

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 and procedural information relating to the Judicial Conduct Investigations Office (the 'JCIO'), which falls under the remit of the Ministry of Justice (the 'MOJ'). Ultimately, 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.
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 first of those.
5. On 25 February 2021, the complainant wrote to the MOJ and requested information in the following terms:

"Please provide copies of the following information, in electronic format wherever possible, including:-

- a) The JCIO Remit regarding Complaints about Judges/Presidents Misusing/Abusing their position as Presidents/Judges by Lying in their statements of 'fact' in their Own Cause in formal Documents (e.g. Decisions, Rulings, etc).

- b) Copies of all documents **related to such complaints** which relate to whether such complaints do or do not fall within the JCIO remit. This is to include, but not limited to, all:
 - i) Reports, Papers, Guidance, Procedures, Standing Orders, Rules, Instructions, Clarifications and similar.
- c) As **a) & b)** above but now relating to the JCIO Remit regarding Complaints about Judges/Presidents Misusing/Abusing their position as Presidents/Judges by knowingly making untrue and misleading statements of 'fact' in their Own Cause in formal Documents (e.g. Decisions, Rulings, etc).

To assist the JCIO: the above concerns may possibly occur when, for example, a litigant complains about a judge or makes a recusal application to a judge/President.

If and when the judge/President then responds (retaliates) misusing and abusing their position of judge/President, by making up and stating as fact in formal documents, defamatory false 'facts' and misleading statements of fact which they know are misleading and untrue (i.e. lying in their own cause) to undermine the credibility of the complainant or recusal applicant.

To assist further: I note that there is no need to send the simplified summary information contained of the JCIO website on this issue. However, the supporting more detailed analysis and documents related to the simplified summaries are included in the request."

- 6. On 16 March 2021 the MOJ asked the complainant to clarify what information he was seeking (as highlighted above in bold text).
- 7. From the case correspondence provided by the complainant, he advised the MOJ on 30 March 2021 that the above request should be read to include 'directives and rules'. The Commissioner notes that the MOJ quoted the following clarification response from the complainant in its substantive response to the request:

"I have re-read your request for clarification several times. I have no wish to offend: but you will appreciate that such requests from a Senior Casework Manager almost 13 days into a 20 working day legal program appears it be [sic] inappropriate. Particularly so when it appears that you have not carefully and correctly read the requests in their alphabetical order which is key to understanding such requests. [When b) starts by referring

to 'related to such complaints' it is obviously relating to the complaints in a). Similarly when c) reads 'As a) & b)' it means as a) & b) but with the different judicial misconduct as stated].

There appears to be no need for clarification. The requests mean what they say. Please re-read the request and give the words and grammar a standard and reasonable interpretation applicable to a specification for information."

8. The MOJ provided its substantive response on 12 April 2021. At this point the MOJ said that it held information for part a) and the first part of c) but that this was exempt by virtue of section 21 of FOIA (information accessible to applicant by other means). The MOJ provided the complainant with the relevant URL links to access the information for those parts of his request.
9. For parts b) and the remainder of c), the MOJ said it did not hold the requested information.
10. The complainant requested an internal review on 13 April 2021 which the MOJ provided on 13 May 2021 upholding its original position.

Scope of the case

11. During the course of the Commissioner's investigation, the MOJ issued a revised response to the complainant on 15 August 2022. It said its original response was incorrect and that the MOJ did not hold any of the requested information. It stated:

"The information you have requested, is not held by 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."

12. The MOJ explained that the URL links were still valid and reiterated them.

13. On 14 November 2022, the complainant sent an email asking for a decision notice to be issued.
14. 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

15. The Commissioner has sought to determine whether, on the balance of probabilities, the MOJ holds the requested information.
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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