

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 May 2015

Public Authority: Legal Ombudsman for England and Wales
Address: Edward House
Quay Place
Edward Street
Birmingham
B1 2RA

Decision (including any steps ordered)

1. The complainant requested information about in-house documentation in relation to the training and guidance of staff dealing with complaints. The Legal Ombudsman for England and Wales (the Legal Ombudsman) provided some information but refused to provide the remainder citing sections 12 and 14 of FOIA (cost of compliance exceeds the appropriate limit and vexatious request respectively).
2. The Commissioner's decision is that the Legal Ombudsman was entitled to apply section 14. He requires no steps to be taken.

Request and response

3. On 23 September 2014, the complainant wrote to the Legal Ombudsman via the *whatdotheyknow* website and requested information in the following terms:
 1. *"All written material advice guidance or instruction issued to or available to staff so as to assist them in working through the handling of a complaint from the time that it is accepted up to and including a determination by an ombudsman and all stages in between.*
 2. *All written material advice guidance or instruction issued to or available to staff so as to assist them in understanding the extent of the jurisdiction, if any, of the ombudsman in relation to any matter which occurs after the respondent has provided to the complainant all of the*

services required under the terms of the retainer including having sent a bill to the complainant within a reasonable period of time of the completion of the work required by the retainer.

3. *All written material advice guidance or instruction issued to or available to staff so as to assist them in understanding the policy of the ombudsman in relation to the time within which to (a) acknowledge emails and (b) deal with or decline to deal with the substantive issues raised in any particular email.*

Would you also please say whether in the reporting period which commenced after 1st April 2013 there was, as compared with the previous year, an alteration in the ratio of the number complaints actually received against and number of complaints accepted?" [sic]

4. The Legal Ombudsman responded on 23 October 2014. It refused to provide the information requested at points 1 – 3 citing the following exemptions of FOIA:
 - section 12 cost of compliance exceeds appropriate limit; and
 - section 14 vexatious requests.
5. No reference was made to the final paragraph of the request.
6. The complainant requested an internal review on 17 November 2014 – repeating all aspects of the request. Shortly after that, on 26 November 2014, the complainant wrote to the Legal Ombudsman asking it to confirm that it will address what he described as 'paragraph 4' of the request, namely:

"Would you also please say whether in the reporting period which commenced after 1st April 2013 there was, as compared with the previous year, an alteration in the ratio of the number complaints actually received against and number of complaints accepted?"

7. The Legal Ombudsman provided an internal review on 13 January 2015 in which it maintained its original position with respect to points 1-3. With respect to paragraph 4, it told the complainant:

"We have not seen a marked variation in the number of people contacting us compared against the number of complaints accepted for investigation".

8. It provided him with figures for the number of contacts received and total number of complaints accepted for each of the years 2010/11 to 2013/14.

Scope of the case

9. Following earlier correspondence, the complainant provided the Commissioner with the relevant documentation on 5 February 2015 to complain about the way his request for information had been handled.
10. The complainant disputes the Legal Ombudsman's handling of his request, starting with its interpretation of the request. It follows that he disputes its application of exemptions to the information requested in points 1 – 3 and its response in respect of point 4.
11. With respect to the Legal Ombudsman's refusal to provide the requested documentation, the complainant appears to dismiss its application of section 14. He told the Commissioner:

"The argument now put forward seems to be based solely on the time and cost involved in complying with the request. There is no apparent attempt to continue to justify the original decision based upon the request being allegedly vexatious or repeated or the consequence of an improper motive".
12. Notwithstanding the complainant's view, during the course of the Commissioner's investigation, the Legal Ombudsman confirmed its position that both section 14(1) and section 12 of FOIA apply to parts 1-3 of the request for information. It provided the Commissioner with arguments in support of both sections to justify its decision to withhold the information requested at points 1 – 3 of the request.
13. The Commissioner notes that having failed to respond about paragraph 4 in its initial response, the Legal Ombudsman ultimately responded and provided the complainant with details of the number of contacts received and complaints accepted for investigation.
14. The complainant disputes that response. In his view, paragraph 4 of his request relates to complaints received and accepted – with no reference made to the number of contacts.
15. Asked by the Commissioner whether it would be reconsidering its response to paragraph 4 of the request, the Legal Ombudsman confirmed that:

"information in the final paragraph for a comparison between complaints received and accepted was provided".
16. The analysis below considers whether the Legal Ombudsman was correct to refuse parts 1-3 of the request under section 14(1) of FOIA on the grounds that the request is vexatious. In doing so the Commissioner will

consider the Legal Ombudsman's interpretation of the request. If the Commissioner finds that section 14 of the FOIA was incorrectly applied, he will go on to consider the Legal Ombudsman's application of section 12(1).

