

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **16 October 2014**

Public Authority: **Ministry of Justice**

Address: **102 Petty France
London
SW1H 9AJ**

Decision (including any steps ordered)

1. The complainant requested training course information for judges, held by the Judicial College, from the Ministry of Justice (the 'MOJ'). Once it had been established that the request was being made under the FOIA, the MOJ stated that the requested information was not held for the purposes of FOIA under the provisions of section 3(2)(a).
2. The Commissioner's decision is that the requested information is not held by the MOJ for the purposes of FOIA by virtue of section 3(2)(a). He requires no steps to be taken.

Background

3. The Judicial College forms part of the Judicial Office. The College is housed within MoJ and supported by MoJ staff. Judicial office holders and the Lord Chief Justice are not public authorities for the purposes of FOIA.
4. Although the complainant made his original request on 18 October 2012, to which the MOJ responded (see 'Request and response' section below) there was a delay of eight months between the MOJ's correspondence of 11 February 2013 and the complainant's subsequent response of 22 October 2013. The MOJ subsequently carried out an internal review on 3 December 2013, which the complainant complained to the Commissioner about on 28 April 2014.
5. Although the complainant submitted a refined request (as set out under paragraph 13), this decision notice is a consideration of the original

request (which is set out in paragraph 6). The reasons for this are set out under the 'Request and response' section below.

Request and response

6. On 18 October 2012 the complainant wrote to the MOJ and requested information in the following terms:

"I request copies of all the information you hold with regard to the course modules in your Judicial College Civil Law prospectuses. This information to include all the information contained in any course materials or lecture/speaking notes etc. Of particular interest are the modules on Appeals and Civil Restraint Orders, Costs and the Equalities Act – however I would like copies of all the materials and information if possible."

7. On 24 October 2012 the MOJ responded. It said it had assessed the complainant's request as being outside the scope of the FOIA because "*training materials for judges are produced by judges for fellow judges*".
8. An exchange of correspondence between the complainant and the MOJ then followed, resulting in a letter from the MOJ dated 11 February 2013, in which it attempted to provide an explanation of how the FOIA had been applied to the request. This letter also responded to various additional questions which the complainant had asked during the email exchanges.
9. The complainant did not write to the MOJ in response to its letter of 11 February 2013 until 22 October 2013.
10. On 24 October 2013 the MOJ clarified why the basis on which it had considered the request under FOIA. However, it went on to explain that where the Judicial College only holds information on behalf of the judiciary, then that **information** falls outside the scope of the FOIA. Another exchange of emails followed, which included a suggestion on 30 October 2013 for the complainant to refine his request which would then be treated as a new FOIA request. It was agreed that the complainant would do so within one week.
11. As the MOJ did not receive the refined request from the complainant within a week, it instead decided to carry out an internal review of his original request of 18 October 2012. It asked the complainant to await the outcome of the internal review to see whether this would give him the answer he had been seeking originally.

12. On 3 December 2013 the MOJ communicated the outcome of its internal review. It apologised for not treating the complainant's request of 18 October 2013 as an FOIA request originally and thereby for not offering him an internal review. It maintained that the MOJ does not hold the requested information because it is held by the judiciary who are not listed as a public authority under Schedule 1 of FOIA. It provided the complainant with some links to what it considered to be relevant websites.
13. In the meantime, on 12 November 2013, the complainant submitted a refined request as follows:

"I require the curriculum and course information, (module materials for Appeals and Civil Restraint Orders, Costs, and the Equalities Act). Where this has not been updated then if this assists with costs restrictions then I do not require essentially duplicated material. I do request the first and latest versions and any versions in between that are different to either."

14. This has not been considered as part of this investigation but the Commissioner has included it for completeness of the chronology of this case. In any event, the findings in respect of the earlier request will necessarily be the same for the refined one.

Scope of the case

15. The complainant contacted the Commissioner on 28 April 2014 to complain about the way his request for information had been handled.
16. The Commissioner has considered whether the MOJ's response that the information it holds, relating to the request, falls outside the definition of information held for the purposes of FOIA under section 3(2).

Reasons for decision

Is the requested information held by the MOJ for the purposes of the FOIA?

