Neutral Citation Number: [2026] UKUT 87 (AAC)

IN THE UPPER TRIBUNAL **Appeal No. UA-2025-000130-GIA**
(ADMINISTRATIVE APPEALS CHAMBER)

BETWEEN

RICHARD IAN HOLT

Appellant

and

(1) THE INFORMATION COMMISSIONER
(2) THE MINISTRY OF JUSTICE

Respondents

BEFORE UPPER TRIBUNAL JUDGE WEST

Hearing Date: 19 November 2025
Decision Date: 19 February 2026

Representation: the Appellant in person

Mr Hugh Whelan, counsel, for the First Respondent (instructed by the Information Commissioner)

Mr Aaron Moss, counsel, for the Second Respondent (instructed by the Government Legal Department)

ON APPEAL FROM

Tribunal	First-tier Tribunal (General Regulatory Chamber) (Information Rights)
Tribunal Case No:	EA/2023/0483
Panel:	Judge Hazel Oliver, Tribunal Members Pieter de Waal and Rosalind Tatam
Tribunal Decision Date:	29/10/2024

Summary of Decision Freedom of Information Act 2000 – request for original will – s.124 Senior Courts Act 1981 – whether requested information held by MoJ in its capacity as a public authority under FOIA or in course of exercising functions as a court – s.15 FOIA - s.3, 4(1), 8(1) and Schedule 1 Public Records Act 1958 – designated place of deposit – interrelationship between FOIA, Senior Courts Act and Public Records Act

Keyword Name **93 Information rights**

93.1 Freedom of information - right of access

93.2 Freedom of information - public authority response

93.3 Freedom of Information - exceptions

Please note that the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and the Reasons of the Judge follow.

DECISION

The decision of the First-tier Tribunal (General Regulatory Chamber) dated 29 October 2024 under file reference EA2023/0483 does not contain an error on a point of law. The appeal against that decision is dismissed.

This decision is made under section 11 of the Tribunals, Courts and Enforcement Act 2007.

REASONS

Introduction

1. This is an appeal by the Appellant ("Mr Holt") against a decision of First-tier Tribunal (Judge Hazel Oliver, Tribunal Members Pieter de Waal and Rosalind Tatam) on 29 October 2024 (after a video hearing on 16 October 2024) which dismissed his appeal from the decision of the Information Commissioner ("the IC") dated 17 October 2023 (IC-242885-P6K8, the "Decision Notice").

2. The appeal relates to the application of the Freedom of Information Act 2000 ("FOIA"). It concerns a request for a copy of an original will made by Mr Holt to the

Ministry of Justice ("the MoJ") and whether that request falls within the ambit of FOIA or whether an original will preserved in a place of deposit in accordance with directions given under Part 1 of Schedule 1 to the Constitutional Reform Act 2005 ("the CRA 2005") remains subject to the control of the High Court and thus falls outside the ambit of FOIA. If so, such a will is open for inspection, but is subject to the control of the High Court and to probate rules.

History of the Appeal

3. On 20 May 2023 Mr Holt wrote to the MoJ and requested the following information (the "Request"):

> "This request is made under the Freedom of Information Act 2000.
>
> Please provide me with a copy of the original will for [name redacted] as identified in the National Probate Calendar as follows:
>
> [Details redacted]
>
> To confirm, I would like a copy of the original will that contains the original signatures of the testator and the witnesses. I already have a copy of the registered will, which I have obtained from the Probate Search Service website at: https://probatesearch.service.gov.uk/. The original will is a different document to the registered copy and will contain original signatures."

4. The MoJ responded on 8 June 2023, stating that the application did not fall under the FOIA process, but advised that it might be possible to obtain some of the requested information from the Probate Registry. Following an internal review the MoJ wrote to Mr Holt on 21 June 2023, stating that it did not hold the requested information.

5. Mr Holt complained to the IC, noting contradictory responses to the request. The IC decided that:

(a) the MoJ was the appropriate public authority (the original request was addressed to HM Courts and Tribunal Service, which is an executive agency of the MoJ).

(b) the MoJ physically holds the requested information, but not for the purposes of FOIA. It holds the information in the course of exercising its functions as a court, rather than in its capacity as a public authority.

6. Mr Holt appealed on 12 November 2023. The MoJ was joined as a party to the proceedings. The appeal was heard by videolink on 16 October 2024. Mr Holt appeared in person and the MoJ by Mr Laverack of counsel. The IC did not appear and was not represented.

The Decision of the Tribunal

7. The Tribunal issued its decision on 29 October 2024. It dismissed Mr Holt's appeal. So far as material, the Tribunal held that

> **"Issues and evidence**
>
> 14. The issues are:
>
> a. Was the requested information held by the MoJ in its capacity as a public authority under FOIA?
>
> b. If so, was the requested information reasonably accessible by other means under section 21 FOIA?
>
> ...
>
> **Discussion and Conclusions**
>
> 16. In accordance with section 58 of FOIA, our role is to consider whether the Commissioner's Decision Notice was in accordance with the law. As set out in section 58(2), we may review any finding of fact on which the notice in question was based. This means that we can review all of the evidence provided to us and make our own decision. We deal in turn with the issues.
>
> 17. The desired outcome stated by the Appellant in his appeal is:
>
> > "I am seeking one (or both) of the following two outcomes:
> >
> > 1. Decision Notice overturned and the requested information provided under the Freedom of Information Act.
> >
> > 2. Application of the Freedom of Information Act clarified and clarification of the process to access original wills and

> other related documents confirmed by the Tribunal, with the requested information provided under such legislation as may be applicable.
>
> Whatever the outcome, I would like to know the process I should follow I order to exercise my right of access to original wills and other related documents and be provided with the requested information. I would like to be able to make future requests for similar information without issue and receive the requested information in a reasonable amount of time."

The Tribunal's role is limited to deciding whether the Commissioner's decision was in accordance with the law in relation to FOIA. We cannot assist with processes that fall outside FOIA, and are unable to provide clarification on other processes or legislation as requested by the Appellant. We do note that, as directed by Judge Hughes, on 7 August 2024 the MoJ provided a letter to the Appellant explaining how he could inspect the original will by making a request to the relevant probate registry and paying a fee of £22.

18. The Appellant has obtained a registered copy of the relevant will, but he is seeking a copy of the original will as held in long-term storage. The current system is for original wills to be stored indefinitely. Original wills are submitted as part of an application for probate to the Probate Service (which is part of the Family and Chancery Divisions of the High Court). Once probate has been granted, they become a public document which can be inspected unless they have been "sealed" by a judge or probate registrar.

Was the requested information held by the MoJ in its capacity as a public authority under FOIA?

19. This depends on whether the original will is held by a court as part of a judicial function, in which case FOIA does not apply. The MoJ is a government department that has overall responsibility for the justice system. HMCTS is an executive agency of the MoJ. HMCTS functions in more than one capacity - as a court officer when conducting business for the court (under the direction of the court), and as a public authority for other matters (such as reporting and analytics of court services). HMCTS is only subject to FOIA when it is acting as a public authority. Similarly, the MoJ can hold information as a public authority under FOIA, but it may also hold information in a different capacity – particularly where this information is held by a court as part of court records.

20. The MoJ's position is put quite simply. It says that original wills are held under section 124 of the SCA, which expressly refers to the "control of the High Court". This is a judicial function. The SCA sets the function by which original wills are held and made available for inspection, and this is not changed by the way in which they are held in practice. The MoJ has overall responsibility for the Probate Registry under HMCTS (which is why the MoJ is the respondent to this appeal), but original wills are held under the control of the High Court.

21. The Appellant has put forward a number of detailed arguments in both written and oral submissions. Having considered these arguments carefully, we find that the MoJ did not hold the requested information in its capacity as a public authority under FOIA. We set out below our conclusions on the key arguments made by the Appellant.

22. **The Public Records Act 1958 and designated "place of deposit".** The Appellant says that original wills are held in a designated "place of deposit" under the PRA. FOIA replaced much of the regime for access to public records when it came into force. He argues that original wills do fall within FOIA because they are held in a place of deposit under the PRA. He suggests that this access regime is separate from the SCA. He says that the SCA provisions on inspection are to allow people to contest a will, and this is different to the rights of access under the PRA. He argues that the SCA cannot take precedence over the PRA and the regime under FOIA, and they are independent provisions.

23. In response the MoJ says that the PRA cannot override the basis on which original wills are held under the control of the High Court. Section 124 SCA requires original wills to be deposited and preserved, and this is done by storing them in a place of deposit under the PRA. This does not mean that they are held under FOIA.

24. The Appellant referred us to various documents which show how original wills are held in a place of deposit under the PRA. Having considered these documents and his submissions, we agree that this is how original wills are currently held. However, this does not automatically mean that all documents held under the PRA are subject to FOIA.

25. Many public records stored in this way will be covered by FOIA - as is shown by section 15 FOIA which sets out special provisions for public records that have been transferred to the Public Records Office or another place of deposit. But, the scope of "public records" under the PRA is wider than the scope of

information that is covered by FOIA. Paragraph 4 of Schedule 1 to the PRA expressly provides that records of courts and tribunals are public records for the purposes of the PRA. Information held by courts is not, however, covered by FOIA.

26. The point that not all records held under the PRA are covered by FOIA is shown by some of the documents that the Appellant referred us to in the supplementary bundle. For example, page A355, guidance from the National Archives on FOIA from 2004. Point (ii) says, "Public records are held by places of deposit on behalf of the Lord Chancellor, who expects The National Archives (TNA) to ensure that suitable arrangements are made by places of deposit for compliance with the FOI Act *where it relates to information in these records*" [emphasis added]. We agree with the Appellant that FOIA has had a significant effect on records held under the PRA and places of deposit. However, this is only where the information held in the records is itself covered by FOIA. If the records are not held by a public authority that is subject to FOIA, they are not brought into the freedom of information regime simply by the fact they are held under the PRA in a place of deposit.

