



Ministry  
of Justice

Disclosure Team  
Ministry of Justice  
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Mr Kanter-Webber  
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data.access@justice.gov.uk

14 January 2022

Dear Mr Kanter-Webber

**Freedom of Information Act Request – MoJ reference: 211215011 (ICO reference: IC-105999-S4M7)**

The Ministry of Justice (MoJ) has received your complaint via the Information Commissioner's Office (ICO) in relation to FOI cases 210317014 (your FOI request of 17 March 2021) and 210416021 (your subsequent request dated 16 April 2021 for an internal review of the decision). We have reviewed the way we dealt with your FOI request and the internal review, and have established that they were not handled correctly, for which we apologise. In this letter, we explain our mistakes and provide a revised response to your request.

**Initial response to your FOI request**

Your FOI request made on 17 March 2021 was handled by the Disclosure and Library Team within MoJ. This team routinely reviews FOI requests on receipt and seeks to ensure that they are handled appropriately. Unfortunately, the team misinterpreted your request as a request for data relating to a judge's opinion and therefore directed you to the UK Supreme Court, which is a separate entity from MoJ. However, this suggestion was made without reference to the appropriate policy team within the department, who were unaware of your request.

We have since established that it was for MoJ to deal with your FOI request rather than the Supreme Court or anyone else. The Disclosure and Library Team should have made appropriate enquiries of the policy team before responding to you.

**Internal review**

On 16 April 2021, you requested an internal review of how your FOI request was handled. Again, this was dealt with by the Disclosure and Library Team (although by a different member of the team). The reviewer considered your FOI request and concluded that it was seeking information from the Supreme Court, which the reviewer believed to be outside the scope of FOIA. The reviewer then wrote to you informing you of the outcome of the IR: namely, that the original response from MoJ had been found to be partially compliant on the basis that while the original decision was correct (i.e. that MoJ was not the appropriate authority to contact on this subject), you ought to have been supplied with further advice on the judiciary as part of the FOI response. This letter referred incorrectly to the "Supreme Court of England and Wales", which it said was not a public body and so not subject to FOIA. It then suggested that you may wish to make enquiries of the UK Supreme Court (the correct title of the court in question) "[o]utside the scope of the FOIA" – whereas in fact the UK Supreme Court is also covered by FOIA.

The outcome of the internal review was wrong: your FOI request was for MoJ to deal with and we should have responded accordingly when we first received your request. We apologise for the mistakes made in dealing with both your original FOI request and the internal review, and are sorry for any inconvenience we may have caused you.

We have taken steps to avoid a repeat: the members of staff who dealt with your FOI request and the internal review have been made aware of their errors and have been reminded of the importance of consulting subject-matter experts in the relevant policy team if they have any questions about how best to handle an FOI request.

### **Revised response to your FOI request**

The relevant policy team in the Judicial and Legal Services Policy Directorate within MoJ has now considered your FOI request of 17 March 2021.

In your request of that date you asked for the following information from MoJ:

***“The President of the Supreme Court today told a select committee that he's been working with you to find a way for Caribbean judges to sit on the Judicial Committee of the Privy Council (reported here: <https://twitter.com/legalhackette/status/1372169231333261314>)***

***“Please disclose an electronic copy of all recorded information you hold related to these discussions/ this piece of work. In considering whether or not any exemptions apply, you will of course bear in mind the fact that the existence of the project is now public knowledge.”***

The policy team has searched its records and we can confirm that MoJ did, at the time of your request, hold information on the subject matter covered by your request.

It is our assessment that, at this stage, all of this information is exempt from disclosure under section 35(1)(a) of FOIA because it relates to the formulation or development of government policy, and some of the information is exempt under section 40(2) as it includes personal data.

#### Formulation or development of government policy

Section 35(1)(a) exempts disclosure of information relating to the formulation or development of government policy. This is intended to protect the integrity of the policy-making process, and to prevent disclosures which would undermine this process and result in less robust, well-considered or effective policies. In particular, it ensures a safe space to consider policy options in private.

Section 35(1)(a) is a qualified exemption which means that the decision to disclose the requested material is subject to the public interest test. When assessing whether or not it was in the public interest to disclose the information to you, we took into account the following factors:

Public interest considerations favouring disclosure:

- There is a general public interest in transparency in relation to the courts.

Public interest considerations favouring withholding the information:

- The policy appraisal in question is at a very early stage. Withholding the requested information is necessary to protect the integrity of the live policy-making process, ensuring a safe space for the consideration of policy options.
- Disclosure may cause unhelpful debate based on an incomplete picture of the policy. Release of information out of context from the proposals may also lead to a misunderstanding of the nature of these and any future changes. There is a danger disclosure of the data may lead to expectations based on isolated comments.

In this case, having assessed the information that we hold, and in light of the considerations above, we reached the conclusion that it would be detrimental to disclose the information at this stage. On this occasion we consider that the public interest is better served by withholding this information under section 35(1)(a) of FOIA.

### Personal information

Section 40(2) and section 40(3A)(a) of FOIA taken together mean that personal data can only be released if to do so would not contravene any of the principles set out in Article 5(1) of the General Data Protection Regulation and section 34(1) of the Data Protection Act 2018.

Individuals have a clear and strong expectation that their personal data will be held in confidence and not disclosed to the public under FOIA. Also, although section 40 is an absolute exemption, we have considered whether there is a wider public interest in disclosing this personal information that would override the fundamental rights of those concerned. We have concluded there is no such public interest in this instance.

In reaching that conclusion and, for the purposes of doing so, taking section 40 considerations separately from section 35 considerations, we balanced the expectation of privacy against a number of other matters. Those matters included whether it would legitimately be in the public interest to name or release personal information about officials dealing with a matter on which the government had not made an announcement, and in weighing such matters we took account of officials' seniority and level of public accountability.

### **Appeal Rights**

If you are not satisfied with this response you have the right to request an internal review by responding in writing to one of the addresses below within two months of the date of this response.

[data.access@justice.gov.uk](mailto:data.access@justice.gov.uk)

Disclosure Team, Ministry of Justice

You do have the right to ask the ICO to investigate any aspect of your complaint. However, please note that the ICO is likely to expect internal complaints procedures to have been exhausted before beginning their investigation.

Yours sincerely

**Judicial and Legal Services Policy Directorate**  
**Ministry of Justice**