



**First-Tier Tribunal  
General Regulatory Chamber  
(Information Rights)**

**Appeal reference: EA/2021/0129**

**Before**

**Upper Tribunal Judge O'Connor  
Tribunal Judge Griffin  
Tribunal Member Rosalind Tatam**

**Between**

**Maya Forstater**

**Appellant**

**and**

**(1) Information Commissioner  
(2) Ministry of Justice  
(3) The Judicial College**

**Respondents**

**Representation:**

Appellant: N. Cunningham of Counsel

First Respondent: K. Taunton of Counsel

Second and Third Respondents: R. Mehta of Counsel

**DECISION AND REASONS**

**Decision**

**The appellant's appeal is allowed.**

## **Substituted Decision Notice**

Insofar as it has not already done so, the Ministry of Justice must provide the appellant (Maya Forstater) with the information it held as to the cost of Trans Awareness Training delivered to the ET and AIT by Gendered Intelligence, so that it is received by no later than 5pm on 18 February 2022.

If the Ministry of Justice held no information as to the cost of Trans Awareness Training delivered to the ET and AIT by Gendered Intelligence other than that identified in its letter to the Tribunal of 21 December 2021, it must confirm that this is so to the Tribunal and all other parties by no later than 5pm on 18 February 2022.

**A failure to comply with the Tribunal's Substituted Decision Notice could lead to contempt of court proceedings.**

## **Reasons**

1. This decision should be read in conjunction with the Tribunal's "*Decisions and Reasons*" of 30 November 2021, in which the following findings were made:

"Summary of the Tribunal's findings:

- (i) The Judicial College is not a public authority for the purposes of the Freedom of Information Act 2000.
  - (ii) The Ministry of Justice is a public authority for the purposes of the Freedom of Information Act 2000.
  - (iii) The Ministry of Justice holds information falling within the scope of the appellant's request for information dated 18 March 2020; namely, information relating to the cost of "*Trans Awareness Training delivered to the ET and AIT by Gendered Intelligence*".
2. At [69] of our decision of 30 November 2021, we observed that within its communication to the Information Commissioner's Office ("ICO") dated "XX December 2020" (found at pages 334-336 of the Open Bundle, the index to which suggests the letter was in fact sent on the 18 December 2020) the Ministry of Justice raised matters which carry the footprint of a Part II exemption, albeit not framed in such terms. The ICO did not address such matters within its Decision Notice. Having considered all the circumstances, we concluded that fairness dictated that the Ministry of Justice should be provided with an opportunity to consider whether the information it holds within the scope of the request (i.e. that identified at [1.iii] above), was, in its view, exempt from communication under Part II of FOIA. In consequence, we adjourned the proceedings and made the following directions:
    - "A. By no later than 21 December 2021 the Ministry of Justice must notify the Tribunal, and all other parties, whether or not the held information is exempt under Part II of FOIA.
    - B. If the Ministry of Justice either (i) notifies the Tribunal that the held

information is not exempt under Part II of FOIA or (ii) fails to send notification to the Tribunal in accordance with Direction A (or any amendment thereto), then the Tribunal will proceed to determine the appeal on the basis that the held information is not exempt under Part II of FOIA.

- C. If the Ministry of Justice notifies the Tribunal, in accordance with Direction A, that the held information is exempt under Part II of FOIA, then on the same occasion the Ministry of Justice must file with the Tribunal and serve on the other parties, a document identifying the exemption(s) relied upon and providing detailed reasons for reliance on such exemption(s).
- D. If the Ministry of Justice notifies the Tribunal that the held information is exempt under Part II of FOIA, the Information Commissioner must, by 18 January 2022, file with the Tribunal and serve on the other parties' written submissions on the application of the exemption(s) relied upon by the Ministry of Justice.
- E. If the Ministry of Justice notifies the Tribunal that the held information is exempt under Part II of FOIA, the appellant must, by 8 February 2022, file with the Tribunal and serve on the other parties' written submissions on the application of the exemption(s) relied upon by the Ministry of Justice."

3. By way of a letter to the Tribunal dated 21 December 2021, the Ministry of Justice state:

"We confirm that the information that the Ministry of Justice holds in relation to the cost of Trans Awareness Training delivered to the ET and AIT by Gendered Intelligence referred to in the Tribunals Edition 3 2018 is not exempt under Part II of the Freedom of Information Act 2000.

The information held records that the requested information as to the cost of the recent Trans Awareness Training delivered by Gendered Intelligence referred to in the Tribunals Edition 3 2018 was £432.40 inclusive of travel costs."

4. There has been no other correspondence from the Ministry of Justice in response to the Tribunal's Directions. Consequently, as the Ministry of Justice did not notify the Tribunal (and the other parties) in accordance with Direction A of the directions of 30 November 2021, that the information it holds as to the cost of "*Trans Awareness Training delivered to the ET and AIT by Gendered Intelligence*" is exempt under Part II of FOIA, we proceed to determine this appeal on the basis that such held information is not exempt under Part II of FOIA.

5. For this reason, and the reasons set out in our decision of 30 November 2021, we find that the Information Commissioner's Decision Notice of 21 April 2021 (reference IC-47775-C4C7) is not in accordance with the law and we substitute a Decision Notice in the terms set out above.

Upper Tribunal Judge O'Connor

*M O'Connor*

26 January 2022

Promulgated

27 January 2022