27. We therefore find that original wills can be held in a place of deposit under the PRA without this meaning they are subject to disclosure under FOIA. There is no issue about whether the SCA or PRA/FOIA takes precedence. Instead, we accept the MoJ's position that a designated place of deposit under the PRA is the way in which the obligations in section 124 SCA to deposit and preserve original wills are fulfilled. As explained by the MoJ in their response to the appeal, an original will has to be provided to the Probate Registry as part of the process of applying for probate. This is the reason that original wills are held and preserved. These documents still remain under the overall control of the High Court. This means that they are not subject to FOIA, because they are held by a court as part of its judicial function.

28. **Original wills are no longer held by the court.** In a related argument, the Appellant says that the original wills are held in custody under the PRA and are not held by the court. He points to section 4(6) of the PRA, which says, "Public records in the Public Record Office or other place of deposit appointed by the Secretary of State under this Act shall be temporarily returned at the request of the person by whom or department or office from which they were transferred." He argues that this shows the court no longer has control over the documents, because they have to make a request for them to be temporarily transferred. We do not agree that this provision means that the High Court no longer has control over original wills. They are held in a place of deposit in

accordance with section 124 SCA, which expressly makes it clear that this is "subject to the control of the High Court and to probate rules".

29. **The MoJ has ultimate control over original wills, as shown by a recent consultation document.** The Appellant says that the MoJ recently issued a consultation document about changing law and policy to allow destruction of original wills after a certain period of time, and this shows they are under the ultimate control of the MoJ rather than the High Court. This consultation on "Storage and retention of original will documents" was published on 15 December 2023. It was presented to Parliament by the Lord Chancellor and Secretary of State for Justice. We do not agree that this consultation undermines the position that original wills are held by the courts. For example, the Ministerial Foreword states, "At the moment there are no limits to how long courts hold these original will documents and they are held long past the period when a challenge might be brought" (page A488 in the supplementary bundle). The consultation is on government proposals to change the length of time for which original wills are held by the courts, primarily in order to save public money. The MoJ holds overall responsibility for the justice system, and so proposals on reforming the work of the courts fall within its remit. This does not mean that the original wills themselves are held by the MoJ as a public authority rather than by the High Court.

30. **Probate records are held by the MoJ for the purposes of FOIA by their own admission in previous decision notices of the Commissioner.** The Appellant provided us with information about two previous decisions of the Commissioner which concerned requests for probate records. In both cases the MoJ appears to have accepted that FOIA applied but refused disclosure on the basis of exemptions. One request was for copies of wills for members of the Royal Family, refused under section 44 FOIA as the wills were sealed. We note that this involved a request for copies rather than for original wills. The other request was for all probate documents sent to a probate registry for a particular will, refused under section 32 FOIA (court records). This would presumably have included the original will.

31. It is unclear why the MoJ did not take the same position in these complaints to the Commissioner as in this appeal. However, we are not bound by these previous decisions of the Commissioner. We also note the MoJ's point that a public authority may decide to rely on different legal arguments to resist disclosure in different proceedings. There are no previous First-Tier Tribunal decisions on this point that we or the parties are aware of. We have considered only the facts and submissions in

this particular appeal in order to decide whether FOIA applied to the Request. The Appellant also raised the point about a fellow genealogist having been sent a copy of an original will under FOIA. Again, this was a decision by an individual probate registry which is not binding on this Tribunal (and we also note that the document was provided by post with no covering letter, so it is unclear whether it was supplied under FOIA or on a different basis).

32. **The information contained in original wills is used for commercial purposes.** The Appellant says that original wills are held by the MoJ as a public authority because the information in them is used for commercial purposes and not purely as court records. He points to a contract between the MoJ and the private company Smee & Ford, which provides access to electronic records under a contract for the purposes of beneficiary notification of charities. We do not agree that this necessarily means that the MoJ holds the information as a public authority. In any case, this does not provide a right of access to an original will as requested in this case – it relates to access to electronic records of wills, which is a different issue. The Appellant explained that for wills after 2021 this might be a scanned copy of an original will, but otherwise it would be a different registered/office copy. It is clear that the original wills themselves are provided to a court during the probate process and are held on that basis. That is what the Request was for and what this appeal is about, not registered/office copies of wills or other scanned/electronic records.

If so, was the requested information reasonably accessible by other means under section 21 FOIA?

33. The MoJ has argued that the information was accessible to the Appellant through the process for inspecting an original will. The Appellant provided evidence that he has attempted to access original wills from a number of district probate registries, only one of these referred him to the same process as explained by the MoJ during these proceedings (see paragraph 17 above), and it appears he has not yet successfully inspected an original will using this process. We have not made a finding on this point because we have found that FOIA did not apply to the requested information.

Outcome

34. We appreciate that the Appellant may find the situation frustrating because he has found it difficult in practice to exercise the right to inspect an original will at various different probate

> registries. However, the fact that the system is not working well administratively is not a reason to apply FOIA to the information.
>
> 35. We therefore find that the requested information was not held by the MoJ in its capacity as a public authority under FOIA. We dismiss the appeal for the reasons explained above."

8. The Tribunal refused Mr Holt permission to appeal on 6 December 2024. Mr Holt applied to the Upper Tribunal for permission to appeal. On 14 April 2025 I directed an oral hearing of the application, which I heard by videolink on 4 June 2025 when Mr Holt appeared before me. The other parties did not appear and were not represented. I granted permission to appeal and made directions for the further conduct of the appeal.

9. I heard the appeal at a face to face hearing on 19 November 2025 when Mr Holt appeared before me in person. The IC was represented by Mr Hugh Whelan of counsel and the MoJ by Mr Aaron Moss of counsel (although the MoJ's response had been drafted by Mr Laverack, who had appeared below). I am obliged to all of them for their submissions.

The Legal Framework

I The requirement for a public authority to hold information

10. S.1 FOIA is entitled "General right of access to information held by public authorities" and provides, so far as material

> "(1) Any person making a request for information to a public authority is entitled –
>
> (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
>
> (b) if that is the case, to have that information communicated to him."

11. S.3(1)(a)(i) FOIA defines a "public authority" to mean

> "[…] any body which, any other person who, or the holder of any office which – (i) is listed in Schedule 1 […]".

12. Part 1 of Schedule 1 includes in its list of public authorities "[a]ny government department" other than the CMA and Ofgem.

13. S.3(2) FOIA defines what it means for a public authority to "hold" information under FOIA:

> "For the purposes of this Act, information is held by a public authority if –
>
> (a) it is held by the authority, otherwise than on behalf of another person, or
>
> (b) it is held by another person on behalf of the authority."

14. In ***University of Newcastle upon Tyne v IC and BUAV*** [2011] UKUT 185 (AAC) ("***BUAV***") at [27], the Upper Tribunal affirmed the First-tier Tribunal's reasoning ([2010] UKFTT 525 (GRC) at [47]) as to the meaning of "holding" information for the purposes of s.3(2) (with emphasis added):

> *"'Hold' is an ordinary English word*. In our judgment it is not used in some technical sense in the Act … However, it is necessary to observe that 'holding' is not a purely physical concept, and it has to be understood with the purpose of the Act in mind … Conversely, we consider that s.1 would not apply merely because information is contained in a document that happens to be physically on the authority's premises: *there must be an appropriate connection between the information and the authority, so that it can be properly said that the information is held by the authority."*

II Control over original wills

15. S.124 of the Senior Courts Act 1981 ("the SCA") provides (with emphasis added):

> "**Place for deposit of original wills and other documents.**
>
> All original wills and other documents *which are under the control of the High Court in the Principal Registry* or in any district probate registry shall be deposited and preserved in such places as may be provided for in directions given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005; and any wills or other documents so deposited shall, *subject to the*

> *control of the High Court and to probate rules*, be open to inspection."

16. S.125 of the SCA, entitled "Copies of wills and grants", provides (again with emphasis added):

> "An office copy, or a sealed and certified copy, of any will or part of a will *open to inspection under section 124* or of any grant may, on payment of the fee prescribed by an order under section 92 of the Courts Act 2003 (fees), be obtained—
>
> (a) *from the registry in which in accordance with section 124 the will or documents relating to the grant are preserved*; or
>
> (b) where in accordance with that section the will or such documents are preserved in some place other than a registry, from the Principal Registry; or
>
> (c) subject to the approval of the Senior Registrar of the Family Division, from the Principal Registry in any case where the will was proved in or the grant was issued from a district probate registry."

17. Rule 58 of the Non-Contentious Probate Rules 1987 provides that

> "**Inspection of copies of original wills and other documents**
>
> 58. An original will or other document referred to in section 124 of the Act shall not be open to inspection if, in the opinion of a district judge or registrar, such inspection would be undesirable or otherwise inappropriate".

III Public records

18. S.15 FOIA, which is entitled "Special provisions relating to public records transferred to Public Record Office, etc" provides, so far as material

> "(1) Where—
>
> (a) the appropriate records authority receives a request for information which relates to information which is, or if it existed would be, contained in a transferred public record, and

(b) either of the conditions in subsection (2) is satisfied in relation to any of that information,

that authority shall, within the period for complying with section 1(1), send a copy of the request to the responsible authority.

…

(4) In this Act "transferred public record" means a public record which has been transferred—

…

(b) to another place of deposit appointed by the Secretary of State under the Public Records Act 1958 …".

19. S.3 of the Public Records Act 1958 ("the PRA") provides

"(1) It shall be the duty of every person responsible for public records of any description which are not in the Public Record Office or a place of deposit appointed by the Secretary of State under this Act to make arrangements for the selection of those records which ought to be permanently preserved and for their safe-keeping.

