 2015. In respect of question one it confirmed the number of tribunals held on Freedom of Information matters was 300. In respect of the second question, the MOJ provided an explanation as to how the information tribunal fitted into the First Tier Tribunal. The MOJ confirmed

that the First Tier Tribunal (GRC) dealt with appeals in other jurisdictions (listing the various different aspects falling within its remit, such as pensions and estate agents) and not just information rights. It said that the budget is allocated to the First Tier Tribunal as a whole and money is not allocated or recorded by jurisdiction. The MOJ explained the information was not held in its response of the 23 November 2015, the explanation being similar to the reason individual cases are not costed separately (just on a larger scale). It also explained that this had been confirmed by HMCTS's Finance and Governance Team.

19. In this case, the complainant queried the published accounts. This led to a further piece of correspondence on 25 November 2015, in which the MOJ clarified that there was not a separate account for the GRC beyond that which is published in the overall HMCTS figures.
20. In addition, the MOJ said the complainant is requesting a figure that is not held as she is asking for the MOJ to determine spend on a small jurisdictional aspect of a larger tribunal. It considers her request is likely to have been prompted by the department consultation in extending fees across further tribunal jurisdictions. However, the MOJ highlighted the consultation document<sup>1</sup> concerned and said that paragraphs 24 and 25 outline that the cost for the year 2013/14 is an **estimate** generated for the purposes of the consultation.
21. If the MOJ were to similarly create an estimate to answer the request, it said this would involve the creation of new information. Under the terms of the FOIA, the MOJ is not required to create information to answer a request for information. For the reasons outlined above, the MOJ therefore advised that it does not hold the information requested; however it accepts that the response given could have provided more clarity around why the information is not held.
22. Section 1 of FOIA states that:

*"Any person making a request for information to a public authority is entitled –*

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<sup>1</sup> [https://consult.justice.gov.uk/digital-communications/further-fees-proposal-consultation/supporting\\_documents/Government%20response%20to%20consultation%20on%20enhanced%20fees%20and%20consultation%20on%20further%20fees%20proposals%20web.pdf](https://consult.justice.gov.uk/digital-communications/further-fees-proposal-consultation/supporting_documents/Government%20response%20to%20consultation%20on%20enhanced%20fees%20and%20consultation%20on%20further%20fees%20proposals%20web.pdf)

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

23. The task for the Commissioner here is to determine whether, on the balance of probabilities, the MOJ holds any information relevant to the request which it has not disclosed to the complainant. Applying the civil test of the balance of probabilities is in line with the approach taken by the Tribunal when it has considered the issue of whether information is held in past cases.
24. Given the explanations provided by the MOJ, the Commissioner is satisfied that no separate record of spend on FOIA tribunals exists. Instead, the GRC is allocated a budget for all the jurisdictions within its remit and spend on a particular tribunal type is not recorded by jurisdiction.

### *Conclusion*

25. From the information provided, the Commissioner has concluded, on the balance of probabilities, that the MOJ does not hold the requested information.

### **Other matters**

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26. In this case, there has been some confusion about the internal review process. The complainant clearly asks for an internal review several times in the WDTK.com thread. The MOJ argued that it has not internally reviewed the request. The Commissioner's view is that the complainant contacted the MOJ again following its second response on 23 November 2015. Rather than carry out an internal review, the MOJ chose to issue a further response on 25 November 2015, which did not constitute an internal review.
27. However, on receipt of a complaint, the Commissioner gives a public authority one final chance to review its handling of the request which is the subject of the complaint. In this case, although it had not undertaken an internal review, the MOJ has not therefore been disadvantaged as it has been able to revisit the request and reconsider its position.

## Right of appeal

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

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

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**