

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 April 2019

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

Decision (including any steps ordered)

1. The complainant requested information from the Judicial Conduct Investigation Office (JCIO) relating to complaints of judicial misconduct.
2. The Ministry of Justice (MoJ) responded, refusing to disclose the requested information and citing the exemptions at sections 44(1)(a) (prohibitions on disclosure) and 40(2) (personal information) of the FOIA. The Commissioner investigated the MoJ's application of section 44(1)(a).
3. The Commissioner's decision is that the MoJ was entitled to find that the information was exempt from disclosure under section 44(1)(a) of the FOIA by virtue of section 139 of the Constitutional Reform Act 2005 (CRA).
4. The Commissioner requires no steps to be taken as a result of this decision.

Background

5. The request in this case was addressed to the Judicial Conduct Investigation Office¹:
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¹ <https://judicialconduct.judiciary.gov.uk/about-us/>

"The Judicial Conduct Investigations Office (JCIO) is an independent statutory body which supports the Lord Chancellor and Lord Chief Justice in their joint responsibility for judicial discipline.

Our statutory remit is to deal with complaints of misconduct".

Request and response

6. On 11 September 2018, the complainant wrote to the JCIO and requested information in the following terms:

"1. What is the complaints procedure of the JCIO to complain against its corrupt staff who dishonestly and fraudulently manipulate complaints of the users of the JCIO office to criminally defend criminal acts of corrupt judges? Please let me have a copy of the complaints procedure.

2. Please let me have a copy of the list/s including names of the following members of the courts judiciary for the periods stated herein below:

	<i>2014-15</i>	<i>2015-16</i>	<i>2016-17</i>
<i>A. Judges complained of</i>			
<i>Circuit Judges</i>	<i>510</i>	<i>487</i>	<i>590</i>
<i>High Court Judges</i>	<i>150</i>	<i>161</i>	<i>122</i>
<i>Court of Appeals Judges</i>	<i>55</i>	<i>65</i>	<i>43</i>
<i>B. Judges disciplined</i>		<i>43</i>	<i>42</i>

Please also disclose figures of the judges disciplined in 2014-15 and the courts to which they belong

<i>C. Judges formerly advised/warned/reprimanded suspended [sic]</i>		
	<i>7</i>	<i>14</i>

Please also let me have the figures for the judges falling in this category 2014-15 and the court to which they belong

<i>D. Judges resigned</i>	<i>15</i>	<i>9</i>
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Please also disclose figures for the judges falling in this category in 2016-17, the courts to which they belonged and the reasons for which they resigned”.

7. The MoJ responded on 11 October 2018. While it responded to part (1) of the request, treating it as an enquiry, it handled part (2) of the request under the FOIA.
8. With respect to part 2A of the request (the names of judges complained about), the MoJ refused to confirm or deny whether it held the requested information citing section 44(2) (prohibitions on disclosure).
9. With respect to part 2B of the request (number of judges disciplined in 2014/15) it cited section 21 (information accessible to the applicant by other means). In the circumstances, it provided the complainant with a hard copy of the information as this was his preferred way of receiving the information.
10. With respect to the courts the judges belong to, the MoJ refused to confirm or deny whether it held the requested information citing section 44(2) (prohibitions on disclosure).
11. With respect to part 2C of the request, the MoJ told the complainant that the position is the same as for 2B.
12. With respect to part 2D of the request, the MoJ told the complainant that it required clarification from him before it was able to consider the request further, citing section 1(3) of the FOIA.
13. The complainant requested an internal review of the MoJ's handling of parts 2A – 2D of the request on 25 October 2018.
14. Following an internal review, the MoJ wrote to the complainant revising its position.
15. The MoJ confirmed that it held the information requested at point 2A and the non-numerical information requested at points 2B and 2C. However, it refused to provide that information citing sections 44(1)(a) (prohibition on disclosure) and 40(2) (personal information) of the FOIA.
16. It maintained its reliance on section 21 of the FOIA in respect of the numerical information requested at parts 2B and 2C.
17. It confirmed that it held information within the scope of part 2D of the request. It withheld the requested numerical information citing section 40(2). It refused to provide the non-numerical information within the scope of part 2D of the request, citing sections 44(1)(a) and 40(2) of the FOIA.

Scope of the case

18. Following earlier correspondence, the complainant provided the Commissioner with the relevant documentation, on 8 January 2019, to support his complaint about the way his request for information had been handled.
19. He considered that the JCIO was wrong to deny him the information he had requested *"and the MoJ is unlawfully supporting such unlawful decision"*.
20. He disputed the MoJ's handling of parts 2A-D of his request, in particular its refusal to provide the requested names of judges. In addition, he objected to the MoJ seeking clarification of part 2D of the request.
21. The Commissioner asked the MoJ to respond with regard to the complainant's concern about why a request for information addressed to the JCIO appeared to have been responded to by the MoJ.
22. In correspondence with the Commissioner, the MoJ explained that, in terms of its relationship with the MoJ, the JCIO is an arm's length body. It further explained how, in those circumstances, FOI requests are administered and responded to.
23. The Commissioner is satisfied, from the explanation given, that it was appropriate for the MoJ to correspond with the complainant regarding his request for information.
24. In the course of his correspondence with the Commissioner, the complainant raised a number of issues which are outside the scope of the Commissioner's remit. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (FOIA).
25. Accordingly, the analysis below considers the MoJ's application of section 44(1)(a) of the FOIA to the Judges' names requested at parts 2A-D of the request. The MoJ provided the Commissioner with a sample of that information during the course of her investigation.
26. The Commissioner has also addressed the complainant's concern about the need for the MoJ to seek clarification of part 2D of his request in 'Other matters' below.