...

(4) Public records selected for permanent preservation under this section shall be transferred not later than 20 years after their creation either to the Public Record Office or to such other place of deposit appointed by the Secretary of State under this Act as the Secretary of State may direct ...".

20. S.4 of the PRA provides

"(1) If it appears to the Secretary of State that a place outside the Public Record Office affords suitable facilities for the safe-keeping and preservation of records and their inspection by the public he may, with the agreement of the authority who will be responsible for records deposited in that place, appoint it as a place of deposit as respects any class of public records selected for permanent preservation under this Act.

…

> (6) Public records in the Public Record Office or other place of deposit appointed by the Secretary of State under this Act shall be temporarily returned at the request of the person by whom or department or office from which they were transferred".

21. S.8(1) of the PRA provides

> "The Lord Chancellor shall be responsible for the public records of every court of record or magistrates' court which are not in the Public Record Office or a place of deposit appointed by the Secretary of State under this Act and shall have power to determine in the case of any such records other than records of the Supreme Court, the officer in whose custody they are for the time being to be".

22. Schedule 1 of the PRA is entitled "Definition of Public Records". Paragraph 1 of Schedule 1 provides

> "The provisions of this Schedule shall have effect for determining what are public records for the purposes of this Act."

23. Paragraph 4 of the Schedule provides, so far as material

> "(1) Subject to the provisions of this paragraph, records of the following descriptions shall be public records for the purposes of this Act: -
>
> (za) records of the Supreme Court;
>
> (a) records of, or held in any department of, the Senior Courts (including any court held under a commission of assize)
>
> …
>
> (3) In this paragraph "records" includes records of any proceedings in the court or tribunal in question and includes rolls, writs, books, decrees, bills, warrants and accounts of, or in the custody of, the court or tribunal in question".

The Government Legal Department Letter

24. Having considered the grant of permission to appeal, the IC considered that it would be of assistance to the Upper Tribunal and the parties if the MoJ could address certain questions within its response which were

> "(1) where and how is the document/information stored?
>
> (2) which organisation is responsible for physically holding it and under what authorisation?
>
> (3) in what way does the High Court have a role in relation to the document/information?
>
> (4) is it being stated that HMCTS have a judicial function themselves or simply that they sometimes act to support the judiciary?
>
> (5) which body does the MoJ consider to hold the document/information and the basis for that?"

25. On behalf of the MoJ the Government Legal Department ("the GLD") provided a letter to the appellant and the IC on 26 August 2025. The letter stated

> "We write further to the ICO's initial response dated 25 July 2025, the Upper Tribunal's direction dated 30 July 2025, and the ICO's subsequent correspondence dated 14 August 2025.
>
> We have taken instructions and provide our client's responses to the ICO's questions at paragraph 3 of its initial response as follows:
>
> *(1) where and how is the document/information stored?*
>
> Wills and other key documents submitted as part of probate applications are permanently stored at the National Probate Records Centre in Birmingham. This is a specialist facility provided by a third-party under a contract with HM Courts and Tribunal Services. Details are set out in the Records Retention and Disposition Schedule for the Probate Registries -
>
> https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fassets.publishing.service.gov.uk%2Fmedia%2F604f6341

e90e077fe9a7c9dc%2Fprobate-registries-rrds.docx&wdOrigin=BROWSELINK

(2) which organisation is responsible for physically holding it and under what authorisation?

The documents are physically held by a third-party specialist contractor, but this is on the basis of it being under the authority of the High Court (as provided for by the Senior Courts Act) and as directed by the Lord/Lady Chief Justice. The documents are received by the Probate Registries (of the High Court) and forwarded for permanent storage once the probate application has been processed.

(3) in what way does the High Court have a role in relation to the document/information?

As explained above, these documents are court records and held under the authority of the High Court by virtue of the relevant legislation. If a court needs to retrieve an original will (for example in the event of a contentious probate lawsuit challenging the validity of the will) this is undertaken. It is HM Courts and Tribunals Service which administers the Gov.UK service where members of the public can request copies of wills and grants of probate, as provided for in Section 125 of the Senior Courts Act 1981 and Rule 58 of the Non-Contentious Probate Rules 1987 which reflects the legal basis for the storage of these records.

(4) is it being stated that HMCTS have a judicial function themselves or simply that they sometimes act to support the judiciary?

The High Court has jurisdiction for probate matters and the Family Division for non-contentious probate business provided through the probate Registries. All grants of probate made by a district probate registrar are made in the name of the High Court under the seal used in the registry. The Non-Contentious Probate Rules provide for grants to be made by District Judges (in addition to Registrars) and the High Court's Chancery Division can also issue or revoke grants in contentious probate cases. HMCTS undertakes administrative and operational support in the process of the court handling probate applications.

(5) which body does the MoJ consider to hold the document/information and the basis for that?

> As above, the documents are held by the High Court in legal terms, and through a contract they are stored in an archive provided by a specialist third-party contractor."

Mr Holt's Submissions

26. Mr Holt submitted that the Tribunal did not make a finding that the place of deposit was a court. His case was that there are numerous occasions where public records are held by a place of deposit, such as The National Archives, where there is still judicial control over the disclosure of information in those records, despite those records also falling under the provisions of FOIA. One such example was given in the application to appeal made to the First-Tier Tribunal, namely the IC's Decision Notice reference IC-200766-T5H8.

27. The Tribunal recognised at paragraph 25 of its decision that:

> "Paragraph 4 of Schedule 1 to the PRA expressly provides that records of courts and tribunals are public records for the purposes of the PRA."

28. The Tribunal went on to say:

> "Information held by courts is not, however, covered by FOIA."

The Tribunal's decision therefore seemed to suggest that original wills are held by a court, when they are in fact held in a place of deposit, which is not a court. The reasons given in the letter of 6 December 2024 enclosing the refusal of permission to appeal state at paragraph 6 that:

> "The Tribunal did not make a finding that a place of deposit was a court."

29. That does not adequately explain why it was deemed that FOIA did not apply as the records are not held by a court and are only currently in the custody of the MoJ by virtue of the appointed place of deposit.

30. Original wills are in fact held on behalf of the Secretary of State for Archives due to being in an appointed place of deposit. The PRA requires under s.5(5) that public records in places of deposit outside the Public Record Office (now The National Archives) ("TNA") have access conditions comparable to public records held by TNA. When records held in places of deposit cannot be accessed in person, or are deemed as "not reasonable accessible", then the provisions of FOIA come into play. As the requested information is found in a record which is held on behalf of the Secretary of State for Archives, they are only held by the MoJ by virtue of the provisions enacted and effectuated by the PRA. Should the MoJ cease to hold original wills, they would need to be transferred to TNA or another place of deposit. These points are also highlighted in the documents in Mr Holt's Applicant's supplementary court bundle, in particular the contract between the MoJ and Iron Mountain, who store the documents.

31. Mr Holt also highlighted the finding by the Tribunal that, while the process of receiving and storing original wills is an essential part of applying for probate and is thus a judicial function, that does not necessarily mean that once these documents have been transferred to a place of deposit to fulfil the requirements of being selected for permanent preservation under the PRA, that the requirements of access under the PRA, or indeed FOIA, do not apply. That is also considering that the original will in question would be classed as a "historical record" under FOIA and the information it contains would not be subject to a s.32 exemption by virtue of s.63(1).

32. There are many documents collected, created and stored by courts in a judicial function which have subsequently been transferred to a place of deposit where FOIA does apply to the information in these records. For example, the Decision Notice issued by the IC reference IC-209631-P3G4 discusses a request made to TNA for "… copies of all transcripts & court documents related to this case …". Whilst this information had indeed been created, received and stored by a court, so a judicial function, this was prior to the records being transferred to a place of deposit, after which FOIA came into effect and relevant exemption(s) were applied when the information was requested.

33. Mr Holt works in the field of professional research and understands that once public records have been transferred to a place of deposit appointed under the rights

of access to such public records are managed by legislation, namely the PRA and FOIA. FOIA itself introduces the term "transferred public records" in s.15, namely those records created or held by government departments which have been selected for permanent preservation and transferred to a place of deposit.

34. Mr Holt submitted that the provisions in s.124 of the SCA and s.5 of the PRA are plainly independent of each other and the Tribunal did not adequately address that issue. The Judge noted during the hearing that the relevant arguments may mean that a situation could arise where information is held in one capacity that is not subject to FOIA, whilst simultaneously being held in another capacity that is subject to FOIA.

35. Mr Holt submitted that the interconnection between the SCA and the PRA was not adequately addressed by the Tribunal. The Tribunal also failed to give examples of public records which are stored in places of deposit which are not subject to FOIA, despite the refusal reasons stating: “not all public records stored in a place of deposit are subject to FOIA (although many are).” No basis for this conclusion was given and Mr Holt submitted that that is wrong based on the provisions of the PRA and the requirements of access applied to records held in places of deposit.

36. Furthermore, he has viewed public records falling under the definition of “original wills and other documents” as defined in s.124 SCA, including documents held in J121, J165 and J169 at TNA. These public records were received or created and stored by the court as part of judicial functions. These documents were viewed in person by Mr Holt in a place of deposit and were thus reasonably accessible. If they were not reasonably accessible and the information not available to view, they would have been subject to FOIA. If these aforementioned records, which are also covered in s.124 SCA, are subject to FOIA due to their transferral to a place of deposit, why then are original wills held in The National Probate Record Centre (“the NPRC”) not subject to the same access regime? The documents are likewise “transferred public records” and are similarly held in a place of deposit. The Tribunal had not adequately answered that question.

