

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2012

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant has requested information from the Ministry of Justice about the usage of Wakefield County Court and disabled access. The Ministry of Justice advised it would deal with his request as *"official correspondence"* because it considered his questions to be asking for more general information, as opposed to recorded information under the Freedom of Information Act 2000 (the 'FOIA'). It informed the complainant that his request would be passed to the MOJ's general enquiries department to forward to the relevant business unit for a response. The complainant requested an internal review. To date, there is no evidence that the Ministry of Justice has responded either to the internal review request or by way of *"official correspondence"*.
2. The Information Commissioner's decision is that the Ministry of Justice breached the FOIA by failing to recognise the request as valid under the FOIA and failing to respond to it within the statutory timeframe.
3. The Information Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To respond to the complainant confirming or denying whether information is held. If it is the case that information is held the Ministry of Justice should either disclose the information to the complainant or issue a valid refusal notice under section 17 of the FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information Commissioner making written certification of this fact to the

High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. The complainant made two separate requests to the Ministry of Justice via its Courts and Tribunals Service, referred to below as the 'MOJ'. Both requests were made via the *Whatdotheyknow.com* website. The request which is the subject of this notice was for information about Wakefield County Court and was made on 17 October 2011. The second request was made on 15 October 2011 for information about Wetherby Magistrates' Court.
6. The MOJ also considered the Wetherby request to be invalid in terms of the FOIA but did provide a response by way of official correspondence on 1 November 2011. This matter is not the subject of the complainant's complaint to the Information Commissioner; however, it is relevant because the MOJ provided the Information Commissioner with its response to the Wetherby request as evidence that it had responded to the complainant in relation to his Wakefield request. In addition, the MOJ's response to the complainant's Wetherby request indicates that the MOJ holds recorded information about Wetherby Magistrates' Court.

Request and response

7. On 17 October 2011 the complainant wrote to the MOJ and requested the following information:

"Please can I ask about current and previous use of Crown House and the county court in the extension immediately behind it.

:- was the court originally in the full Crown House, now empty?

:- if so, why and when did it move? What was the disabled access for wheelchair users when it was in the main Crown House building?

:- how long has the court been in its current location in the extension behind Crown House?

:- what consideration was given to wheelchair users attempting to access the court at its present location

:- a potted history of the commissioning and any significant

change in usage of Crown House, including the bit currently used as Wakefield County Court."

8. The MOJ responded via *Whatdotheyknow.com* on 31 October 2011, attaching its response of 25 October 2011 which advised the complainant that the MOJ considered his request would be "*best dealt with as official correspondence*" and would be forwarded to its general queries team for a response.
9. The complainant requested an internal review on 16 November 2011. To date the MOJ has not provided the internal review result, nor has it provided the Information Commissioner with any evidence that it has replied via the official correspondence route.

Scope of the case

10. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He raised concerns about the MOJ's failure to acknowledge his request as a valid FOIA request, its failure to respond to his request within the statutory timescale and its failure to respond to his request for an internal review.
11. The Information Commissioner has considered whether the request constituted a valid FOIA request and should therefore have been handled in accordance with the provisions of the FOIA. As part of this determination, he also asked the MOJ to revisit the request in terms of its validity under FOIA and address questions about the searches it had undertaken for recorded information in relation to the request.

Reasons for decision

12. Section 8(1) of FOIA states that a request for information should be in writing, bear the name and address of the applicant and describe the information requested. The Information Commissioner considers it clear that the request in this case can be defined as such and therefore constitutes a valid request under FOIA for recorded information.
13. The Information Commissioner holds the view that all communications made in writing to a public authority, including those transmitted by electronic means, may contain or amount to requests for information within the meaning of the FOIA, and so must be dealt with in accordance with the provisions of the FOIA. While in many cases such requests can be dealt with under the course of normal business (or official correspondence) where that is a more efficient way of providing

requested information, the Information Commissioner notes that in this case the MOJ failed to provide any information through this route. During his investigation he asked the MOJ to provide a copy of its official correspondence response. The MOJ forwarded a copy of its response about Wetherby and not Wakefield. The Information Commissioner has noted that this response is published on *Whatdotheyknow.com* but that there is no response published in relation to the complainant's Wakefield request. In the absence of an effective disposal of this request in the normal course of business, the Information Commissioner's view is that the MOJ was under an obligation to provide a freedom of information response within the statutory timescale.

14. The Information Commissioner had asked the MOJ to respond to a number of questions about its searches for the requested information, in order to establish on a balance of probabilities whether recorded information was held. However, the MOJ did not respond, since its view remained unchanged that the request was not valid under the FOIA. In addition, because the Information Commissioner has concluded that no response has been provided to the complainant in any form, he has not considered further at this stage whether any recorded information is held by the MOJ relevant to this request.
15. Section 1(1) of the FOIA requires a public authority to respond to an information request with confirmation or denial as to whether the requested information is held. In relation to any information that is held, the public authority should either disclose this, or provide a valid explanation as to why this will not be disclosed. Section 10(1) of FOIA requires that this should be done within 20 working days of receipt of the request. From the information provided to the Information Commissioner in this case it is evident that the MOJ breached the FOIA by failing to respond to what the Information Commissioner considers to have clearly been a valid information request for the purposes of the FOIA. At paragraph 3 above, the MOJ is required to respond to this request.

Other matters

16. All communications in writing to a public authority, including those transmitted by electronic means, may contain or amount to requests for information within the meaning of the FOIA, and so must be dealt with in accordance with the provisions of the FOIA. While in many cases such requests will be dealt with in the course of normal business, it is essential that public authorities dealing with correspondence, or which otherwise may be required to provide information, have in place procedures for taking decisions at appropriate levels, and ensure that

sufficient staff are familiar with the requirements of the FOIA and the Codes of Practice issued under its provisions.

17. Whilst the introduction does not form part of the Code itself, the Information Commissioner would echo its recommendations. In this instance, the MOJ appears to have failed to recognise the request and processed it accordingly. The Information Commissioner expects that, in future, the MOJ will ensure that its staff are provided with adequate training in relation to the recognition of requests and that procedures are in place for providing appropriate responses.
18. Any written reply from the applicant (including one transmitted by electronic means) expressing dissatisfaction with an authority's response to a request for information should be treated as a complaint, as should any written communication from a person who considers that the authority is not complying with its publication scheme. These communications should be handled in accordance with the authority's complaints procedure, even if the applicant does not expressly state his or her desire for the authority to review its decision or its handling of the application.

Right of appeal

19. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

20. 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.
21. 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

Jon Manners
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