

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 October 2019

**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 a copy of guidance referred to in a Practice Direction.
2. The Ministry of Justice (MoJ) ultimately withheld the requested information on the basis of the exemption at section 23(1) (information supplied by, or relating to, bodies dealing with security matters) of the FOIA.
3. The Commissioner is satisfied that the withheld information falls within the scope of this exemption and therefore the MoJ can rely on section 23(1) of the FOIA to withhold it.
4. The Commissioner requires no steps to be taken as a result of this decision.

#### Request and response

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5. On 26 January 2019, the complainant wrote to the MoJ and requested information in the following terms:  
*"Please disclose a copy of Closed Judgments Library – Security Guidance of 2017".*
6. The request was made using the 'whatdotheyknow' website.
7. The MoJ responded on 20 February 2019. It refused to provide the requested information, citing the following exemption as its basis for doing so:

- section 40(2) personal information.
8. The complainant disputed that section 40 of the FOIA applied in this case. He considered that his request has been misinterpreted and told the MoJ:

*"The document I sought is guidance on how to maintain a library of judgments".*

9. Following an internal review the MoJ wrote to the complainant on 11 March 2019 maintaining its original position.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 11 March 2019 to complain about the way his request for information had been handled.

11. He referred the Commissioner to a statement within the publicly available *"Practice Direction: Closed Judgments"*<sup>1</sup> regarding the availability of the requested information. He told the Commissioner:

*"It is clear, therefore, that the document I seek is a guidance document which "set[s] down" a series of "secure handling provisions". It cannot consist solely of personal data or else the reference in the Practice Direction would make no sense".*

12. During the course of the Commissioner's investigation the MoJ revisited its handling of the request. In correspondence with the complainant, the MoJ confirmed that it held the requested information, but that it was exempt from disclosure under section 23(1) (information supplied by, or relating to, bodies dealing with security matters) of the FOIA.

13. The complainant confirmed that he required a decision notice in this case. In his correspondence with the Commissioner, he observed that the MoJ had changed the basis of its refusal:

*"... with no explanation for the change or for persisting in the original error...".*

14. The Commissioner accepts that a public authority has the right to claim an exemption for the first time before the Commissioner or the Tribunal.

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<sup>1</sup> <https://www.judiciary.uk/wp-content/uploads/2019/01/lcj-and-spt-practice-direction-closed-judgments-jan-2019-as-published.docx>

The Commissioner does not have discretion as to whether or not to consider a late claim.

15. 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 FOIA.
16. Accordingly, the analysis below considers the MoJ's application of section 23(1) of the FOIA to the requested guidance.

## Reasons for decision

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### *Section 23(1) – information supplied by or relating to bodies dealing with security matters*

17. Section 23(1) of the FOIA provides an exemption which states that:

*'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'*

18. To successfully engage the exemption at section 23(1), a public authority needs only to demonstrate that the relevant information was directly or indirectly supplied to it by, or relates to, any of the bodies listed at section 23(3)<sup>2</sup>.
19. This means that if the requested information falls within this class it is absolutely exempt from disclosure under the FOIA. This exemption is not subject to a balance of public interest test.
20. In support of its reliance on the exemption, and in accordance with the Memorandum of Understanding (MoU) between the ICO and the MoJ (on behalf of Government Departments)<sup>3</sup>, the MoJ provided the Commissioner with a reasoned explanation that clarified how the information was supplied by, or otherwise relates to, a section 23 body.

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<sup>2</sup> A full list of the bodies referenced in section 23(1) is available here:

<http://www.legislation.gov.uk/ukpga/2000/36/section/23>

<sup>3</sup> <https://ico.org.uk/media/about-the-ico/documents/1042533/mou-national-security-cases-foia-eir.pdf>

21. The Commissioner is necessarily restricted in what she is able to say about the nature of that explanation without compromising the content of the withheld information.
22. However, in light of that explanation, and in the circumstances of this case, the Commissioner is satisfied that the information withheld by the MoJ under section 23(1) engages the exemption.
23. Section 23(1) is an absolute exemption which means that it is not subject to the public interest test set out in section 2(2)(b) of the FOIA. Once it is determined that the exemption is engaged, the information cannot be released under the FOIA.
24. The Commissioner has therefore concluded that the MoJ was entitled to rely on section 23(1) of the FOIA to withhold the information requested by the complainant.

## Right of appeal

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25. 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@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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 .....**

**Gerrard Tracey  
Principal Adviser  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**