37. The fact that public records have been collected, created or stored as part of a judicial function does not have a perpetual bearing on their exemption from FOIA. That can be seen in many examples, such as the following:

Court File: CRIM 1/5466
Date of FOI Response: 24 October 2016
Freedom of Information Request: Reference F0046422
Link to FOI Request and Responses:
https://www.whatdotheyknow.com/request/crim_15466_niven_sinclair#incoming-885839
FOI Exemption(s): Section 38

Court File: J 82/4296
Date of FOI Response: 5 November 2024
Freedom of Information Request: Reference CAS-199806-C0S5S6
Link to FOI Request and Responses:
https://www.whatdotheyknow.com/request/malcolm_fairley_born_1952_died_2#incoming-2818233
FOI Exemption(s): Section 38

38. Mr Holt submitted that there were no or inadequate reasons in law for the conclusions arrived at in the Tribunal's decision, including but are not limited to:

(1) the requested information is held by the NPRC which is a place of deposit and is subject to the provisions and access regime of the PRA.

(2) public records held by places of deposit are not exempt from FOIA by virtue of the fact that the records may have been created, collected or stored by a court.

(3) the public records held by the NPRC and therefore the information contained within them, are held on behalf of the Secretary of State for Archives and if they were not thus held, would be held by TNA or another place of deposit.

(4) there is no provision to the effect that records held by places of deposit are perpetually exempt from the provisions of FOIA or the access regime of the PRA.

39. Mr Holt supplemented his submissions in an undated reply to the submissions of the IC and the MoJ, but although I have read and considered that document I do not need to set it out here. The foregoing paragraphs encapsulate Mr Holt's grounds of appeal and his submissions. I should say that I accept Mr Holt's submission that the NPRC in Erdington, Birmingham, where the original will is held, was formally appointed a place of deposit under s.4(1) of the PRA and that Hays IMS (now Iron Mountain) is the third party which manages the NPRC on behalf of HMCTS, which is an executive agency of the MoJ, which is the government department which has overall responsibility for the justice system.

The IC's Submissions

40. For the IC, Mr Whelan submitted that the key question for determination was whether, pursuant to s.3(2)(a) FOIA, the requested information was held by HMCTS "otherwise than on behalf of" the High Court. If the information were held on behalf of the High Court, s.1(1) FOIA did not apply in light of the fact that the High Court was not subject to FOIA. If the information were instead held on behalf of an entity listed under Schedule 1 FOIA (or by HMCTS on its own behalf), s.1(1) FOIA applied to the entity in respect of all its functions.

41. In that context, Mr Holt advanced one ground of appeal; namely, that the Tribunal made an error of law in its definition of "control", having regard to s.3(2) FOIA. In support of that ground of appeal, he made a number of submissions, including the following:

(a) As records of the court, original wills fell within the definition of "public records" pursuant to s.1(1)(a) of the PRA. Those public records were held in a "place of deposit" pursuant to s.4(1) of the PRA, being the NPRC, which was managed by HMCTS (an executive agency of the MoJ).

(b) The original wills had, as a matter of fact, been transferred to the NPRC, pursuant to ss.15(1) and 15(4) FOIA. The NPRC then held the original wills "on behalf" of the Secretary of State for Archives, engaging s.3(2)(b) FOIA. The original wills were thus subject to s.1(1) FOIA.

c. Accordingly, s.124 of the SCA did not apply to the original wills.

42. Mr Holt's ground of appeal could not succeed, for two reasons.

43. First, his interpretation of the engagement between the SCA and the PRA in relation to the definition of "records of the court" had no basis in law. As explained by the Supreme Court in relation to CPR 5.4C in ***Cape Intermediate Holdings Ltd v Dring*** [2019] UKSC 38; [2020] AC 629 at [23], the term "records of the court" must refer to the documents and records "the court itself keeps for its own purposes. It cannot refer to every single document generated in connection with a case and filed, lodged or kept for the time being at court". The fact that an original will did not fall within that definition supported the conclusion that it was not a "public record" under s.1(1)(a) of the PRA. That interpretation was further supported by the fact that paragraph 4(3) to Schedule 1 of the PRA did not mention wills specifically (or evidence generally) in its definition of "records". As a result of that interpretation, an original will was not subject to s.15 FOIA. That, in turn, meant that ss. 57 and 66 FOIA also did not apply.

44. Second, Mr Holt had failed adequately to explain the legal error in the Tribunal's decision that the MoJ's connection with the original will was by virtue of the SCA and not the PRA. On the contrary, the Tribunal was correct to uphold that interpretation. S.124 of the SCA provided authority for the deposit of wills and described the original wills as being "under the control of the High Court". That provision also noted that, while such original wills would be open to inspection, that was specifically "subject to the control of the High Court and to probate rules". It was further noted that an individual's ability to obtain a copy of the will under s.125 of the SCA was subject to that will being available for inspection by virtue of s.124 of the SCA, which, in turn, was subject to the control of the High Court. Accordingly, the question of HMCTS accessing

the original will in any substantive manner was ultimately determined by the High Court, which controlled the original will pursuant to the SCA.

45. Consequently, the IC submitted that the original will was held by HMCTS solely on behalf of the High Court. That meant that the "appropriate connection" between the original will and HMCTS was inadequate for it to be "properly said that the information is held by the authority": ***BUAV*** at [27]. In light of that, the requested information was held solely "on behalf of" the High Court pursuant to s.124 of the SCA. As the High Court was not listed in Schedule 1 FOIA (unlike the MoJ), s.3(2)(a) FOIA therefore did not apply and the requested information was not amenable to the FOIA regime.

46. While the Upper Tribunal was not a fact-finding tribunal, it was further noted that that position, as regards the connection between the MoJ and the requested material, was further supported by the MoJ's response to the IC's questions dated 26 August 2025 (as set out above).

The MoJ's Submissions

47. For the MoJ, Mr Moss submitted that Mr Holt's request for the original will was made under s.1(1) FOIA. The Tribunal found that s.1(1) FOIA did not apply to his request for an original will, as the MoJ held original wills as a part of its judicial function, not as a public authority for the purpose of FOIA and therefore FOIA did not apply. The Tribunal was correct in its conclusion. S.1(1) FOIA applied only to information held by public authorities. S.124 of the SCA stated who controlled original wills.

48. The High Court was not a public authority for the purpose of FOIA. S.3 FOIA defined "public authority" as any body, person or holder of any office listed in Schedule 1 or s.5 FOIA. Courts and tribunals were neither listed in Schedule 1 nor designated under s.5. It could be seen from the list at Schedule 1 that "public authority" included the executive and legislative arms of government, but not the judicial arm. (Also of note was para. 1ZA of Schedule 1 (with emphasis added): "The Competition and Markets Authority, in respect of information held *otherwise than as a tribunal*".) In ***Kennedy v Charity Commission*** [2014] UKSC 20; [2015] AC 455, Lord Wilson stated in terms:

"A court is not a public authority for the purposes of [FOIA]" (at [175], in a dissenting judgment, albeit immaterially so).

49. Mr Holt sought to argue that, despite the express words of s.124 of the SCA that original wills were under the control of the High Court, original wills were held by a public authority for the purpose of FOIA. The MoJ understood his arguments to be four-fold and as follows.

50. First, he said that the Tribunal made an error of law by not defining "control" in s.124 of the SCA. He argued that original wills were "held" not by the High Court, but in a "place of deposit" under s.4(1) of the PRA, with such place of deposit not being a court.

51. Secondly, he said that, because para 4 of Schedule 1 of PRA 1958 included records of the court within the definition of "public records" for the purpose of that Act, original wills must be public records for the purpose of that Act.

52. Thirdly, he said that, as a matter of fact, original wills had been transferred to a place of deposit, which must mean that they became as a "transferred public record" under s.15(4)(b) FOIA, and therefore subject to s.1(1) FOIA.

53. Fourthly, he said that the reference in s.124 of the SCA to "other documents" was a reference to records covered by FOIA, which he said was something which the Tribunal did not address.

54. All of Mr Holt's arguments were to be rejected. S.124 of the SCA allowed the judicial arm of government to determine where original wills were deposited. S.124 referred to part 1 of Schedule 2 to the CRA 2005, which empowered the Lord Chief Justice (a member of the judiciary) to "make or give designated directions". Wherever originals will were, had been or would be deposited arose from a judicial act. Original wills were controlled by the judiciary. The word "control" did not need to be defined. It was an ordinary word, and the effect of that word in s.124 was apparent from s.124 itself (and even more so when read next to part 1 of Schedule 2 to the CRA 2005).

That it was the judiciary who controlled original wills was also apparent from Rule 58 of the Non-Contentious Probate Rules 1987: “An original will or other document referred to in section 124 of the Act shall not be open to inspection if, in the opinion of a district judge or registrar, such inspection would be undesirable or otherwise inappropriate”. The MoJ’s position was that the “controller” of original wills under s.124 was also the “holder” of information for the purpose of s.1(1) FOIA. The High Court was the controller and holder. The Upper Tribunal’s decision in ***BUAV*** was instructive, at [23], where Upper Tribunal Judge Wikeley approved the reasoning in the first instance decision under appeal (with emphasis added):

> “[47] 'Hold' is an ordinary English word. In our judgment it is not used in some technical sense in the Act. We do not consider that it is appropriate to define its meaning by reference to concepts such as legal possession or bailment, or by using phrases taken from court rules concerning the obligation to give disclosure of documents in litigation. Sophisticated legal analysis of its meaning is not required or appropriate. However, it is necessary to observe that *'holding' is not a purely physical concept, and it has to be understood with the purpose of the Act in mind*. Section 3(2)(b) illustrates this: an authority cannot evade the requirements of the Act by having its information held on its behalf by some other person who is not a public authority. *Conversely, we consider that s.1 would not apply merely because information is contained in a document that happens to be physically on the authority's premises*: there must be an appropriate connection between the information and the authority, so that it can be properly said that the information is held by the authority ...”

