

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 February 2013

**Public Authority:** Legal Services Commission  
**Address:** Chief Executive's Office  
8<sup>th</sup> Floor  
102 Petty France  
London  
SW1H 9AJ

### Decision (including any steps ordered)

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1. The complainant made three requests for various information concerning legal aid. The Legal Services Commission (LSC) refused these requests under section 12(1) of the FOIA as the combined cost of these requests would exceed the limit of £450.
2. The Commissioner's decision is that the LSC complied with the FOIA in that it was appropriate for it to aggregate the costs of dealing with these three requests and the combined costs of these requests would be in excess of the appropriate limit. The LSC was not, therefore, required to comply with these requests.

### Request and response

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3. The complainant made the following information requests on 22 February and 9 March 2012:

**(i)** *"Would you be able to check please whether the following convicted criminals received legal aid and, if so, how much in each case? The names, court at which they appeared for their confiscation hearing, and date on which a confiscation order was imposed, are given below.*

*[Followed by a list of 20 individuals' names with courts and dates added]"*

**(ii)** "1. The number of recipients of legal aid who have been asked to pay back a sum of more than £100,000 in each of the past three financial years (2010/11, 2009/10, 2008/9).

2. The name of each of these recipients, the total sum to be repaid by each of these recipients, the date of their conviction, and the offence or offences for which each was convicted.

3. The total sum so far repaid by each of these recipients and the sum that remains outstanding in each case."

**(iii)** "1. The number of "high value" legal aid cases dealt with by the Legal Services Commission in each of the past three financial years (including the current 2011/12 financial year up and until the latest date possible) in which the legal aid recipient (i.e. the defendant) has received legal aid payments totalling £1 million or more.

2. The name and date of birth of each of these defendants, the Crown Court at which their case was heard, the date of their conviction or latest hearing, and the offence or offences for which each was convicted (where applicable).

3. The total amount of legal aid received by each of these defendants.

4. The total amount of legal aid repaid by each of these defendants (where applicable)."

4. The LSC responded to these requests on 21 March 2012. It stated that the cost of collating the information requested would exceed the appropriate limit and so the requests were refused under section 12(1). Some information was, however, disclosed to the complainant, although it later stated to the ICO that it provided this information in an attempt to assist the complainant and that it considered this disclosure to have been made outside the scope of the FOIA.
5. The complainant responded to the LSC on 23 March 2012 and requested that it carry out an internal review. The LSC responded with the outcome of the internal review on 24 April 2012. The refusal under section 12 of the FOIA was upheld.

## **Scope of the case**

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6. The complainant contacted the Commissioner on 17 August 2012 to complain about the refusal to disclose the requested information. The complainant argued that the public interest favoured the disclosure of this information.

7. The complainant, a journalist, also raised the issue of the LSC dealing with his requests under the FOIA, when he would have preferred these to have been handled outside the scope of the FOIA as press inquiries. The complainant objected to the approach taken by the LSC as this allowed the time spent on the various requests to be aggregated for the purposes of forming a cost estimate.
8. In response to this point the Commissioner has referred to section 8 of the FOIA. This requires that a valid request for information must be made in writing, state the name of the requester, give an address for the response and describe the information requested. The requests in question met all of these criteria and, therefore, it was legitimate for the LSC to deal with these under the FOIA.
9. Provided the complainant did not object to this approach, the LSC would also have had discretion to deal with these as press inquiries outside the scope of the FOIA had it so chosen. However, there was no breach of the FOIA through the LSC choosing to respond to these requests more formally. The Commissioner covers the issue of the aggregation of the requests further below.

## Reasons for decision

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### Section 12

10. Section 12(1) of the FOIA provides that a public authority is not obliged to comply with an information request where the cost of doing so would breach the appropriate limit. This limit is set in the Freedom of Information (Appropriate Limit and Fees) Regulations 2004 (the fees regulations) at £600 for central government bodies and £450 for all other public authorities.
11. Section 12 refers to the estimated cost of compliance with the request. The task for the Commissioner here is to consider and reach a conclusion as to whether the estimate made by the LSC is reasonable. The approach of the Commissioner is that a reasonable estimate will be sensible, realistic and supported by evidence.
12. The LSC argued that the cost limit for it is £450 owing to its status as "*a non-departmental public body operating at arm's length from our sponsoring Government department*". Whilst the approach has been taken previously by the ICO that the LSC is a £600 body and this approach has also been taken in relation to similar bodies, in particular the Crown Prosecution Service, in this case the Commissioner accepts that the cost limit for the LSC is £450.

