



Ministry
of Justice

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18 November 2024

Dear I Cetin

Freedom of Information Act (FoIA) Request – 240923016

Thank you for your request dated 23 September 2024 for an Internal Review of FoIA 240904026 in which you asked for the following information from the Ministry of Justice (MoJ):

My request pertains to the current Registrar of the Employment Appeal Tribunal. Please provide the following information:

Confirmation that Nicola Suzanne Batten Daly, registered with the Solicitors Regulation Authority under number 162956, is currently serving as the Registrar of the Employment Appeal Tribunal.

The Registrar's salary information:

- a) The starting salary when the current Registrar took up the position***
- b) The current salary of the Registrar***
- c) Any salary increases or adjustments since the appointment, including dates and amounts***

The Registrar's educational and professional background:

- a) Educational qualifications, including institutions attended and degrees obtained***
- b) Professional experience prior to appointment as Registrar, including previous roles, employers, and dates of employment***
- c) Any specific qualifications or experience that were required for the Registrar position***

Details of the appointment process for the current Registrar:

- a) The date the position was advertised***
- b) The minimum qualifications and experience required, as stated in the job advertisement***
- c) The date of appointment of the current Registrar***

I would like to emphasise that the salary of the Registrar should be public information, in line with the salaries of judges and other judicial office holders. This is based on the following considerations:

The Registrar performs quasi-judicial functions and makes significant decisions affecting employment law cases.

Transparency in judicial salaries is an established practice to ensure public accountability and maintain trust in the judicial system. The public has a right to know how public funds are being used to compensate individuals in such influential positions. Disclosure of this information helps prevent potential conflicts of interest and ensures fair compensation.

This information is requested in the public interest, to ensure transparency and accountability in the appointment and performance of individuals in key judicial roles. The information sought relates directly to the professional capacity of a public official and does not infringe on personal privacy beyond what is necessary for public scrutiny of this important role. If you need any clarification or have any questions about this request, please don't hesitate to contact me. I look forward to receiving your response within the statutory timeframe of 20 working days.

Your request for a review is set out as follows; -

I am writing to request an internal review of the Ministry of Justice's handling of my Freedom of Information request (reference: 240904026) dated 4 September 2024, concerning the Registrar of the Employment Appeal Tribunal.

I have serious concerns about the response I received on 23 September 2024, which stated that the Ministry of Justice (MOJ) does not hold any of the requested information. This seems implausible for several reasons:

Employment Status: The Registrar of the Employment Appeal Tribunal is, to the best of my knowledge, an employee of the Ministry of Justice. As such, the MOJ should hold basic employment information, including name, position, salary, and qualifications.

Scope of Request: My request was directed to the MOJ, not specifically to the Employment Appeal Tribunal. As the overarching department responsible for courts and tribunals, the MOJ should have access to this information.

Basic Information: At a minimum, the MOJ should be able to confirm the name and appointment of the current Registrar. This is fundamental public information for a senior quasi-judicial role.

Salary Information: Given that the Registrar's role involves judicial functions, their salary should be a matter of public record, similar to other judicial positions.

Appointment Process: Information about the appointment process, including dates and requirements, should be held by the appointing body, which I believe to be the MOJ.

Public Interest: As outlined in my original request, there is a strong public interest in transparency regarding this role, which the response fails to address.

I request that a more thorough search be conducted across all relevant departments of the MOJ, including Human Resources, Appointments, and Payroll. If after this search, the MOJ maintains that it holds none of the requested information, please provide a detailed explanation of:

- a) Who employs the Registrar of the Employment Appeal Tribunal***
- b) How appointments to this role are made and recorded***
- c) How the Registrar's performance is overseen if no information is held***
- d) How the salary for this position is determined and paid if no records are kept***

Furthermore, I would like to understand how the MOJ can fulfil its obligations of transparency and accountability regarding this important public role if it holds no information about the individual occupying it.

If the MOJ genuinely does not hold this information, this raises serious concerns about record-keeping and accountability within the justice system, which I believe warrants further investigation.

A full history of my FOI request and all correspondence is available on the Internet at this address:

***https://www.whatdotheyknow.com/request/salary_qualifications_and_appoin
I look forward to a comprehensive review of my request and a more detailed response addressing these points.'***

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

The response to FOIA 240904026 stated that the MoJ did not hold any information within the scope of your request.

After careful consideration we have concluded that this response was not compliant with the requirements of the FOIA.

Statutory deadline

The statutory deadline for your request was 2 October 2024, and the response was provided on 23 September 2024. The response was therefore compliant with the timeliness requirements of the FOIA.