55. The Upper Tribunal was not a fact-finding tribunal. However, supposing Mr Holt were correct to state that original wills were physically held by a public authority for the purpose of s.1(1) FOIA, that did not make good his argument. That public authority would hold the original wills only as a consequence of the judicial act under s.124 of the SCA which enabled the original wills to be deposited there. S.1(1) FOIA did not apply to the courts. Parliament did not intend s.1(1) to apply to the courts. Mr Holt’s argument that s.1(1) applied due the place of deposit of original wills was contrary to the purpose of FOIA. Notwithstanding a third-party having physical possession, the High Court continued to “control” original wills and continued to “hold” them.

56. Mr Holt's argument based on the definition of "public records" at para 4 of Schedule 1 of the PRA including records of the court was a bad one. The Supreme Court's judgment in ***Cape Holdings*** was instructive. The Supreme Court (Lady Hale giving judgment for the court) interpreted CPR 5.4C, which enabled a person who was not a party to proceedings to obtain from the Court "records of the court". At [23] Lady Hale held: "The "records of the court" must therefore refer to those documents and records which the court itself keeps for its own purposes. It cannot refer to every single document generated in connection with a case and filed, lodged or kept for the time being at court".

57. Mr Holt's argument failed for another reason. The effect of ss.8(1) and 3(1) and (4) of the PRA was that, for court records (other than records of the Supreme Court), the Lord Chancellor must make arrangements to select those which ought to be permanently preserved and for their transfer to the Public Record Office no later than 20 years after their creation. Original wills were not subject to those arrangements made by the Lord Chancellor (now a member of the executive), as they were subject to their own regime under s.124 of the SCA directed by the Lord Chief Justice (a member of the judiciary). Original wills are not "records of the court" for the purpose of the PRA.

58. As for s.15(4)(b) FOIA, Mr Holt's argument was untenable. That sub-section applied to "another place of deposit appointed by the Secretary of State under the Public Records Act 1958". The depositing of original wills was an act of the Lord Chief Justice, not the Secretary of State; therefore, an original will was not a "transferred public record" under s.15(4). To the extent that the Tribunal's decision accepted Mr Holt's submission that original wills were held in a place of deposit under the PRA at [24], that finding simply recorded de facto how original wills were stored. The Tribunal made a factual finding that original wills were stored at a place of deposit, rather than a legal finding that original wills fell within the PRA regime instead of the regime under s.124 of the SCA. Indeed, the Tribunal held at [27] "we accept the MoJ's position that a designated place of deposit under the PRA is the way in which the obligations in section 124 SCA to deposit and preserve original wills are fulfilled".

59. As for s.124 of the SCA referring to "other documents", it could be seen on the face of s.124 that those other documents were "under the control of the High Court". For the same reasons as set out above, those other documents were not subject to s.1(1) FOIA.

60. Finally, the MoJ noted that the previous version of s.124 of the SCA stated "as the Lord Chancellor may direct", where the current version stated "as may be provided for in directions given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005". The words were substituted by the CRA 2005, Schedule 2(2) para 5 (3 April 2006), i.e. when the functions of Lord Chancellor ceased to straddle all three arms of government and the judicial functions of that office were transferred to members of the judiciary. The amendment made it clear that the power to direct where original wills were deposited was now, and was previously, a judicial function.

61. The MoJ's position was that this appeal could and should be determined on legal submissions alone, as set out above, and in any event the Upper Tribunal was not a primary finder of fact. However, the MoJ's answers to the IC's questions corresponded with the legal position set out in Mr Moss's submissions: original wills were held under the authority of the High Court pursuant to s.124 of the SCA.

Analysis

62. As set out above, s.124 of the SCA provides (with emphasis added):

> "**Place for deposit of original wills and other documents.**
>
> All original wills and other documents *which are under the control of the High Court in the Principal Registry* or in any district probate registry shall be deposited and preserved in such places as may be provided for in directions given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005; and any wills or other documents so deposited shall, *subject to the control of the High Court and to probate rules*, be open to inspection."

63. Again as set out above, s.125 of the SCA, entitled "Copies of wills and grants", provides (again with emphasis added):

> "An office copy, or a sealed and certified copy, of any will or part of a will *open to inspection under section 124* or of any grant may, on payment of the fee prescribed by an order under section 92 of the Courts Act 2003 (fees), be obtained—
>
> (a) *from the registry in which in accordance with section 124 the will or documents relating to the grant are preserved*; or
>
> (b) where in accordance with that section the will or such documents are preserved in some place other than a registry, from the Principal Registry; or
>
> (c) subject to the approval of the Senior Registrar of the Family Division, from the Principal Registry in any case where the will was proved in or the grant was issued from a district probate registry."

64. Pursuant to s.124, rule 58 of the Non-Contentious Probate Rules 1987 (again as set out above) provides that

> "**Inspection of copies of original wills and other documents**
>
> 58. An original will or other document referred to in section 124 of the Act shall not be open to inspection if, in the opinion of a district judge or registrar, such inspection would be undesirable or otherwise inappropriate".

65. In my judgment the effect of these provisions is clear:

(1) all original wills and other documents are under the control of the High Court in the Principal Registry or in any district probate registry

(2) such documents (whether original wills or other documents) are to be deposited and preserved in such places as may be provided for in directions given in accordance with Part 1 of Schedule 2 to the CRA 2005

(3) such directions must be given in accordance with Part 1 of Schedule 2 to the CRA 2005 by the Lord Chief Justice as the head of the judiciary since Part 1 of Schedule 2 provides, so far as

> "*Interpretation*
> 1 In this Part "designated directions" means directions under another Act which are, by virtue of provision in that Act, to be made or given in accordance with this Part.
>
> *The process*
> 2 (1) It is for the Lord Chief Justice, or a judicial office holder nominated by the Lord Chief Justice with the agreement of the Lord Chancellor, to make or give designated directions".

(4) such documents (whether original wills or other documents) so deposited shall be open to inspection, but subject to the control of the High Court and to probate rules

(5) the fact of deposit elsewhere than in the Principal Registry or a district probate registry does not alter or lessen the control of the High Court because the other documents so deposited (whether original wills or other documents) are explicitly provided to be subject to the control of the High Court and to probate rules.

66. I agree with Mr Moss for the MoJ that the previous version of s.124 of the SCA stated "as the Lord Chancellor may direct", whereas the current version states "as may be provided for in directions given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005". Those words were substituted by the CRA 2005, Schedule 2(2) para 5 (3 April 2006), i.e. when the functions of Lord Chancellor ceased to straddle all three arms of government and the judicial functions of that office were transferred to members of the judiciary and in this particular instance to the Lord Chief Justice as head of the judiciary. The amendment made it clear that the power to direct where original wills were deposited remains still, as it was hitherto, a *judicial* function.

67. An individual's ability to obtain a copy of an original will under s.125 is subject to that will being available for inspection by virtue of s.124 which, as explicitly set out in s.124, is subject to the control of the High Court. That it is the judiciary which still controls access to original wills or other documents referred to in s.124 is confirmed by rule 58 of the Non-Contentious Probate Rule 1987.

68. As I have concluded above, the amendment to s.124 makes it clear that the power to direct where original wills are deposited remains still, as it was hitherto, a *judicial* function. That was the position under the previous versions of s.124, dating back to the relevant provisions of the Court of Probate Act 1857, the Supreme Court of Judicature (Consolidation) Justice Act 1925, the Administration of Justice Act 1928 and the PRA. I have set out all of these provisions in an Appendix to this decision.

69. Mr Holt argued that the "control" of the High Court in s.124 only extended to the inspection of original wills and other documents with the ambit of the section and that the High Court did not otherwise "control" original wills once deposited in a place of deposit. I do not accept that submission. The section is clear that such original wills and other documents remain subject to the control of the High Court. There is no warrant for construing the section as reading that such wills and documents are *only* subject to the control of the High Court for the purposes of inspection and not otherwise.

70. Mr Holt therefore sought to argue that original wills, once in a place of deposit, were held in custody under the PRA and accordingly were not held by the court. He relied on s.4(6) of the PRA to the effect that

> "Public records in the Public Record Office or other place of deposit appointed by the Secretary of State under this Act shall be temporarily returned at the request of the person by whom or department or office from which they were transferred."

71. He argued that this demonstrated the High Court no longer has control over the documents, because it has to make a request for them to be temporarily returned. I do not accept that proposition. S.4(6) does not mean that the High Court no longer has control over original wills. It does not effect a repeal of or amendment to s.124 either by express words or by necessary implication. On the contrary, original wills (and other documents within the ambit of the section) are held in a place of deposit in accordance with s.124 of the SCA, which expressly makes it clear that inspection of original wills remains "subject to the control of the High Court and to probate rules". S.4(6) is an administrative provision which provides that public records (whether in the Public

Record Office or other place of deposit) are to be temporarily returned at the request of the person by whom or department or office from which they were transferred.

