

IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

APPEAL REFERENCE: EA.2021.0129

BETWEEN

MAYA FORSTATER

Appellant

and

- (1) INFORMATION COMMISSIONER
- (2) MINISTRY OF JUSTICE
- (3) THE JUDICIAL COLLEGE

Respondents

2ND AND 3RD RESPONDENTS'
SKELETON ARGUMENT

Bundle references are to the bundle prepared for the hearing on 20 October 2021, in the form [Tab/Page number].

Time estimate: 1 day

Pre-reading: ½ day

Essential materials: Decision Notice [1/1-11]; Notice of Appeal [2/12-23]; ICO amended response [4/36-47]; R2 and R3 Response [5/48-57].

Evidence: Statement of Ms Amelia Wright [16/77-93].

1. This is the brief Skeleton argument filed on behalf of the Second and Third Respondents (“R2” and “R3”, jointly referred to as “the Respondents”), the Ministry of Justice (“MoJ”) and the Judicial College, which are jointly represented by the Government Legal Department.

Key documents

2. The Tribunal is respectfully referred to the Respondents’ Statement of Case filed on 14 July 2021 [5/48-57] which sets out in detail the Respondents’ case. Neither the Appellant nor the ICO have responded to that case to date, notwithstanding the opportunity to file a Reply in August 2021. As such, the Respondents will address any issues raised by the other parties at the hearing.

3. The Appellant's case has thus far only been set out in her Appeal Notice [2/19-23].
4. In its Amended Response, the Information Commissioner's Offices ("ICO") has confirmed that the Commissioner maintains and supports her Decision and agrees with the Respondents that the Judicial College is not a relevant public authority falling within the scope of FOIA.
5. The Respondents have now filed the evidence of Ms Amelia Wright ("AW1"), the Executive Director of the Judicial College, in order to assist the Tribunal in understanding the context of this appeal, and the issues for determination. Ms Wright explains:
 - a. The background to and establishment of the Judicial Studies Board, and then the Judicial College (AW1, §§5-17) [16/79-82];
 - b. Details as to the current operation of the Judicial College, in particular in relation to the training of the judiciary (AW1, §§18-30) [16/82-86];
 - c. An overview of what the Judicial College does, and the logistics of organisation of judicial training (AW1, §§31-38) [16/87-90];
 - d. The practice of the Judicial College in responding to FOIA requests and to publishing information for public transparency (AW1, §§39-49) [16/90-92]; and
 - e. The previous treatment of the Judicial Studies Board under FOIA (AW1, §§50-53) [16/92-93].
6. The Respondents do not anticipate this evidence being controversial, and expect that it can be addressed by way of submission. However, they have not yet received confirmation from the other parties as to whether they wish to put any questions to Ms Wright, and accordingly whether she will be required to give live evidence.

Submissions

7. This appeal is concerned with a narrow but important question of law, namely whether the Freedom of Information Act 2000 ("FOIA" or "the Act") applies to information relating to the training of the judiciary. Information held by or on behalf of the judiciary is excluded from the scope of the Act, in light of its unique and independent role in the UK's constitutional structure.

8. The Appellant's position as articulated so far, appears to be as follows:
 - a. Although it is not expressly named, and has not been expressly designated as a public authority in Schedule 1 to FOIA, the Judicial College should be treated as an analogue to the Judicial Studies Board, its predecessor (Ground 1, Appeal Notice, §9 [2/21];
 - b. Based on that analysis, the Decision is said to have posed the wrong questions, namely whether the information was held by the Ministry of Justice (R2), rather than the Judicial College itself (Grounds 2 and 3, Appeal Notice, §§12, 15 and 17) [2/[21-23].
9. As to the first point, it appears to be the Appellant's position that this is a simple error. That is not the case. The Judicial College is not one of the designated public authorities within the meaning of the Act. This is not a simply drafting 'slip' or a distinction without a difference but reflects the constitutional developments instigated by the Constitutional Reform Act 2005 and the Tribunals, Courts and Enforcement Act 2007, which placed judicial training squarely and exclusively in the hands of the judiciary. The ICO accepts and endorses this position (Amended Response, §§29-31) [4/42-43].
10. The College' predecessor, the Judicial Studies Board, cannot simply be equated with the Judicial College or the express reference in the statute 'read' as if it were meant to be the College: the two are separate corporate bodies, with substantive differences (see the evidence of Ms Wright at §§6-8 and 50 [16/79-80 and 92].
11. This distinction is readily comprehensible: the previous position concerned non-departmental public body overseen by a Cabinet Minister – effectively an administrative aspect of the executive, which was to be treated analogously to other government departments under FOIA. By contrast, the reformed position excludes from the scope of FOIA, matters which Parliament has not expressly foreseen the Act to cover – namely judicial materials and/or information held on behalf of the judiciary.
12. As to the second point, this principally flows from the first. The only additional consideration arising from this Ground is that the Respondents accept that the Ministry

of Justice holds information relevant to the Judicial College, for example on servers, which it hosts. As Ms Wright explains, the Respondents have previously disclosed information which relates solely to administrative issues which is “held” by R2 for its own purposes (e.g. at an institutional level re the total funding allocated to heads of costs) (AW1, §§43-45 [16/91]).

13. However, the information sought by the requester in this case does not relate to those issues, and instead is focussed on the content and details of specific judicial training. As such, it relates to information outside the scope of the Act.
14. For the reasons set out above and addressed in the Respondents’ Response, they invite the Tribunal to dismiss the appeal.

12 OCTOBER 2021

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Instructed by:

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