Section 3(2) – information held by a public authority

17. Section 1 of FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it.
18. Section 3(2) sets out the criteria for establishing if information is held for the purposes of FOIA:

"For the purposes of this Act, information is held by a public authority if –

- (a) it is held by the authority, otherwise than on behalf of another person, or*
- (b) it is held by another person on behalf of the authority."*

19. The Commissioner interprets the phrase "*otherwise than on behalf of another person*" to mean that a public authority holds information for the purposes of the FOIA if it is held to any extent for its own purposes. Therefore, in this case the only circumstance in which information would not be held by the MOJ by virtue of section 3(2) would be where it is held only on behalf of the judiciary, and not to any extent for the MOJ's own purposes.
20. The MOJ has provided the Commissioner with further details of the arrangement under which the MOJ (Judicial College) holds the requested information on behalf of the judiciary. It explained that the requested information is held by the MOJ on behalf of the judiciary for the sole use of the judiciary at a judicial training event. Therefore, it considered that it was not defined as information held by a public authority.
21. The MOJ told the Commissioner that, as far as the Judicial College is aware, all the materials are provided by judges in order to train their fellow judges, which it said was its understanding of the entire information falling within the scope of the request. The MOJ maintains that the information is not held by the MOJ and, as such, it is not obliged to consider its content or its authorship. The MOJ confirmed that its assessment is that the information is held entirely on behalf of the judiciary (and in particular the Lord Chief Justice who has a statutory responsibility regarding the training of the judiciary) and that they are not subject to the FOIA.

22. The MOJ explained that an extensive check would be required to see if any course modules had ever been written by a non-judicial person and stated that the FOIA does not require it to do so as it does not hold the requested information. It also said it is possible that academics may have produced a small number of handouts over the years, in areas of technical expertise in the civil jurisdiction, at the express request of the judicial course directors. However, it highlighted that the important issue is that they were produced for the sole use of the judiciary at a judicial training event and the judiciary are in possession of the materials. It confirmed that the MOJ does not use or process this information.
23. Whilst this question is not solely determinative the Commissioner asked the MOJ to confirm which body or organisation owns the training material requested by the complainant. In reply, the MOJ explained that the Lord Chief Justice, the Senior President of Tribunals and the Chief Coroner have statutory responsibility for judicial training which is exercised through the Judicial College. It said that all training materials are ultimately owned by them as the senior members of the judiciary for the sole purpose of delivering judicial training.
24. Additionally, the MOJ told the Commissioner that the information requested (judicial training materials) is housed within the Judicial College's Learning Management System (LMS) in electronic form, and that judges producing the training materials save them directly on to the system. Albeit that the judiciary are given some general IT support by the Judicial College, the judiciary hold the information and access to the LMS is limited to judicial office holders who are given a private individual log-in. Some officials in the Judicial College also have access in order to assist the judiciary to maintain the LMS, and to be able to assist judicial office holders to use the system. However, while members of the Judicial College have access to the LMS for the aforementioned reasons, the MOJ confirmed that those staff do not process this information for the work of the Judicial College. The MOJ stated that all work on the LMS system is conducted at the express request of the judiciary.
25. The Commissioner asked the MOJ to explain whether the judiciary is entirely separate from the Judicial College and how and where judges 'fit' into the system. In reply, the MOJ said in terms of the FOIA the judiciary are not a public authority as defined by the Act. It explained that the Judicial College is staffed by civil servants from the MOJ, and that the Judicial College (and also the Judicial Office generally) assist the senior judiciary in fulfilling their leadership functions, including the provision of training for judicial office holders. The MOJ advised that the judiciary are independent from Government.