72. I also agree with both Mr Whelan and Mr Moss that the "controller" of an original will under s.124 is also the "holder" of the information for the purpose of s.1(1) of FOIA. Regardless of the physical location of the original will or other document referred to in s.124, whether in the Principal Registry or in a district probate registry or in another place of deposit, the High Court is both the controller and the holder of the document. In that event, the "appropriate connection" between the original will and HMCTS is not adequate for it to be "properly said that the information is held by the authority". In that respect I agree with Upper Tribunal Judge Wikeley's approval of the reasoning of the First-tier Tribunal in ***BUAV*** where he said

> "23. In a passage which was central to its conclusions the tribunal then reasoned as follows:
>
> > "[47] *'Hold' is an ordinary English word.* In our judgment it is not used in some technical sense in the Act. We do not consider that it is appropriate to define its meaning by reference to concepts such as legal possession or bailment, or by using phrases taken from court rules concerning the obligation to give disclosure of documents in litigation. *Sophisticated legal analysis of its meaning is not required or appropriate. However, it is necessary to observe that 'holding' is not a purely physical concept, and it has to be understood with the purpose of the Act in mind.* Section 3(2)(b) illustrates this: an authority cannot evade the requirements of the Act by having its information held on its behalf by some other person who is not a public authority. *Conversely, we consider that s.1 would not apply merely because information is contained in a document that happens to be physically on the authority's premises: there must be an appropriate connection between the information and the authority, so that it can be properly said that the information is held by the authority.* For example, an employee of the authority may have his own personal information on a document in his pocket while at work, or in the drawer of his office desk: that does not mean that the information is held by the authority. A Government Minister might bring some constituency papers into his departmental office: that does not mean that his department holds the information contained in his constituency papers."

73. Having cited the reasoning of the decision at first instance, he continued

> "27. I have included the lengthy paragraph [47] of the tribunal's decision in its entirety above (at paragraph 23) for one simple reason. I regard the approach set out there to the question of whether a public authority "holds" information as an accurate statement of the law.
>
> 28. The test that FOIA uses is whether the public authority "holds" the requested information. The choice of statutory language must be significant. The test is not whether the public authority "controls" or "possesses" or "owns" the information in question; simply whether it "holds" it (as was observed by the information tribunal in *Quinn v Information Commissioner* [(EA/2005/0010) at [50]). "Hold", as the present tribunal also noted, is an ordinary English word and is not used in some technical sense in the Act. That construction is also supported by one of the leading texts, Information Rights: Law and Practice by Philip Coppel QC (3rd edn, Hart Publishing, 2010), which observes that FOIA "has avoided the technicalities associated with the law of disclosure, which has conventionally drawn a distinction between a document in the power, custody or possession of a person" (p.339, para. 9-009). The tribunal's comments are consistent with the approach taken by Lord Reid in *Brutus v Cozens* [1973] AC 854 (at 861), namely that "The meaning of an ordinary word of the English language is not a question of law. The proper construction of a statute is a question of law."
>
> 29. More recently Lord Hoffmann, in explaining the significance of those dicta from *Brutus v Cozens*, noted that "many words or phrases are linguistically irreducible in the sense that any attempt to elucidate a sentence by replacing them with synonyms will change rather than explain its meaning" (*Moyna v. Secretary of State for Work and Pensions* [2003] UKHL 44 at paragraph 23). The tribunal in the present case was plainly alive to that very real danger. It (quite properly) did not seek to re-define or replace the word "hold" in any way. True, the tribunal ruled that "'holding' is not a purely physical concept", but that was necessary on a purposive construction of the legislation, bearing in mind the clear terms of section 3(2) of FOIA. Furthermore I do not regard the tribunal's reference to the need for "an appropriate connection between the information and the authority" as a misguided attempt to replace the statutory language with its own "rather nebulous" test (as Mr Pitt-Payne put it). On the contrary, the tribunal was simply pointing to the need for the word "hold" to be understood as conveying something more than the simple

> underlying physical concept, given the intent behind section 3(2).”

74. S.1 FOIA provides a general right of access to information held by public authorities. S.3(1)(a)(i) FOIA defines a “public authority” to mean

> “[…] any body which, any other person who, or the holder of any office which – (i) is listed in Schedule 1 […]”.

Part 1 of Schedule 1 includes in its list of public authorities “[a]ny government department” other than the CMA and Ofgem.

75. By contrast, the High Court is not listed in Part 1 of Schedule 1 and is not therefore a public authority for the purpose of FOIA. Courts and tribunals are neither listed in Schedule 1 nor designated under s.5. It is apparent from the list at Schedule 1 that “public authority” encompasses the executive and legislative arms of government, but not the judicial arm. In that respect it is worthy of note that para. 1ZA of Schedule 1 refers to “The Competition and Markets Authority, in respect of information held *otherwise than as a tribunal*”. Lord Wilson was therefore correct to say in ***Kennedy v Charity Commission*** [2014] UKSC 20; [2015] AC 455 at [175] (albeit in a dissenting judgment, but not materially so for present purposes)

> “A court is not a public authority for the purposes of [FOIA].”

76. In short, original wills and other documents within the ambit of s.124 remain under the control of the High Court and not merely for the purposes of inspection. That means that they are not subject to FOIA because they are, and continue to be, held by a court as part of its judicial function.

77. The high watermark of Mr Holt’s argument is encapsulated in paragraph 48 of his reply:

> “For authorities not subject to FOIA, such as courts, once the records have been transferred to the National Archives or a Place of Deposit they become subject to the FOIA access regime”.

78. I reject that argument. If the information is held on behalf of the High Court, s.1(1) FOIA does not apply in light of the fact that the High Court is not subject to FOIA. Mr Holt's argument that s.1(1) applies due the place of deposit of original wills is contrary to the purpose of FOIA. Notwithstanding a third party having physical possession, it is the High Court which continues to control original wills and which continues to hold them.

79. Mr Holt additionally sought to argue that, because paragraph 4 of Schedule 1 of PRA included "records of the court" within the definition of "public records" for the purpose of that Act, original wills must be public records for the purpose of that Act.

80. As I have set out in paragraph 23 above, paragraph 4 of Schedule 1 of the PRA provides, so far as material

> "(1) Subject to the provisions of this paragraph, records of the following descriptions shall be public records for the purposes of this Act: -
>
> (za) records of the Supreme Court;
>
> (a) records of, or held in any department of, the Senior Courts (including any court held under a commission of assize)
>
> …
>
> (3) In this paragraph "records" includes records of any proceedings in the court or tribunal in question and includes rolls, writs, books, decrees, bills, warrants and accounts of, or in the custody of, the court or tribunal in question".

81. Both Mr Whelan and Mr Moss submitted that Mr Holt's interpretation of the engagement between the SCA and the PRA in relation to the definition of "records of the court" had no basis in law. In that respect they both relied on what Lady Hale had said in the Supreme Court in relation to CPR 5.4C in ***Cape Holdings*** at [23] to the effect that the term "records of the court" must refer to the documents and records "the court itself keeps for its own purposes. It cannot refer to every single document generated in connection with a case and filed, lodged or kept for the time being at court". They argued that the fact that an original will did not fall within that definition

supported the conclusion that it was not a "public record" under s.1(1)(a) of the PRA. That interpretation was further supported by the fact that paragraph 4(3) to Schedule 1 of the PRA did not mention wills specifically (or evidence generally) in its definition of "records".

82. In determining that matter, it seems to me that it is appropriate to set out what Lady Hale said in ***Cape Holdings*** in somewhat more detail to see the precise context in which she made her remarks. I agree with Mr Holt that the question arose in somewhat different circumstances in that in that case the applicant, who had not been a party to concluded proceedings, applied on behalf of a group which supported victims of asbestos-related diseases for access to all documents used or disclosed at or for the trial, including the trial bundles and trial transcripts, on the basis that they were "records of the court" within CPR r 5.4C(2). The master granted the application, but the Court of Appeal allowed the company's appeal in part, holding that "records of the court" did not include trial bundles or trial transcripts, but that the court had an inherent jurisdiction to permit a non-party to obtain some of the documents which a trial bundle usually contained, including witness statements and skeleton arguments. Accordingly, the court granted the applicant access to a number of documents under its inherent jurisdiction. When the matter came before the Supreme Court, the cross-appeal by the applicant was dismissed on the basis that "records of the court" in CPR r 5.4C(2) did not refer to every single document generated in connection with a case and filed, lodged or kept for the time being at court, but referred to those documents and records which the court itself kept for its own purposes, although it could not depend upon how much of the material lodged at court happened still to be there when the request was made. The Court of Appeal had not therefore erred in failing to make a wider order under rule 5.4C(2).

83. It was in that context that Lady Hale stated that

> "*CPR r 5.4C*
> 16 Rule 5.4C is headed "Supply of documents to a non-party from court records". For our purposes, the following provisions are relevant:

> "(1) The general rule is that a person who is not a party to proceedings may obtain from the court records a copy of
>
> (a) a statement of case, but not any documents led with or attached to the statement of case, or intended by the party whose statement it is to be served with it;
>
> (b) a judgment or order given or made in public (whether made at a hearing or without a hearing) …
>
> (2) A non-party may, if the court gives permission, obtain from the records of the court a copy of any other document led by a party, or communication between the court and a party or another person".

17 By rule 2.3(1), "statement of case"

> "(a) means a claim form, particulars of claim where these are not included in a claim form, defence, Part 20claim, or reply to defence; and
>
> (b) includes any further information in relation to them voluntarily or by court order …".

18 There are thus certain documents to which a non-party has a right of access (subject to the various caveats set out in the rule which need not concern us) and what looks at first sight like a very broad power to allow a non-party to obtain copies of "any other document filed by a party, or communication between the court and a party or other person". Hence the Forum argues that the test is filing. CPR r 2.3 provides that "filing", in relation to a document, means delivering it, by post or otherwise, to the court office. So, it is argued, any document which has been delivered to the court office has been filed and the court may give permission for a non-party to obtain a copy.

19 There are two problems with this argument. First, the fact that filing is to be achieved in a particular way does not mean that every document which reaches court in that same way has been filed: the famous fallacy of the undistributed middle. The second is that the copy is to be obtained "from the records of the court". The Civil Procedure Rules do not define "the records of the court". They do not even provide what the records of the court are to contain. Nor, so far as we are aware, does any other legislation.