Outcome

An FOIA Internal Review re-considers all aspects of the original response, including the decision-making process; therefore, in the interests of fairness, we have considered the original response provided to FOIA 240904026 alongside the investigation and decisions made to provide this response.

We have also considered relevant Information Commissioner's Office (ICO) guidance, which can be found in full here: [Guide to freedom of information | ICO](#) and here: [How to access information from a public authority | ICO](#).

We have paid particular attention to [Section 40 and Regulation 13 – personal information | ICO](#) and [Requests for personal data about public authority employees \(ico.org.uk\)](#)

In this case, despite the London Regional Knowledge and Information Liaison Officer (LR KILO) carrying out a legitimate search with the Employment Appeal Tribunal (EAT), we believe their search should have been extended to the Upper Tribunal Administrative Team who would be the appropriate department to determine whether or not the requested data was held by MoJ.

We can confirm that the Registrar of the EAT is an employee of the MoJ and therefore not a judicial office holder; we apologise that the original response suggested you redirect your request to the Judicial Office. Judicial Office would deal with personal matters for the Judiciary only and would therefore not be the appropriate department to address your request to.

In conclusion we believe the original response was incorrect, for which we apologise. We shall now re-address the information requested in FoIA 240904026:

Regarding confirmation that Nicola Suzanne Batten Daly is currently serving as the Registrar of the Employment Appeal Tribunal and confirmation of the date she was appointed, we can confirm that the MoJ holds the information that you have requested. However, the information is exempt from disclosure under section 21 of the FoIA, because it is reasonably accessible to you. The information can be accessed via the following links:

[Members of the Employment Appeal Tribunal - Courts and Tribunals Judiciary](#)

[Page 48 of the 2018 Senior President of Tribunals' Annual Report](#)

We can also confirm that the MoJ holds the information that you have requested relating to the Registrar's salary, educational and professional background and appointment process.

The EAT Registrar role is a Grade 7 lawyer role and it might be helpful to explain that the generic starting salary of a Registrar and the qualifications and/or experience that are required for a Registrar position would be similar to a recent Upper Tribunal Registrar job description found here: [91447 - Registrar/ Lawyer, Upper Tribunal \(Administrative Appeals Chamber\) - MoJ](#)

We deem that the rest of the data requested: salary increases, current salary and educational and professional background is exempt from disclosure under section 40(2) of the FoIA, because it contains personal data.

Section 40(2) and section 40(3A)a of the 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 UK General Data Protection Regulation (UK GDPR) and section 34(1) of the Data Protection Act 2018(DPA).

Article 5(1)(a) of the UK GDPR states that: “*Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject*”. In the case of an FoIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent. Disclosure of information under the FoIA is deemed to be to the wider world.

To be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful. It is our view that the lawful basis most applicable is basis 6(1)(f) which states: “*processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child*”.

In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under the FOIA, it is necessary to consider a legitimacy, necessity and balancing test:-

Whilst full disclosure of the information may allow for greater transparency about, and accountability for, public expenditure; there is enough generalised information in the public domain to negate a legitimate interest in disclosing more detail.

The additional information you seek is processed by MoJ within the Registrar’s personnel record, for the purposes of the employee and employer’s relationship together.

Whilst public figures accept a degree of scrutiny about their functions in office, even officials in senior posts may have a reasonable expectation that certain information about purely personal matters is not disclosed. We have considered Ms Daly’s wishes and can confirm that disclosure would contravene her valid objection to the disclosing of her more personal data to the world at large.

In addition, the MoJ has a duty of care to its staff and disclosure of the more personal information relating to the Registrar may have repercussions for her health and safety by disclosing to the world at large.

On balance, we believe the fundamental rights and freedoms of the Registrar to the protection of her more personal data outweigh the legitimate interests served by full disclosure in this instance.

We also feel this response has taken a proportionate and fair approach and has met the identified legitimate interest by disclosing some of the information, rather than all the detail that has asked for.

We have therefore concluded that releasing the rest of the requested information into the public domain would be unlawful in this instance; the personal information is therefore exempt from disclosure under section 40(2).

Individuals have a clear and strong expectation that their personal data will be held in confidence and not disclosed to the public under the FoIA.

This is an absolute exemption and does not require a public interest test under the FoIA.

Yours sincerely

SW Data Information & Protection Team
HMCTS, South West Regional Support Unit

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 he considers that we have handled it incorrectly.

You can contact the ICO at the following address:

Information Commissioner's Office online portal
<https://ico.org.uk/make-a-complaint/foi-and-eir-complaints/>

Postal address
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF