IN THE FIRST-TIER TRIBUNAL **Appeal No: EA/2015/0218**
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

ON APPEAL FROM:
The Information Commissioner's Decision Notice No: 20th, August 2015
Dated: FS50582481

Appellant: Deborah Thomas

Respondent: The Information Commissioner

("the ICO")

Before

David Farrer Q.C.

Judge

and

Stephen Shaw

and

Henry Fitzhugh

Tribunal Members

Date of Decision: 1st. March, 2016

Date of Promulgation: 14 March 2016

Subject matter: FOIA s.1(1)(b)

Whether the Ministry of Justice ("the MoJ") communicated to the Appellant the requested information.

The Tribunal's decision

The appeal is dismissed. The MoJ is not required to provide further information to the Appellant

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Abbreviations	(in addition to those above)
The DN	The ICO's Decision Notice
FOIA	The Freedom of Information Act, 2000

The Reasons for the Tribunal's Decision

The Request

1. By letter dated 14th. February, 2015 Ms. Thomas directed the following request to the South – West Regional Office of the MoJ –

   "After discussions with the Parliamentary and Health Service Ombudsman, it has been decided that detailed information relating to a person's right to choose to have either an oral or a written hearing if they are the plaintiff who wishes to bring a small claim to a County Court is provided.

   This letter should therefore be seen as my formal request for this information to be provided.

   For the benefit of doubt, I require as much information on this as is possible; the rules followed, the technical mechanisms used, the procedures in place, how they are enshrined, the statutes they rely upon, etc., etc..

   In so far as this is concerned, please can you now see to it that this request is now actioned as soon as possible".

2. The MoJ responded on 24th. February, 2015. It asserted that this request was not made under FOIA and *"court procedures can be explained under normal court business".* It stated that the request had been passed to Plymouth County Court.

3. On 3rd. March, 2015, Plymouth County Court provided a standard information leaflet EX306 entitled "The small claims track in the civil courts". At page 5 it contained consecutive paragraphs headed "Will there always be a hearing" and "Do I have to go to the hearing?" They set out the salient features of the procedure, in particular, (i) that the judge allocates cases that he/she considers can be dealt with without hearing to the small – claims track (no hearing) subject to the litigant to object and ask for a hearing and (ii) that a litigant can ask for a claim to be dealt with in her absence on the basis of the written evidence submitted. The leaflet made no reference to the court rules governing theses matters nor the statute under which such rules are made.

4. Ms. Thomas responded by letter to the MoJ Regional Office stating that the information provided was not what she had requested and seeking an internal review of the handling of her request.

5. A somewhat unproductive series of exchanges followed, the MoJ proceeding on the footing that there was no FOIA request but rather a "course of business" request for routine information so that no procedure for internal review was applicable. However, it provided copies of Part 27 of the Civil Procedure Rules ("the CPR") ("The small

claims track") and Practice Direction 27 which supplements it. Part 27.9 and 27.10 deal respectively with non – attendance at a hearing and disposal without a hearing. On 7th. April, 2015, the MoJ invited clarification as to the procedures on which Ms. Thomas wanted information and reference was made later to that invitation.

6. The upshot was a complaint to the ICO by Ms. Thomas and, ultimately, the agreement of the MoJ on 7th. July, 2015, to conduct an internal review. It evidently did so and responded on 3rd. August, 2015, confirming that this request had been properly treated as "business as usual". By then Ms. Thomas had complained to the IC seeking a decision on the MoJ's response to her request.

The Decision Notice

7. The DN included a finding that the request of 14th. February, 2015 set out above fulfilled the requirements of s.8 of FOIA. Any response, however classified by the MoJ, must therefore comply with the requirements of s.1 (1).

8. It found that the MoJ had satisfied its obligations under s.16 by inviting Ms. Thomas, in more than one letter, to indicate what further information she required.