20 The Public Records Act 1958 is not much help. It only tells us which records are public records and what is to be done with them. The person responsible for public records must make

arrangements to select those which ought to be permanently preserved and for their transfer to the Public Record Office no later than 20 years after their creation (section 3). The Lord Chancellor is the person responsible for many court records, including those of the High Court and Court of Appeal (section 8). Section 10 and Schedule 1 define what is meant by a public record. Paragraph 4 of Schedule 1 includes the records of or held in the Senior Courts (i.e. the High Court and Court of Appeal) in the list of records of courts and tribunals which are public records. We have been shown a document prepared by Her Majesty's Courts and Tribunals Service and the Ministry of Justice, headed Record Retention and Disposition Schedule. This lists how long various categories of files and other records are to be kept. Queen's Bench Division files, for example, are to be destroyed after seven years. Trial bundles are to be destroyed if not collected by the parties at the end of the hearing or on a date agreed with the court. This is of no help in telling us what the court files should contain.

21 We have been shown various historical sources which indicate what the records of certain courts may from time to time have contained, but it is clear that practice has varied. Some indication of what the court records may currently contain is given by CPR Practice Direction 5A, paragraph 4.2A of which lists the documents which a party may obtain from the records of the court unless the court orders otherwise. These include "a claim form or other statement of case together with any documents filed with or attached to or intended by the claimant to be served with such claim form"; "an acknowledgement of service together with any documents filed with or attached to or intended by the party acknowledging service to be served with such acknowledgement of service"; "an application notice", with two exceptions, and "any written evidence filed in relation to an application", with the same two exceptions; "a judgment or order made in public (whether made at a hearing or without a hearing)"; and "a list of documents". It does not include witness statements for trial, experts' reports for trial, transcripts of hearings, or trial bundles.

22 The essence of a record is that it is something which is kept. It is a permanent or long-term record of what has happened. The institution or person whose record it is will decide which materials need to be kept for the purposes of that institution or person. Practice may vary over time depending on the needs of the institution. What the court system may have found it necessary or desirable to keep in the olden days may be different from what it now finds it necessary or desirable to keep. Thus one would expect that the court record of any civil case would include, at the very least, the claim form and the judgments or orders which resulted from that claim. One would not expect that it would

> contain all the evidence which had been put before the court. The court itself would have no need for that, although the parties might. Such expectations are confirmed by the list in Practice Direction 5A.
>
> 23 The "records of the court" must therefore refer to those documents and records which the court itself keeps for its own purposes. It cannot refer to every single document generated in connection with a case and filed, lodged or kept for the time being at court. It cannot depend upon how much of the material lodged at court happens still to be there when the request is made.
>
> 24 However, current practice in relation to what is kept in the records of the court cannot determine the scope of the court's power to order access to case materials in particular cases. The purposes for which court records are kept are completely different from the purposes for which non-parties may properly be given access to court documents. The principle of open justice is completely distinct from the practical requirements of running a justice system. What is required for each may change over time, but the reasons why records are kept and the reasons why access may be granted are completely different from one another."

84. When the matter was originally argued before me, I was doubtful that Mr Whelan and Mr Moss were right on this point. In the first place, why was not an original will a document or record which "the court itself keeps for its own purposes", as witness the terms of s.124? Secondly, paragraph 4(3) to Schedule 1 of the PRA is not an exhaustive provision since its states

> "(3) In this paragraph "records" *includes* records of any proceedings in the court or tribunal in question and includes rolls, writs, books, decrees, bills, warrants and accounts of, or in the custody of, the court or tribunal in question",

thus leaving open the possibility that an original will could fall within the definition of "records of the court".

85. On reflection, however, I have decided that Mr Whelan and Mr Moss are correct and that an original will is not a public record under s.1(1)(a) of the PRA. That interpretation was further supported by the fact that paragraph 4(3) to Schedule 1 of

the PRA did not mention wills specifically (or evidence generally) in its definition of "records".

86. Whilst paragraph 4(3) to Schedule 1 is not exhaustive, it is in my view significant that the partial definition of records includes "records of any proceedings in the court or tribunal in question" and includes "rolls, writs, books, decrees, bills, warrants and accounts" of, or in the custody of, the court or tribunal in question. An original will is not akin to either of those categories. Moreover, when Lady Hale was considering in ***Cape Holdings*** what were "the records of the court", it is in my judgment significant that she referred to documents relating to *litigation*, as when she said at [22] that

> "Thus one would expect that the court record of any civil case would include, at the very least, the claim form and the judgments or orders which resulted from that claim. One would not expect that it would contain all the evidence which had been put before the court."

It is in that context that she went on to say at [23] that

> "The "records of the court" must therefore refer to those documents and records which the court itself keeps for its own purposes. It cannot refer to every single document generated in connection with a case and filed, lodged or kept for the time being at court. It cannot depend upon how much of the material lodged at court happens still to be there when the request is made."

87. Thus the "records of the court" for the purposes of the PRA must refer to those documents and records relating to litigation which the court itself keeps for its own purposes. These will include a claim form or other statement of case together with any documents filed with or attached to or intended by the claimant to be served with such claim form, an acknowledgement of service together with any documents filed with or attached to or intended by the party acknowledging service to be served with such acknowledgement of service, an application notice (with minor exceptions) and any written evidence filed in relation to an application (with the same two exceptions), a judgment or order made in public (whether made at a hearing or without a hearing) and a list of documents. They may include other documents, but they do not include witness statements for trial, experts' reports for trial, transcripts of hearings, or trial

bundles. Nor do they include original wills, which are not generated as a result of any litigation process.

88. Whilst therefore I agree with Mr Holt that the question which Lady Hale was considering in ***Cape Holdings*** arose in somewhat different circumstances, I do not accept his proposition that what she said about the meaning of "the records of the court" has no bearing on this case.

89. Even if that is wrong and original wills are part of the records of the court for the purposes of the PRA (and I note in passing that the GLD itself referred to original wills as court records in answer to question 3above), that does not make them subject to FOIA for the reasons which I have set out above. As the Tribunal correctly stated in its judgment at [26]

> "We agree with the Appellant that FOIA has had a significant effect on records held under the PRA and places of deposit. However, this is only where the information held in the records is itself covered by FOIA. If the records are not held by a public authority that is subject to FOIA, they are not brought into the freedom of information regime simply by the fact they are held under the PRA in a place of deposit."

90. Mr Holt finally sought to argue that, as a matter of fact, original wills had been transferred to a place of deposit, which must mean that they became as a "transferred public record" under s.15(4)(b) FOIA and therefore subject to s.1(1) FOIA.

91. The argument based on s.15(4)(b) FOIA falls at the outset. That sub-section applies (with emphasis added) to

> "another place of deposit *appointed by the Secretary of State under the Public Records Act 1958*".

92. However, as is clear from the terms of s.124 of the SCA, the depositing of original wills is an act of the Lord Chief Justice (and previously the Lord Chancellor as then head of the judiciary), not of the Secretary of State. Thus an original will is not a

"transferred public record" under s.15(4) and that provision is not engaged in the case of an original will.

93. I also agree with Mr Moss that Mr Holt's argument fails for another reason, even assuming that an original will is a court record for the purposes of the PRA. The effect of ss. 3(1) and (4) and 8(1) of the PRA is that, for court records (other than records of the Supreme Court), the Lord Chancellor must make arrangements to select those which ought to be permanently preserved and for their transfer to the Public Record Office no later than 20 years after their creation.

94. Original wills are not subject to those arrangements made by the Lord Chancellor (then both the head of the judiciary as well as a member of the executive, but since the CRA 2005 only a member of the executive) since they are subject to their own regime under s.124 of the SCA as directed by the Lord Chief Justice (now the head of the judiciary).

95. The Tribunal in its decision at [24] accepted Mr Holt's submission that original wills were held in a place of deposit under the PRA, but that was a factual finding which recorded how in actuality original wills were stored. In other words, the Tribunal made a factual finding that original wills were stored at a place of deposit, but not a legal finding that original wills fell within the PRA regime instead of the regime under s.124 of the SCA, still less that they fell within the ambit of FOIA.

96. On the contrary it stated that

> "24. The Appellant referred us to various documents which show how original wills are held in a place of deposit under the PRA. Having considered these documents and his submissions, we agree that this is how original wills are currently held. However, this does not automatically mean that all documents held under the PRA are subject to FOIA.
>
> …
>
> 27. We therefore find that original wills can be held in a place of deposit under the PRA without this meaning they are subject to disclosure under FOIA. There is no issue about whether the SCA

> or PRA/FOIA takes precedence. Instead, we accept the MoJ's position that a designated place of deposit under the PRA is the way in which the obligations in section 124 SCA to deposit and preserve original wills are fulfilled. As explained by the MoJ in their response to the appeal, an original will has to be provided to the Probate Registry as part of the process of applying for probate. This is the reason that original wills are held and preserved. These documents still remain under the overall control of the High Court. This means that they are not subject to FOIA, because they are held by a court as part of its judicial function."

97. Finally, as to Mr Holt's argument that "other documents" referred to in s.124 of the SCA is a reference to records covered by FOIA, that argument fails for the same reason as does his argument based on original wills under s.124. As I have explained above, those other documents which are not original wills are also under the control of the High Court to the same extent as are original wills. The argument about the meaning of "other documents" in s.124 does not therefore advance Mr Holt's case.

