

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 December 2012

Public Authority: Land Registry
Address: Head Office
Trafalgar House
1 Bedford Park
Croydon
CR0 2AQ

Decision (including any steps ordered)

32. The complainant has requested all information held by the Land Registry in relation to a specific land title. The Commissioner's decision is that the Land Registry has correctly applied the exemption at section 21 of the FOIA to the information it holds as that information is reasonably accessible to the applicant by other means. The Commissioner has also decided that, on the balance of probabilities, the Land Registry does not hold the 1996 file. The Commissioner does not require any steps to be taken.

Request and response

33. On 4 December 2011 the complainant made the following request for information:

"I request a copy of all information stored both electronically and paper based including copies of any correspondence relating to Title WA 797523 a property known as Blaenwinllan, Blaen-winllan or Blaen-gwenllan located on ordnance survey map reference SN4439SW administrative area of Carmarthenshire."

34. The Land Registry responded on 12 December 2011 and confirmed holding the information but refused to provide it citing the exemption at section 21 of the FOIA as the information is available under section 66 of the Land Registration Act 2002 and the Land Registration Rules 2003. It stated that copies of letters and documents in the files could be

obtained from the Wales office by completing form OC2 with a fee of £12 per document. It also stated that it had been informed by the Wales office that they are experiencing some difficulty in locating the 1996 file.

35. The complainant requested a review on 12 December 2011 stating that the information is not accessible as it appears to have been mislaid and that he is requesting information which would not be covered by completing form OC2 but is covered by FOIA requests.
36. An internal review response was provided by the Land Registry on 4 January 2012. It confirmed that apart from one item, that being a copy of a 'Customer Contact Centre Enquiry Referral Form' dated 14 December 2010 which it then disclosed, the requested information is available under the procedures set out in Section 66 of the Land Registration Act 2002 and is therefore exempt from the provisions of the FOIA. The Land Registry also informed the complainant that one of the files related to the requested title number appears to be missing and apologised for any inconvenience that was causing.
37. The complainant repeated his request on 17 and 22 May 2012 as he believed that the missing file from 1996 had been found. The Land Registry replied on 18, 21 and 25 May 2012 maintaining its original position and stating that it had been informed by the Wales office that there is nothing more they can do for the complainant. It also informed the complainant of his right to refer to the Independent Complaints Reviewer for the Land Registry if he had a complaint about the way the Land Registry has responded to his enquiries, that he could commence proceedings for Judicial Review if he had a complaint about the mapping of his title plan or compilation of the register and informed him of the internal complaints procedure and that the Ombudsman would usually only investigate complaints after the internal complaints procedure has been followed.

Background

38. As background to his request and complaint, the complainant stated that it is his contention that the Land Registry has made an error and granted his neighbour title to land owned by him and that despite having title deeds he cannot prove the error because the file granting title has been misplaced. He proposed that the untruths stated by the Land Registry and the refusal to supply any documentation held is a further attempt to cover up their error.
39. The Land Registry explained that prior to making his information request, the complainant had been in correspondence with the Wales office from October 2011 disputing the registration of the extent of land

in his title and that of the adjoining title. It had been made clear to him that the title plans produced for both titles at the time of registration were not incorrect and although he had been informed that the Wales office was experiencing difficulty in locating the 1996 file this had no bearing on the decision.

40. The Land Registry further explained that the complainant then contacted the Land Registry's Non-Executive Chair and lodged a complaint with the Parliamentary Ombudsman but both were unsuccessful. There was no evidence that the Land Registry had acted incorrectly. After failing to resolve the matter under these two options, he was informed of the remaining opportunities available to him to either challenge the registration decision by judicial review or pursue the complaint about the missing file through the Land Registry's own complaints process and contact the Land Registry's Independent Complaints Reviewer.

Scope of the case

10. The complainant wrote to the Commissioner on 24 June 2012 to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider the following three complaints:
 - Failure to safeguard the public record, specifically the file relating to Land Registry Title WA 797523.
 - Failure to supply and disclose requested documents when lawfully requested under the FOIA.
 - To attempt to deceive and mislead by stating untruths.
11. During the investigation, the complainant also stated that he suspects land fraud and believes the Land Registry have prejudiced the prevention and detection of crime of the administration of justice and that it is in the public interest to determine how the records have been lost.
12. The Commissioner has informed the complainant that he is restricted to investigating breaches of the legislation it regulates (namely the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Data Protection Act 1998, the Privacy and Electronic Communications Regulations and the INSPIRE Regulations 2009) and therefore cannot look into the complaint that the Land Registry has attempted to deceive or that or that it has failed to safeguard the public record. The Commissioner suggested to the

complainant that he direct such complaints to the Land Registry itself in the first instance.

13. The Commissioner has considered the Land Registry's application of section 21 of the FOIA and whether any information is held in relation to the 1996 file.

