

J E Garner
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1 December 2020

Dear J E Garner

Freedom of Information Act (FOIA) Request – 200915010

Thank you for your request dated 15 September in which you asked for the following information from the Ministry of Justice (MoJ):

“With reference to the findings of Judge Ord in the [REDACTED] v Secretary of State for Justice Employment Tribunal case, involving withholding of evidence, tampering, corrupting of documents etc. Please provide details of:

1. The report into the conduct of the respondents (MOJ) carried out by the woman in the Government's Legal Department as referred to in Paragraph 50.

2. Please explain why, the woman in the Government's Legal Department is allowed to prepare the "Report into the conduct," when she herself was involved in the ET remedy hearing, is this not a conflict of interest?

3. Please provide details of anybody involved in the above ET case, guilty of the "forgery of documents" having been disciplined/dismissed as a result of the MOJ's Legal Department's "Internal Review"

4. Please provide details of those responsible for the "corruption of and misleading after-the-event creation of documents" as referred to in Paras 59 and 61 of the ET judgment, being referred to the Police/CPS for consideration of a prosecution for the criminal offence of forgery”.

Your request has been handled under the FOIA.

Firstly, I should explain that I have redacted the name of a third party individual in your request as this information is exempt from wider dissemination under section 40(2) of the FOIA, because it is personal data. Personal data should only be processed more widely if to do so would not contravene any of the data protection principles set out in Article 5(1) of the General Data Protection Regulation and section 34(1) of the Data Protection Act (DPA) 2018. Releasing the redacted information within the terms of your request into the public domain via FOIA would therefore be unlawful.

I am responding on the basis that you have requested three items of information, at points 1, 3 and 4 of your request as set out above, and have asked for an explanation at point 2: this is not an information request within the meaning of the FOIA, but I will respond to it in this letter.

I will respond to each point based on your numbering of each item of the request.

Item 1

I can confirm the MoJ holds the information that you have requested. However, I consider that the information requested is exempt from disclosure under section 42(1) of the FOIA, because it constitutes confidential information between lawyers and clients.

Section 42(1)

Section 42(1) 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, I took into account the following factors:

Public interest considerations favouring disclosure

- There is public interest in public authorities being accountable for the quality of their decision making. Ensuring that decisions have been made on the basis of good quality legal advice is part of that accountability.
- Transparency in the decision-making process and access to the information upon which decisions have been made can enhance accountability.
- There is public interest in knowing whether or not legal advice has been followed in some cases.
- The fact that public funds had been spent on the legal advice adds weight to the public interest arguments based on transparency.

Public interest considerations favouring withholding the information

- This report was prepared to provide a review and advice on the conduct of that litigation by Government Legal Department (GLD) on behalf of Her Majesty's Prison and Probation Service (HMPPS)/Ministry of Justice (MOJ). Legal Professional Privilege (LPP) exists to ensure that a client is guaranteed the greatest level of openness to allow for full and frank legal advice from their legal advisors in confidence including the review of litigation.
- It is important for public authorities to be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them, without the fear of intrusion.

- Both client and legal adviser need to be able to discuss the litigation freely to ensure that they have considered the issues fully. This is a fundamental principle of English law.
- Decisions by the Court in relevant cases have established that there is a strong presumption in favour of maintaining LPP in the absence of compelling reasons to the contrary. Having considered the relevant factors, we are satisfied that there are no compelling reasons to waive that privilege in this case.

On balance, I consider the public interest favours withholding the information at this time.

I also considered whether the information is exempt from disclosure under section 38(1)(a) – endangerment to the physical or mental health of any individual – and/or section 40(2) – personal information. I concluded that some of the information contained within the report would fall within each of those exemptions. However, I have not felt it necessary to apply them, as section 42(1) exempts the whole of the report, for the reasons set out above.

Item 2

As explained above; the report is a review conducted by the GLD of the conduct of the litigation to which the Secretary of State for Justice was a party. Contrary to what may be inferred from the Remedy Judgment referenced in your request, the person who conducted the review was not otherwise involved in the case.

Item 3

I can confirm that the MoJ does not hold this information. The terms of reference of the review were to provide advice to the MoJ about the conduct of the litigation only.

Item 4

This information is exempt from disclosure under section 14(2) of the FOIA as the MoJ previously replied to a request from you for this information on 1 October 2020 (FOI 200915040). You requested an Internal Review of that response, which was provided to you on 28 October (IR 201001051), upholding the original reply. I understand that you have since asked the Information Commissioner's Office to review MoJ's handling of your request.

While the wording of this request may be different, the information you seek is substantially the same as that you requested in FOI 200915040. In accordance with section 14(2) of the FOIA, the MoJ is not obliged to comply with a request which is identical, or substantially similar, to an earlier request from you, unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

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

Disclosure Team, Ministry of Justice, 10.25, 102 Petty France, London, SW1H 9AJ

You do have the right to ask the Information Commissioner's Office (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,

Rob Mitchell
HMPPS Briefing and Correspondence Team