98. As to the subordinate arguments adduced by Mr Holt, I agree with the conclusions of the Tribunal as set out in its decision at [29-32]

99. Mr Holt submitted that it is the MoJ which has ultimate control over original wills, as shown by the recent consultation document about changing law and policy to allow destruction of original wills after a certain period of time and that this demonstrated that original wills were under the ultimate control of the MoJ rather than the High Court. The consultation on "Storage and retention of original will documents" was published on 15 December 2023 and was presented to Parliament by the Lord Chancellor and Secretary of State for Justice. I agree with the Tribunal that this consultation does not undermine the position that original wills are held by the courts. Indeed the Ministerial Foreword stated that "At the moment there are no limits to how long courts hold these original will documents and they are held long past the period when a challenge might be brought". The consultation was on government proposals to change the length of time for which original wills are held by the courts, primarily in order to save public money. Given that the MoJ holds overall responsibility for the justice system proposals on reforming the work of the courts fall within its remit. That does not mean that the

original wills themselves are held by the MoJ as a public authority rather than by the High Court. For the sake of completeness, I should add that the MoJ response to the consultation, which was issued on 8 January 2025, concluded that

> "61. The Government has reflected on this issue and concluded that it should not proceed with any reform at this stage that involves the destruction of original wills or other critical probate documents.
>
> …
>
> 119. There was strong opposition to any destruction of original wills or other documents. This was for a variety of reasons in terms of both a national historical resource and also for individual legal challenges. There was also a strong emotional response to the consultation, typified in the comments received on the unique nature of wills as a record of a living person's wishes for the distribution of their assets.
>
> 120. The Government accepts the compelling case that has been made by respondents and recognises the equality aspects and has therefore determined not to proceed with any reforms that involve the destruction of original wills and supporting documents currently designated for permanent preservation."

100. Secondly, Mr Holt argued that the information contained in original wills is used for commercial purposes and not purely as court records. He points to a contract between the MoJ and the private company Smee & Ford, which provides access to electronic records under a contract for the purposes of beneficiary notification of charities. I agree with the Tribunal that this does not mean that the MoJ holds the information as a public authority. Moreover, that contract does not provide a right of access to an *original* will such as was requested in this case; rather it relates to access to *electronic records* of wills, which is a different issue. Mr Holt explained that for wills after 2021 that might be a scanned copy of an original will, but otherwise it would be a different registered/office copy. It is clear that the original wills themselves are provided to a court during the probate process and are held on that basis. That is what the request in this case was for and that is what this appeal is about, not registered/office copies of wills or other scanned/electronic records.

101. Thirdly, Mr Holt submitted that probate records are held by the MoJ for the purposes of FOIA by its own admission in previous decision notices of the IC. He provided the Tribunal with information about two previous decisions of the IC concerning requests for probate records. In both cases the MoJ appears to have accepted that FOIA applied, but refused disclosure on the basis of exemptions. One request was for copies of wills for members of the Royal Family, refused under s.44 FOIA as the wills were sealed. The Tribunal noted that that involved a request for copies rather than for original wills. The other request was for all probate documents sent to a probate registry for a particular will, refused under s.32 FOIA (court records). That would presumably have included the original will. The Tribunal found no assistance in those decisions, which were in any event not binding on it. It stated that it was unclear why the MoJ did not take the same position in those complaints to the IC as in this appeal, but noted the MoJ's point that a public authority may decide to rely on different legal arguments to resist disclosure in different proceedings. Mr Holt also raised a point about a fellow genealogist having been sent a copy of an original will under FOIA. Again, that was a decision by an individual probate registry which was not binding on the Tribunal.

102. I have determined this case on legal submissions alone and in any event the Upper Tribunal is not a primary finder of fact. However, I note that the MoJ's answers to the IC's questions correspond with the legal position which I have set out above. In short, original wills are held under the authority of the High Court pursuant to s.124 of the SCA.

Conclusion

103. I am therefore satisfied that, pursuant to s.3(2)(a) FOIA, the requested information was held by HMCTS on behalf of the High Court. If the information is held on behalf of the High Court, s.1(1) FOIA does not apply in light of the fact that the High Court is not subject to FOIA. Mr Holt's argument that s.1(1) applies due the place of deposit of original wills is contrary to the purpose of FOIA. Notwithstanding a third party having physical possession of them (in the NPRC), it is the High Court which continues to control original wills pursuant to s.124 of the SCA and which continues to hold them for the purposes of FOIA, so that there is no appropriate connection between the

information and the MoJ, such that it can be properly said that the information is held by the MoJ.

104. It seems to me that the position is correctly stated in Coppel, Information Rights, 6th ed, 2003, at 42-002 (with footnotes omitted, but with emphasis added) to the effect that

> "**Courts as public authorities**
> Courts, tribunals and the like are not public authorities within the meaning of the FOIA and the EIR. As the right of access conferred by FOIA and by the EIR is a right in respect of recorded information held by a 'public authority,' there is no right of access under FOIA or the EIR to information held by courts, tribunals and the like. There is, however, a distinction between a court or tribunal – that is to say, those exercising judicial power of the state – and the organisation providing administrative support to those exercising judicial power of the state (e.g. HM Courts Service). Documents for use in proceedings before a court, tribunal or like body will typically be filed with and be held by the organisation providing administrative support. Normally, each supporting organisation is a 'public authority' within the meaning of FOIA and the EIR. Although the right of access conferred by FOIA and by the EIR is a right to information 'held' by a public authority, FOIA provides that:
>
> > information is held by a public authority if it is held by the authority, otherwise than on behalf of another person...
>
> Since the coming into force of FOIA, the assumption has been that documents filed in proceedings or generated by those acting in a judicial capacity (e.g. judgments and orders) are held by supporting organisations (such as HM Court Service) on behalf of the judicial entity. As such, although the supporting organisations are 'public authorities' and although typically documents filed in proceedings or generated by those acting in a judicial capacity will be in the custody of the supporting organisation, those documents will not by 'held' by that supporting organisation, and so those documents will be outside of the reach of FOIA. To the extent that court documents are 'held' by a supporting organisation, s 32(1) of FOIA provides an exemption for court records etc. The scope of this exemption is considered elsewhere in this work, but for present purposes it is enough to observe that engagement of the exemption is purely class-based (i.e. it does not require a likelihood of harm to a protected interest) and it is absolute (i.e. it is not subject to a public interest balance). *It would seem that the policy objective*

> *of taking documents filed in proceedings or generated by those acting in a judicial capacity outside the access right conferred by FOIA (whether on the basis that those documents are not 'held' by a public authority or because if they are so held they are exempted by s 32) is to leave disclosure of those documents within the control of the courts themselves. This arrangement is not indicative of a policy intention that such documents should never be made publicly accessible. Rather, the intention is that disclosure of such documents is to be addressed through different, more specific schemes. These schemes are better adapted than FOIA to ensuring that the conduct of proceedings is not disturbed by requests for access to court documents. That such additional regimes may co-exist with FOIA is recognised by section 78 of FOIA*."

105. For these reasons, and notwithstanding Mr Holt's ingenious and beguiling submissions, the appeal is dismissed.

Mark West
Judge of the Upper Tribunal
Authorised for issue on 19 February 2026

APPENDIX

Court of Probate Act 1857

> "LII. Every District Registrar shall file and preserve all original Wills of which Probate or Letters of Administration with the Will annexed may be granted by him, in the Public Registry of the District, subject to such Regulations as the Judge of the Court of Probate may from Time to Time make in relation to the due Preservation thereof, and the convenient Inspection of the same.
>
> …
>
> LXVI. There shall be One Place of Deposit under the Control of the Court of Probate, at such Place in London or Middlesex as Her Majesty may by Order in Council direct, in which all the original Wills brought into the Court or of which Probate or Administration with the Will annexed is granted under this Act in the Principal Registry thereof, and Copies of all Wills the Originals whereof are to be preserved in the District Registries, and such other Documents as the Court may direct, shall be deposited and preserved, and may be inspected under the

> Control of the Court and subject to the Rules and Orders under this Act.
>
> …
>
> LXXXIX. The Acting Judge and Registrar of every Court, and other Person now having Jurisdiction to grant Probate or Administration, and every Person having the Custody of the Documents and Papers of or belonging to such Court or Person, shall, upon receiving Requisition for that Purpose, under the Seal of the Court of Probate, from Registrar, and at the Time and in the Manner mentioned in such Requisition, transmit to the Court of Probate, or to such other Place as in such Requisition shall be specified, all Records, Wills, Grants, Probates, Letters of Administration, Administration Bonds, Notes of Administration, Court Books, Calendars, Deeds, Processes, Acts, Proceedings, Writs, Documents, and every other Instrument relating exclusively or principally to Matters or Causes Testamentary, to be deposited and arranged in the Registry of each District or in the Principal Registry, as the Case may require so as to be easy of Reference, under the Control and Direction of the Court".

Supreme Court of Judicature (Consolidation) Justice Act 1925

> "170. There shall be one place of deposit under the control of the High Court, at such place in the County of London as His Majesty may by Order in Council direct, in which—
>
> (a) all original wills brought into the High Court or of which probate or administration with the will annexed has been granted in the principal probate registry;
>
> (b) copies of all wills the originals of which are to be preserved in any district registry; and
>
> (c) such other documents as the High Court may direct,
>
> shall be deposited and preserved, and in which, subject to the control of the High Court and to probate rules and orders, they may be inspected".

Administration of Justice Act 1928

> "11. The following shall be substituted for section one hundred and seventy of the principal Act (which provides that there shall be one place for the deposit of original wills and certain other documents):—

> "170. All original wills and other documents which are under the control of the High Court either in the principal probate registry of in any district probate registry shall be deposited and preserved in such places as the President of the Probate Division, with the consent of the Lord Chancellor, may direct, and any wills or other documents so deposited shall, subject to the control of the High Court and the provisions of probate rules and orders, be open to inspection.""

Public Records Act 1958

> "8(2) The power of the President of the Probate Division of the High Court under section one hundred and seventy of the Supreme Court of Judicature (Consolidation) Act 1925, to direct where the wills and other documents mentioned in that section are to be deposited and preserved (exercisable with the consent of the Lord Chancellor) shall be transferred to the Lord Chancellor".