26. The MOJ confirmed that while staffed by civil servants, the Judicial College works alongside the judiciary and many functions are exercised under their direction. The two Directors of Training for the College are judges. There is an Executive Director (a civil servant) who heads the staff teams. The Board of the College consists of members of the judiciary with the only exception being the Executive Director. The College Board chairman is a Court of Appeal Judge who, by virtue of the position (of chairman), is also a member of the Judicial Executive Board (JEB) which is chaired by the Lord Chief Justice and consists of the most senior members of the judiciary. The chairman of the College is able to assure the Lord Chief Justice, the Senior President for Tribunals and the Chief Coroner (via JEB) that judicial training needs are being met and to provide advice on current activities and priorities when requested.
27. The Commissioner asked the MOJ to further explain how the Judicial College's relationship with FOIA. He added that it may be helpful here to include some detail about how the organisation is structured and which parts of it are subject to FOIA.
28. In reply, the MOJ told the Commissioner that the nature of the independence between the judiciary and the Government means that there will be information that is for the sole use of the judiciary in order to carry out their functions. It is inevitable that they require support and infrastructure and such infrastructure is provided by the wider Judicial Office, which is contained within the MOJ. However, while such support is provided, for example, in housing a training materials access point for all members of the judiciary in England and Wales, the MOJ stated that this does not mean that the office which provides that access point is processing or using that data for its own functions.
29. The MOJ explained that the Judicial College was formed in April 2011, replacing the Judicial Studies Board, to better reflect the increased remit for training responsibility brought about by the introduction of Her Majesty's Courts and Tribunal Service (HMCTS), which saw the merger of the Courts Service and the Tribunals Service.
30. In addition, the MOJ said it regularly handles FOIA requests that relate to the Judicial College's administration, finances and general operations. Information that relates to its performance such as the number of judges trained, courses run and overall subject areas covered is also frequently published and the entire Courts Judiciary Prospectus can be found on the judiciary website¹. It is therefore clear to the

¹ www.judiciary.gov.uk

Commissioner that the MoJ takes a request by request approach to deciding whether information is held under FOIA, considering whether it is to any extent for its own purposes.

31. In its early correspondence with the complainant the MOJ made reference to the Constitutional Reform Act 2005 (the CRA). The Commissioner asked what impact the CRA has had on FOIA requests made to the Judicial College. In response, the MOJ stated that the CRA does not have direct relevance to the handling of requests made under the FOIA. It said that the CRA was mentioned in one piece of correspondence where the Judicial College were explaining the independence of the judiciary from Government which was strengthened by the 2005 Act.
32. The MOJ confirmed that the CRA does not affect the FOIA and requests regarding judicial information. It said, however, the CRA did strengthen the independence of the judiciary by making the Lord Chief Justice Head of the Judiciary (s.7) which re-enforces the view that they are not a public body or part of the Government; neither are they subject to any ministerial oversight. The CRA also sets out the statutory responsibility of the Lord Chief Justice for judicial training and the duty on the Lord Chancellor to preserve the independence of the judiciary. The Tribunals, Courts and Enforcement Act 2007 confer the same powers in respect of training on the Senior President of Tribunals.
33. The Commissioner queried who has access to the requested training information; the MOJ said that primary access is by the judiciary (via the LMS system) to obtain training materials in advance of attending training seminars. There is also a library of reference documents open to all judicial office holders on the LMS. Those officials within the Judicial College who access the LMS only do so for the benefit of assisting the judiciary with this process.
34. The MOJ stated that none of the information in scope of the request is used by the MOJ or Judicial College staff and that the training materials are only relevant to judges. It reiterated that all of the information requested is judicial information held for judicial purposes only.
35. Following the explanations provided by the MOJ, the Commissioner formed a preliminary view that the MOJ does not hold the requested information to any extent for its own purposes. The Commissioner wrote to the complainant setting out his preliminary view on 24 June 2014 with a view to resolving the case informally.
36. The complainant replied on 14 July 2014, disagreeing with his preliminary view. He submitted lengthy arguments and a significant number of questions in response.

37. With the complainant's consent, on 28 July 2014 the Commissioner forwarded the response to the MoJ, asking it if it wished to comment prior to the decision notice being drafted. On 11 August 2014, the MoJ said it had consulted with the Judicial College and did not wish to add to its previous submissions.
38. In conclusion the Commissioner recognises that the Judicial College is part of the Judicial Office and the purpose of these offices is to support the work of the judiciary, respecting the independence of the judiciary. The college is contained within the MoJ in terms of day to day running and administration. Some information about the running of the College is therefore held by MoJ for their own purposes under FOIA and may engage section 3(2). However, the information requested in this case is information that is generated by, and used solely by, the Judiciary. In light of the clear legal position of the independence of the judiciary the Commissioner has concluded that the material requested is not held by MoJ for the purposes of FOIA MoJ's position on section 3(2) is therefore correct.

Right of appeal

39. 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

40. 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.
41. 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

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