

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 3 November 2022

**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 information relating to policing.
2. The Ministry of Justice (MoJ) denied holding the information requested at part (2) of the request.
3. The Commissioner's decision is that, on the balance of probabilities, the MoJ does not hold information within the scope of that part of the request.
4. The Commissioner requires no steps to be taken as a result of this decision.

#### **Request and response**

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5. On 8 April 2022, the complainant wrote to the MoJ and requested information in the following terms (numbers added for clarity):  
  
"1. Can you tell me the last time Police in the Milton Keynes area Prosecuted anyone for the following offences and how many times this has occurred in the last ten years.  
  
Driving on Footpath S34(1) RTA [Road Traffic Act] 1988  
  
Dangerous Parking S22A RTA  
  
Unnecessary Obstruction S42 RTA

2. Also Police Officers take an Oath to uphold the Queens Laws if they consistently fail to do so leaving members of the public in danger are they guilty of Gross Neglect of Duty”.
6. The MoJ responded on 12 May 2022. It provided some information within the scope of part (1) of the request but withheld the remaining information within the scope of that part of the request, citing sections 44 (prohibitions on disclosure) and 32 (court records) of FOIA.
7. Following an internal review the MoJ wrote to the complainant on 13 June 2022, revising its position. While it maintained its application of section 44, it confirmed that it was not relying on section 32 of FOIA to withhold information.

### **Scope of the case**

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8. Following earlier correspondence, the complainant contacted the Commissioner on 23 August 2022 to complain about the way part (2) of his request for information had been handled.
9. Following the Commissioner’s intervention, there was further correspondence between the complainant and the MoJ about its handling of part (2) of the request. The MoJ clarified its response, confirming that it is not responsible for policing policy and, therefore, there is no business justification for holding such information. The MoJ did, however, advise the complainant in relation to other public authorities who may hold relevant information.
10. The complainant remained dissatisfied.
11. The Commissioner has sought to determine whether, on the balance of probabilities, the MoJ holds recorded information within scope of part (2) of the complainant’s request.

### **Reasons for decision**

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12. Section 1(1) of FOIA provides that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

13. Having considered the wording of part (2) of the request, the Commissioner notes that it is framed as a general question rather than a request for a specific piece of recorded information.
14. While the Commissioner accepts that a request can be in the form of a question, rather than a request for specific documents, under FOIA a public authority does not have to answer a question if this would mean creating new information or giving an opinion or judgment that is not already recorded.
15. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.
16. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
17. Nor is it the Commissioner's role to identify which of a group of organisations is most likely to hold particular information – only whether the particular public authority, to which the request has been made, does or does not hold the information that has been requested.
18. The Commissioner recognises that the complainant believes that it is in the interest not only of the public but of police officers themselves to know if they are committing gross neglect of duty by persistently failing to uphold the law.
19. However, the Commissioner accepts the explanation provided by the MoJ that, as the MoJ is not responsible for policing policy, there is no requirement for this information to be held.
20. His decision in this case is that, on the balance of probabilities, the MoJ does not hold recorded information within the scope of part (2) of the request. He is therefore satisfied that the MoJ has complied with the requirements of section 1 of FOIA.

## Right of appeal

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21. 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](mailto:grc@justice.gov.uk)

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

22. 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.
23. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**