

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 November 2012

Public Authority: The Legal Ombudsman
Address: PO Box 15871,
Tamworth,
B77 9LF

Decision (including any steps ordered)

1. The complainant has requested information about the Legal Ombudsman's appointment procedures and staff.
2. The Commissioner's decision is that the Legal Ombudsman (LeO) has correctly applied section 40(2). However he found the LeO to be in breach of section 10(1) of the FOIA for failing to respond to the requests within 20 working days.
3. The Commissioner does not require the LeO to take any steps.

Request and response

4. On 31 October 2011, the complainant wrote to LeO and requested information in the following terms:
 1. *What is the maximum period within which the Legal Ombudsman must deal with and respond to a complaint made against a solicitor and/or barrister? Please disclose a copy of the policy document disclosing clearly:*
 - A) *Procedure followed for the appointment of a caseworker/legal ombudsman*
 - B) *Procedure followed to allocate complaint to a caseworker/legal ombudsman*

C) Rules regarding the investigation of complaints and the period allowed for the investigation

2. Are any employees/caseworkers/legal ombudsman employed by the Legal Ombudsman's Office from the beleaguered office called Legal Complaints Services? If yes, please disclose,

A) Number of former employees of Legal Complaints Service Office employed by the Legal Ombudsman's Office;

B) Names of former employees of Legal Complaints Service Office employed by the Legal Ombudsman's Office

C) Is [name redacted] a former employee of the Legal Complaints Service Office?

3. Please disclose:

A) A copy of the Complaints procedure of the Legal Ombudsman's Office

B) Name of the Chief Legal Ombudsman

C) Position of [name redacted] in the office of the Legal Ombudsman

5. The LeO responded on 5 December 2011. However, this was an incomplete response and the complainant wrote to it again asking for a full response.

6. The LeO responded on 28 December 2011. It provided some of the information requested but refused to provide the remainder. It cited section 40(2) of the FOIA as its basis for doing so.

7. The complainant requested an internal review on 19 March 2012 and included some further requests for information in the following terms:

1. Please disclose specific section/sub-section of the LSA 2007 which allows such a privilege to your office alone.

2. Please disclose the statistics concerning complaints investigation of which took more than five months.

3. The number of those employed by your office from the demised LCS against whom the users of the LCS had made complaints against them while working for the CS?

- i. Number of those that you may disclose in reply to (3) against complaints upheld; and (A) total number of complaints made against the; and (B) number of complaints upheld against each one of them;*
- ii. Number of those that you may disclose in reply to (3) against complaints were dismissed outright and total number of complaints made against them; and*
- iii. Number of those that you may disclose in reply to (3) against whom complaints were upheld partly; and (A) total number of complaints made each one of them; and (B) number of complaints upheld against each one of them.*
- 4. The number of those that you may disclose in reply to (3) against whom complaints have been made while working for your office and how many complaints have been made against each one of them.*
- 5. Detailed procedure to allocate complaints.*
- 6. Answer in detail the queries I make in sub-paragraphs 2A-2B of my letter dated 31 October 2011.*
8. Following an internal review the LeO wrote to the complainant on 17 May 2012. With regard to the request of 31 October 2011 sub-paragraphs 2A-2B, the LeO stated that it employed 282 staff of which 26 had previously been in the employment of the LCS. However, it considered the information requested in 2B was the personal information of those individuals, and therefore exempt from disclosure.
9. With regard to the further requests made on 19 March 2012, the LeO provided information in response to questions 2 and 5 above. In addition the LeO explained that it did not hold the information requested in question 3 i, ii and iii above.
10. The LeO provided some information in response to question 4 above, but refused to provide the remainder citing section 40(2) of the FOIA.

Scope of the case

11. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically raised the issue of the withholding of the names as he believed that the LeO were wrong to withhold names of employees as it deprived him of the information from which he could determine whether or not individuals involved may have a personal vendetta against him, and

whether those individuals who while working for the Legal Complaints Service were guilty of serious wrongdoings.

12. The complainant also considered that any information that concerns and affects the eligibility of individuals to hold and/or not hold a public office cannot be and should not be subject to the Data Protection Act, in particular when
 - *the office they hold is a "quasi" judicial role;*
 - *they happen to be former employees of an office which enjoyed a reputation of bias, corruption and nepotism;*
 - *users of the office which employed them have been wronged by them, and;*
 - *users of the new office employing them are likely to be affected by their appointment and fear similar treatment again when they are paid from the public purse to provide quasi-judicial services.*
13. The Commissioner has clarified the issues under investigation with the complainant and as such the scope of this case is to determine if the LeO has correctly applied section 40(2) of the FOIA, to part 2B of the request dated 31 October 2011, and to ascertain if the LeO holds the information requested in question 3 i, ii and iii of his request of 19 March 2012.
14. In addition, the complainant has raised concerns about the time the LeO took to respond to his requests.

Reasons for decision

Section 40(2) – Third party personal data

15. This exemption provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the DPA.

Is the withheld information personal data

16. Personal data is defined by the DPA as any information relating to a living and identifiable individual. A named individual's employment history is clearly personal data.

Would disclosure breach the Data Protection Principles?

17. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that

personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

18. The view of the Commissioner is that there is an expectation that an employee in a public authority will have a certain amount of information about them disclosed i.e name, job title, work telephone number. However, the complainant has asked for information relating to employment history.
19. The Commissioner has issued guidance about requests for personal data about public authority employees:
http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/section_40_requests_for_personal_data_about_employees.ashx
20. This guidance talks about whether the information requested relates to them in the professional role or as an individual, and is information contained in their personnel file as opposed to actions they have taken in carrying out their job. It also suggests consideration should be given to whether the employees are senior within the organisation or have a public facing role. The more senior the individual and/or the more public facing their roles are the greater their expectation should be that information about them would be released and the more likely it would be to conclude that it would be fair to do so.
21. The LeO has confirmed that whilst investigators provide their full names to all customers they are interacting with, they would not expect their names to be made available to members of the public they have no interaction with. They are not classed as "senior," and they do not have a public profile. An investigator does have to exercise a significant level of personal judgment, and individual responsibility, in relation to complaints they are dealing with. But the LeO argues that this rests solely with complaints they are working on, and does not extend to a blanket publication of their names to anyone who requests them.
22. The Commissioner considers that the individuals concerned would have an expectation of privacy in relation to their names being linked to their employment history. The Commissioner also considers that the individuals would hold an expectation of confidentiality in relation to this information.

23. In relation to the consequences of disclosure, whilst the FOIA is applicant and motive blind the Commissioner is aware of the LeO's real concerns in this case that disclosure of this information may have on the individuals involved and given the nature of the work by the LeO and the potential involvement for Investigators in high profile or emotive cases, it is the Commissioner's view that making their names publicly available could potentially cause unnecessary and unjustified distress to the Investigators concerned.
24. Notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if there is a more compelling public interest in disclosure.
25. However, the Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interests of the members of staff concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information. The Commissioner notes that the complainant may have a personal interest in knowing the identities of the persons who worked at the predecessor organisation. The Commissioner also accepts that there is a general public interest in terms of the transparency and accountability of public sector organisations. However, the Commissioner does not consider that in this case any legitimate public interest extends to disclosure of the names of the individuals requested by the complainant. It adds nothing to transparency or accountability as it either has no connection to the consideration of the complainant's own complaints, or has no relevance to a decision taken on his complaints.
26. Based on the above, the Commissioner is satisfied that the withheld information is personal data and that disclosure would breach the first data protection principle as it would be unfair to the individuals concerned. As the Commissioner has determined that it would be unfair to disclose the requested information, it has not been necessary to go on to consider whether disclosure is lawful or whether one of the conditions in Schedule 2 of the DPA is met. The Commissioner therefore upholds the LeO's application of the exemption provided at section 40(2) of the FOIA.

Information not held

27. On 19 March 2012 the complainant requested information relating to the number of complaints made about current members of staff when they had worked for the LCS.

28. The LeO responded on 17 May 2012. It stated that the LCS were the predecessor complaints handling scheme to the present LeO and were subsequently abolished under the provisions of the Legal Services Act 2007. The LCS was a completely separate legal/commercial entity to the LeO and as such the LeO was not party to the information requested, they simply do not hold it.
29. The Commissioner notes that it can be difficult for a public authority to "prove" that it does not hold any information on a particular subject.
30. As the LCS was abolished in 2007 and the LeO established in 2010 it would naturally follow that some former LCS staff would apply to the LeO. However, it does not naturally follow that their previous employment records would be transferred to their new employer. There is nothing to suggest that the LeO would have any information relating to complaints made about staff at the LCS.
31. Having reviewed the evidence, the Commissioner is satisfied that on the balance of probabilities, the requested information is not held by the LeO.

Time taken for LeO to respond

32. The first request was made on 31 October 2011, and the first response issued on 5 December 2011. However, this response appears to have been a response to other requests and did not address any of the matters raised on 31 October 2011.
33. The complainant wrote to LeO again on 19 December 2011 stating that he had not received a full response to his letter of 31 October 2011. A further response was subsequently issued on 28 December 2011.
34. With regard to the response issued on 5 December 2011, this was 30 working days from the date of the request and fell outside the 20 working days allowed.
35. With regard to the second response issued on 28 December 2011, it fell within 20 working days of the request of 19 December. However, as this was in essence a response to the first request of 31 October 2011 it was 46 days after the original request.
36. The LeO has not provided any evidence of when the requests were received.
37. With regard to the request dated 19 March 2012, the LeO wrote to the complainant on 24 April 2012 to request an extension to provide a response. Their letter indicated an extension of 10 working days.

However, when the response was finally provided on 17 May 2012, LeO advised that their earlier letter should have read 20 working days, therefore making the due date 22 May 2012.

38. Despite advising the complainant of the delay, this was done incorrectly and does not mitigate a late response. This response was provided 43 working days after receipt of the request, again outside the 20 working days allowed.
39. The LeO has not provided any evidence of when the request was received.
40. Section 10 states that "*a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt*".
41. Therefore the Commissioner finds that the LeO were in breach of section 10(1) of the FOIA.

Right of appeal

42. 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

43. 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.
44. 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

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