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Dear Mr Magrath

Freedom of Information Act (FOIA) Request – 200824007 (IR of 200730004)

Thank you for your request dated 24 August July 2020 for an Internal Review of FOI 200730004 in which you asked for the following information from the Ministry of Justice (MoJ):

I am writing to request information about the recording of remote and hybrid court hearings. The request is made under the Freedom of Information Act 2000.

- 1. Whether any statistical record is routinely kept of the the number of remote hearings that have taken place using a. Teleconferencing b. Videoconferencing**
- 2. How many remote hearings have taken place during the months of April, May and June 2020 in a. County Courts (including the Family Court) b. The High Court (all divisions) c. The Court of Appeal (both divisions)**
- 3. Are remote hearings in all these courts routinely recorded?**
- 4. How are recordings of remote hearings managed and stored?**
- 5. How are recordings of videoconference hearings transcribed?**
- 6. What approach is taken to the recording of hybrid hearings, ie partly remote, partly in person/court?**

The purpose of an Internal Review is to assess how your FOI request was handled in the first instance and to determine whether the original decision given to you was correct. This is an independent review: I was not involved in the original decision.

In response to your questions (1) to (3) you were advised that the data currently held by Her Majesty's Courts and Tribunals Service (HMCTS) regarding these matters is not considered to be robust or accurate enough to release in to the public domain as a FOIA response, and that consequently the data requested is not held by MoJ.

You were further advised that any data connected with these matters for the period April-June 2020 is exempt from disclosure under section 44(1)(a) of the FOIA, which refers to prohibitions on disclosure 'by or under any enactment' of the FOIA. In this case, the

information you were seeking was prohibited by the Statistics and Registration Services (SRS) Act 2007 and the Pre-release Access to Official Statistics Order 2008.

Finally, regarding Questions (4) to (6), you were advised that these are not to be answered under FOIA, since you were asking for advice and guidance. A more detailed explanation regarding the guidance contained in Section 84 of the FOIA ie in order for a request for information to be handled as a FOIA request, it must be for recorded information, was provided to you.

After careful consideration I have concluded that this response was partially compliant with the requirements of the FOIA.

Statutory deadline

The statutory deadline for your request was 27 August 2020 and the response was provided on 19 August 2020. The response was therefore compliant with the timeliness requirements of the FOIA.

Outcome

In your request for an Internal Review you say:

“The answers given to questions 1 to 3 of my request seem inconsistent, in that you say, on the one hand, “we do not hold the information to answer your questions” and then go on to say that, in fact, you do hold the information but that it is either too soon to ask for it or prohibited by legislation. This is not very satisfactory, but since it appears some information will be available later in the year, I am content to wait.”

I accept your point, and although I believe that the respondent to your request was trying to be helpful, it was not appropriate to quote the exemption under Section 44 of FOIA when it had already been clearly stated, correctly, that the data requested was not held by HMCTS / MoJ.

Further, in your request for an Internal Review you then go on to say

“In respect of the answers given to questions 4 to 6, you say they are in effect asking for advice and guidance. I dispute this. They are not asking for advice or guidance but for a policy or set of instructions which either are, or are not, in existence and being applied by your staff and/or outsourced to an external agency. If the data which are the subject of questions 1 to 3 are being collected, then that must be occurring under a policy or set of instructions which ought presumably to be in documentary form and ought, therefore, to be recorded or stored.”

I do not accept this argument. Questions (4) to (6) were:

- How are recordings of remote hearings managed and stored?
- How are recordings of videoconference hearings transcribed?

- What approach is taken to the recording of hybrid hearings, ie partly remote, partly in person/court?

There is no mention of asking for “a policy or set of instructions which either are, or are not, in existence and being applied by your staff and/or outsourced to an external agency” with regard to these matters. There is no reasonable way by which the respondent would know that you were asking for copies of such policies and instructions that have been issued to both staff and external agencies regarding these matters, or what were the conditions applying to your request.

If you could confirm to MoJ (or to me following receipt of this response) that your request is for:

“Any policies or instructions that are currently applied by HMCTS/MoJ staff and/or outsourced external agencies regarding:

- How are recordings of remote hearings managed and stored?
- How are recordings of videoconference hearings transcribed?
- What approach is taken to the recording of hybrid hearings, ie partly remote, partly in person/court?”

Then your questions will be treated as a new FOIA request and responded to accordingly.

In conclusion

I am satisfied that the response you received on 19 August was provided to you within the statutory time limits that apply to MoJ.

However, whilst Questions (4) to (6) were not clearly asking for specific recorded information and were not to be answered, in this instance, under the FOIA; I judge that Section 44 should not have been applied to Questions (1) to (3).

Appeal Rights

If you are not satisfied with this response you have the right to apply to the Information Commissioner’s Office (ICO). The Commissioner is an independent regulator who has the power to direct us to respond to your request differently, if she considers that we have handled it incorrectly.

You can contact the ICO at the following address:

Information Commissioner’s Office

<https://ico.org.uk/Global/contact-us>

Yours sincerely

K Smith

K Smith
Knowledge and Information Liaison Officer
North East Region