Reasons for decision

Section 44 prohibitions on disclosure

27. Section 44(1) of the FOIA provides that:

"Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –

(a) is prohibited by or under any enactment,

(b) is incompatible with any Community obligation, or

(c) would constitute or be punishable as a contempt of court."

28. In this case, the MoJ is relying on section 44(1)(a). Section 44(1)(a) of the FOIA exempts information if its disclosure is prohibited by other legislation. Such provisions are referred to as statutory prohibitions or statutory bars and they prevent public authorities from disclosing specific types of information.

29. The MoJ argued that the requested information is prohibited from disclosure by virtue of section 139 of the CRA. It told the complainant that section 139 establishes a duty of confidentiality on those who have responsibilities in relation to conduct and discipline regarding judicial office holders.

30. In that respect, the MoJ explained to the complainant:

"In this instance, section 139 of the CRA establishes a duty of confidentiality on those who have responsibilities in relation to matters of conduct and discipline involving judicial officer 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 the Act".

31. The Commissioner acknowledges that the MoJ provided the complainant with a copy of the relevant legislation. Nevertheless, in the Commissioner's view, the MoJ's response relied, to a large degree, on the requested material being self-evidently exempt. She considers that the MoJ failed to explain to the complainant why it considered the requested information was confidential by virtue of section 139 of the CRA. It follows that it was not clear why disclosure of the requested information through the FOIA was prohibited under another enactment.

32. In correspondence with the Commissioner during the course of her investigation, the MoJ provided further arguments in support of its view that section 44(1)(a) of the FOIA applies in this case.

33. The MoJ referred the Commissioner to section 139(1) of the CRA which provides that:

"A person who obtains confidential information, or to whom confidential information is provided, under or for the purposes of a relevant provision must not disclose it except with lawful authority".

34. The 'relevant provisions' are contained in section 139(2) of the CRA. The Commissioner understands that the relevant provision in this case is Part 4 of the CRA: Part 4 relates specifically to judicial appointments and discipline.

35. The CRA defines confidential information at section 139(3):

"Information is confidential if it relates to an identified or identifiable individual (a "subject")".

36. With respect to the 'lawful authority' aspect of section 139(1) of the CRA, the MoJ referred the Commissioner to section 139(4) of the CRA which states:

"(4) Confidential information is disclosed with lawful authority only if and to the extent that any of the following applies—

(a) the disclosure is with the consent of each person who is a subject of the information (but this is subject to subsection (5));

(b) the disclosure is for (and is necessary for) the exercise by any person of functions under a relevant provision;

(c) the disclosure is for (and is necessary for) the exercise of functions under section 11(3A) of the Supreme Court Act 1981 (c. 54) or a decision whether to exercise them;

(d) the disclosure is for (and is necessary for) the exercise of powers to which section 108 applies, or a decision whether to exercise them;

(e) the disclosure is required, under rules of court or a court order, for the purposes of legal proceedings of any description".

37. Accordingly, it argued that the MoJ would be in breach of the CRA if the names of the judges were released.

38. The Commissioner accepts that, given the wording of the requests - which ask for the names of judges that have been complained about, disciplined etc. - the requested information relates to identified or identifiable individuals.

39. The Commissioner also accepts that section 139 of the CRA only permits disclosure of confidential information obtained for the purposes of

judicial discipline in limited and specified circumstances. These circumstances are defined in section 139(4) of the CRA in what the Commissioner considers to be precise terms.

40. The Commissioner acknowledges that the complainant considers that:

"No one guilty of misconduct; in particular when the persons guilty of misconduct hold judicial office could and should be entitled remain anonymous".

41. However, from the evidence she has seen in this case, none of the limited and specific circumstances prescribed in the CRA which enable confidential information to be lawfully disclosed are met.

42. Since section 44 is an absolute exemption no public interest test applies.

43. The Commissioner has therefore concluded that it was appropriate for the MoJ to withhold the information to which this exemption has been applied as disclosure was prohibited by other legislation, namely section 139 of the CRA.

44. Having reached the conclusion that the MoJ was entitled to find that the information was exempt from disclosure under section 44(1)(a) of the FOIA, it has not been necessary for the Commissioner to consider whether the other exemption cited by the MoJ would also apply.

Other matters

45. The complainant was dissatisfied that the MoJ asked him to clarify part 2D of his request.

46. The Commissioner's guidance² states:

"Requests are often ambiguous, with many potential interpretations, or no clear meaning at all. If you can't answer the request because you are not sure what is being requested, you must contact the requester as soon as possible for clarification.

You do not have to deal with the request until you have received whatever clarification you reasonably need. However, you must consider whether you can give the requester advice and assistance

² <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/>

to enable them to clarify or rephrase their request. For example, you could explain what options may be available to them and ask whether any of these would adequately answer their request”.

47. Having considered the wording of the request, the Commissioner is satisfied that it was appropriate for the MoJ to seek clarification of that part of the request, rather than attempt to guess which interpretation was correct. She is also satisfied that the MoJ gave appropriate advice to the complainant.

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

Carolyn Howes
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