9. It concluded that the provision of the leaflet, together with explanations as to where she might seek further information, satisfied the MoJ's duties under FOIA s.1 (1) in relation to the request, regardless of how the MoJ classified it. It did not refer to the provision of copies of CPR Part 27.9 and 27.10 or the Practice Direction.

10. Ms. Thomas appealed.

The Appellant's case

11. Neither in her Grounds of Appeal nor in her Reply of 30th. October, 2015 did Ms. Thomas add significantly to her complaint that her request had not been met? She stated that neither the leaflet nor the copy of the relevant CPR answered her request. She did not seek clarification from the MoJ staff but information as to *"how they (the procedures) are enshrined, the statutes relied on etc., etc..."*

12. She submitted emphatically that the ICO had not demonstrated that the MoJ had complied with its obligations under FOIA.

The Respondent's case

13. Not surprisingly, the submissions of the ICO largely adopted the findings of the DN.

Our Reasons for this decision

14. Ms. Thomas' letter of 14th. February, 2015 clearly constituted a request for the purposes of s. 8 of FOIA. It satisfied the formal requirements of s.8 (1) and (2). Nobody suggests otherwise. How the MoJ chooses to classify it for internal administrative purposes is a matter for the MoJ but, so far as FOIA is concerned, there is no sub - category of requests known as "business as usual". If a request to a public authority caught by FOIA ss. 3 – 6 satisfies s.8, FOIA is engaged. Internal reviews have no statutory basis; they are a sensible practice designed to ensure that the public authority has considered any refusal very carefully before the ICO becomes involved and further public expenditure results. Here, a substantial amount of time seems to have been devoted to procedural issues in respect of the nature of the request and the supposed consequences of classification, which did not require any assessment.

15. The scope of the request deserves examination. Its focus is the right of a claimant to choose an oral or a "written" hearing in a case assigned to the small claims track. Such matters are exclusively covered by the CPR (here Parts 27.9 and 27.10) and associated practice directions. The leaflet EX 306 contains a relatively informal summary of those relevant rules.

16. The request asks for -

"the rules followed, the technical mechanisms used, the procedures in place, how they are enshrined, the statutes they rely upon, etc., etc." The procedures are enshrined in the CPR, "the Rules", as supplemented by relevant directions. These have been provided to Ms. Thomas. We do not understand what is meant by" technical mechanisms". If this is a reference to the tactical use of the CPR and the Directions by skilled litigators that is something which is not held as information by the MoJ or individual courts.

17. The open – ended character of the request created by the addition of "etc., etc.," adds nothing in practice to the range of information sought.

18. That leaves *"the statutes they rely upon"* which we assume refers to the enabling statute(s) by virtue of which the Rules Committee was and is empowered to regulate civil procedure in the High Court and the County Court. The relevant Act and provisions are the Civil Procedure Act, 1997, ss. 1 and 2. That is not information held

by a public authority but the law of the Land, accessible to anybody who wishes to find it.

19. We observe that Ms. Thomas did not take the opportunity to expand on what it was that the MoJ had failed to provide. She simply protested that her request was not answered.

20. The provision, first of the leaflet and later of the relevant and identified provisions of the CPR and related directions answered this request as fully as could reasonably be expected, in the Tribunal's opinion and the identity of the enabling statute, if it was really important, could readily have been obtained elsewhere. Indeed the MoJ would have been entitled to rely generally on FOIA s.21 (information reasonably accessible other than by virtue of FOIA s.1), though it was plainly more sensible and helpful to provide the material already referred to.

21. Accordingly, the Tribunal upholds the ICO's decision that the MoJ properly met this request and/or that, in so far as it failed to name the enabling statute, the omission did not relate to information held by the MoJ but to the law of England and Wales. Alternatively, if it was information that it held, it was information readily obtainable elsewhere – i.e., fully in the public domain. In the further alternative, it was an omission of no practical importance and should be disregarded when considering Ms. Thomas' complaint and appeal.

22. For these reasons this appeal is dismissed.

23. Our decision is unanimous.

David Farrer Q.C.

Tribunal Judge

1st. March, 2016