13. The fees regulations are specific that the cost limit is £600 for public authorities listed in Part I of Schedule 1 of the FOIA. For public authorities listed in any other part of Schedule 1, the cost limit is £450. The LSC is listed in Part VI of Schedule 1; hence the fees regulations provide that the cost limit in relation to LSC is £450.
14. Covering first whether it was appropriate for the LSC to aggregate the costs of dealing with the complainant's requests, rather than considering the costs of each of these requests separately, the fees regulations are specific as to the circumstances in which this is permissible. These circumstances are that the requests are made by one person, or multiple people acting together, to the same public authority, received within 60 working days of each other and relate 'to any extent' to the same or similar information.
15. The wording 'to any extent' used in the regulations is important here as this means that the test for aggregating requests is broad; essentially, if the information requested relates to similar subject matter, it will be permissible to aggregate the requests. In this case the Commissioner considers it clear that the requests do all concern similar subject matter, hence it was appropriate for the LSC to aggregate the costs of responding to these.
16. Turning to whether the estimate made by the LSC was reasonable, the fees regulations provide that the cost of complying with a request must be calculated at the rate of £25 per hour. This means that there is effectively a time limit of 18 hours. The fees regulations also specify the tasks that can be taken into account when forming a cost estimate as follows.
  - Determining whether the information is held.
  - Locating the information.
  - Retrieving the information.
  - Extracting the information.
17. The total cost estimate made by the LSC for complying with all of the requests is £1,717. In explanation for this cost estimate the LSC stated that providing this information would involve three of its teams: the Complex Crime Unit, Finance Team and Debt Recovery unit, as well as an external contractor.
18. Its estimate in relation to each of the requests was as follows.
  - (i) Approximately 30.5 hours / £763.

- (ii) Approximately 6 hours / £154.
  - (iii) 32 hours / £800.
19. LSC gave detail of its workings for these estimates. These showed that the LSC believed that it would be necessary to gather the information requested from various sources, some of which were held in manual form and some in electronic form. The various tasks that LSC stated that it would be necessary to carry out in order to comply with these requests the Commissioner accepts fall within the tasks permitted by the fees regulations.
  20. In relation to request (i), the estimate made by the LSC consisted of time to review paper files and time to extract information from databases. In relation to the paper files, LSC stated that these would on average consist of approximately 1,000 pages and it gave an estimate of 45 minutes to go through each of these to identify the relevant information. It also identified two databases which could contain information falling within the scope of the request and gave an estimate of three hours to identify and extract information from these locations.
  21. For request (ii), the LSC stated that the tasks that it would be necessary for it to perform would be to run a report from a database, review paper files and for an external contractor to also carry out searches for this information. In relation to the paper files it made an estimate of five minutes per file, but also stated that it believed that it may take considerably longer than this in some cases.
  22. The LSC stated that request (iii) would require that it search several different databases, which it estimated would take seven hours. It would then be necessary to cross reference with other information to identify and locate the information described in the request, which it estimated would take 14 hours. It also stated that, similarly to request (ii), it would be necessary for an external contractor to carry out searches for this information.
  23. The Commissioner anticipates that the complainant may consider it to be an unsatisfactory situation that it was not a simple task for the LSC to supply the information which he has requested. The function of the LSC is to run the legal aid scheme, so the complainant may hold the view that the LSC should be able to easily supply him with the requested information. However, notwithstanding what the requester may believe the public authority should be capable of supplying within the cost limit, as noted above the task for the Commissioner in relation to section 12 is to consider whether the cost estimate made by the public authority is reasonable.

24. In this case the LSC has provided to the Commissioner's office a reasonable level of detail as to how it calculated its cost estimate. On the basis of this detail the Commissioner accepts that the LSC reasonably estimated that the combined cost of compliance with the complainant's three requests would be in excess of the limit of £450. Section 12(1) does, therefore, apply and the LSC was not required to comply with the requests.

## **Section 16**

25. Section 16(1) provides that a public authority is under an obligation to provide advice and assistance to any person making an information request. In relation to section 12(1) this should mean that the requester is provided with advice as to how their request could be refined in order to bring the cost of it within the appropriate limit. In this case no such advice and assistance was provided to the complainant. This issue was raised with the LSC to comment upon.

26. The LSC maintained that it had provided advice and assistance in this case. In the refusal notice the complainant was provided with an explanation of the difficulties of supplying the requested information. The LSC believes that this explanation should assist the complainant in relation to wording any future requests so that they do not exceed the cost limit.

27. The LSC also explained to the complainant that some of the information he had requested would be likely to be exempt under section 40(2) (personal information) of the FOIA. The Commissioner agrees that the information specified in these requests would be likely to be sensitive personal data according to the definition given in section 2 of the Data Protection Act 1998<sup>1</sup>. This means that it is likely to be the case that section 40(2) would be engaged in relation to this information and so the LSC would not be required to disclose it.

28. The Commissioner accepts that the LSC did take steps to comply with its obligation under section 16(1) in this case. By explaining why it would be time consuming to provide the information requested, the complainant was given an indication of the type of request that it may

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<sup>1</sup> Section 2 of the Data Protection Act 1998 specifies what is to be considered sensitive personal data for the purposes of that Act. Amongst this list is personal data as to the commission, or alleged commission of any offence, and the proceedings for any offence committed, or alleged to have been committed.

be possible for LSC to comply with without the cost limit being exceeded. By referring to section 40(2) it also indicated that the complainant may be more likely to secure disclosure of at least some information if he avoids wording his requests in such a way that compliance with them would involve the disclosure of sensitive personal data.

## Right of appeal

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29. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

30. 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.
31. 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 .....**

**Jon Manners**  
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