Reasons for decision

Section 21 - Information accessible to the applicant by other means

14. Section 21(1) of the FOIA can be applied when all the relevant requested information is reasonably accessible to the applicant. It is an absolute exemption and so there is no public interest test.
15. The Information Commissioner's guidance on section 21 explains that charges may be made in circumstances where there is a statutory scheme under which information is provided for a fee, or where the information is provided under the public authority's publication scheme and the scheme indicates that a charge may be made.
16. In its correspondence with the Information Commissioner, the Land Registry explained that under section 66 of the Land registration Act 2002 "any person may inspect and make copies of or any part of registers, title plans and any documents which are referred to in the register or any other document kept by the registrar relating to an application". It stated that the Land Registration Rules 2003 specify the forms individuals should use and in this case, a form OC2 should be used accompanied by the appropriate fee which is £11 for a copy of each document/letter. It stated that there is a statutory process for obtaining the requested information set out in the Land Registry's legislation and it is therefore exempt from the FOIA provisions.
17. The Commissioner considers that the phrase 'reasonably accessible' under section 21 refers to whether the applicant can reasonably obtain all the information to which section 21 has been applied and does not refer to whether the applicant can access a reasonable proportion of the information to which the exemption has been applied. Therefore, he asked the Land Registry whether there was any information held within the scope of the request that would not be available by completing the form OC2. The Land Registry confirmed that the only information held which would not be available under section 66 of the Land Registration Act 2002 is the 'Customer Contact Centre Enquiry Referral Form' dated 14 December 2010 which was disclosed at internal review.

18. The Information Commissioner has noted that in its initial response the Land Registry referred the complainant to Public Guide 1 which explains what information is available and how to obtain it and Public Guide 15 which explains about the FOIA, both of which make it clear as to the fees which will be charged.
19. The Information Commissioner has concluded that the information the complainant requested which has not been disclosed is reasonably accessible via other means. The requested information can be obtained electronically or in hard copy on payment of a reasonable fee.

Section 1 – Is the 1996 file held?

20. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
21. The Commissioner considers that the normal standard of proof to apply in determining whether a public authority holds any requested information is the civil standard of the balance of probabilities.
22. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held as well as any arguments or evidence that information is held put forward by the complainant.
23. As stated earlier, the complainant believes that the Land Registry's refusal to supply the requested information is an attempt to cover up their error. In correspondence to the Land Registry, which the complainant provided to the Commissioner, he quoted the following paragraphs from the Parliamentary Ombudsman which he stated led him to believe the missing file had been located;

"The basis for the review has been the twelve documents you sent to the Parliamentary Ombudsman, together with our previous correspondence. Firstly, I would have to say that the evidence supplied to the Ombudsman does not contain any information that has not been previously available to and considered by my colleague [named individual]..."

and

"...I have to say that I do not understand nor recognise the content of [named individual's] email of 21 May 2012. I can confirm that, other than simply deciding to refer your case back to the Land Registry for a fresh review of the new evidence, there was nothing else to be 'resolved' between our Office and the Land Registry or even the Wales office..."

24. The Commissioner has considered these paragraphs but cannot see how they indicate that the missing 1996 file has been located. He therefore does not consider them as evidence that the Land Registry hold the 1996 file.
25. The Land Registry explained that from the beginning of 1996 it introduced a new filing system to store its paper files in respect of applications received for registration. This is a 'Year File' method with each file containing paper documents of all applications received in that calendar year. It confirmed it held 2003 and 2005 year paper files and 2010 electronic files for the requested title number. It explained that it began a programme of scanning all documents retained on applications from 14 July 2008 and that a points arising screen (PAS) has been available since the introduction of the computerised register in 1993. It explained that the PAS is an electronic notepad available in all casework systems which is used to create a record of any substantive application and that the screens are permanently retained with in the Land Registry's database and are available as of right under section 66 of the Land Registry Act 2002.
26. The Commissioner enquired as to the scope, quality, thoroughness and results of the searches carried out by the Land Registry. It confirmed it had undertaken a search of paper and electronic records held against both the complainant's title number and his neighbour's title number which included a search of the casework system and contacting two other departments. No information relating to the 1996 file is stored on the PAS system despite that system being used since 1993. It explained that any electronic data would be recorded by title number only but a further search was conducted to check if there were any other non-title files in existence, for example a separate complaint file or indemnity payment file.
27. The Land Registry also confirmed that it had not destroyed the 1996 file as it retains files indefinitely and that in this case the file appears to have been mislaid.
28. The Commissioner also enquired whether there was any legal requirement or business need for the Land Registry to hold the information and what the Land Registry's record management policy says about records of this type.

29. The Land Registry stated that such documents are covered by an Instrument of Retention granted by The National Archives and that there is a statutory business purpose for holding the information. It explained that it is governed by the Public Records Act 1958 and that it has obtained an instrument of retention enabling it to retain its statutory records beyond the time stipulated in the Public Records Act 1958 within which records must be transferred to The National Archives.
30. The Commissioner also considered whether the Land Registry had any reason or motive to conceal the requested information. He appreciates the complainant's view that the Land Registry is attempting to conceal its alleged error in the registration of title but it is not his role to decide on such a matter and he has not seen any evidence that an error has been made. Therefore he has not identified any reason or motive to conceal the 1996 file.
31. In the circumstances, although there is a statutory and business purpose to hold the requested information, the Commissioner does not consider that there is any evidence that would justify refusing to accept the Land Registry's position that it has lost, and therefore does not hold, the 1996 file. The Commissioner is therefore satisfied that on the balance of probabilities, the 1996 is not held by the Land Registry. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.

Right of appeal

32. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

33. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
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