17. The Commissioner will also consider the Legal Ombudsman's handling of paragraph 4 of the request.

Reasons for decision

Section 14 vexatious request

18. Section 14(1) of the FOIA says that a public authority does not have to comply with a request for information if the request is vexatious.
19. Although the term 'vexatious' is not defined in the FOIA, it is generally accepted that the purpose of section 14 is to protect the resources (in the broadest sense of the word) of the public authority from being squandered on disproportionate or improper use of the FOIA.
20. The Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests¹. They include, for example:
 - abusive or aggressive language;
 - burden on the authority;
 - personal grudges; and
 - deliberate intention to cause annoyance.
21. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
22. The Commissioner's guidance suggests that, if a request is not patently vexatious, the key question the public authority must ask itself is

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request upon it and balance this against the purpose and value of the request.

23. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. The Commissioner considers that the background and history of the request may be relevant here but has nonetheless considered all the circumstances of the case.

The complainant's view

24. In correspondence with the complainant, the Legal Ombudsman told him:

"Your request equates to all training material ever provided to investigators over the last four years".

25. The complainant told the Commissioner that the Legal Ombudsman interpreted the request the way it did in order to avoid scrutiny of the way that they conduct investigations. In his view:

"It simply suits their purpose to purport to perceive the request as being wider than it is".

26. The complainant clearly considers that his request relates to current material only and that the Legal Ombudsman had the option to seek clarification from him. With respect to the scope of points 1-3 of the request he told the Commissioner:

"Notwithstanding the clear terms in which the request was expressed, the anonymous member of staff purported to treat the first limb of the request as if it related to all training and guidance material that had ever been produced by LeO in the entire four years of the existence of LeO whether in current use or not... It is obvious that the first limb of the request relates only to the current material available to staffThere is no reference in my request to 'ever provided...' or '... over the last four years'.

If in doubt it would have been an easy thing for the LeO employee given the task of responding to my request to write to me and clarify it. However, if the object of the exercise was to exaggerate the extent of the request so as to provide a pretext for denying it, then a request for clarification would have been counter-productive".

27. The complainant would expect the requested information – which he considers likely to comprise current in-house documentation, training and guidance material - to be easily accessible from the Legal Ombudsman's intranet.

28. When requesting an internal review, the complainant told the Legal Ombudsman:

"If it will take them the sort of time conjectured by OLC to get to grips with the basic documentation that they need to do their jobs then something is seriously wrong with the way that the OLC has organised their operation.

If the response is just an inept attempt at obfuscation then whoever is responsible should resign".

29. The complainant told the Commissioner that he had offered to pay for an IT consultant to examine the Legal Ombudsman's system to see if it was capable of providing "as effortlessly as most modern systems" the requested information. He advised that the Legal Ombudsman has ignored his offer.

30. Referring to parts 1-3 of the request, the complainant told the Commissioner that it was wrong to take the same blanket view of all three requests and that furthermore:

"treating all three complaints in the same way, having decided that only one of them was potentially problematic is indicative of a motivation to avoid any disclosure at all"..

31. With respect to the suitability of the requested information for being disclosed, the complainant told the Commissioner that he considers it highly unlikely that the requested material contains information that members of the public and members of the legal profession should not see.

32. He also considers that one benefit of disclosure is that it would provide clear evidence of the existence of robust procedures. He argued that making the requested information available for scrutiny would add to the confidence both of the Legal Ombudsman staff and the stakeholders who deal with them.

33. The complainant stated that disclosure would provide the opportunity for members of the public and members of the legal profession to provide feedback. He told the Commissioner:

"Feedback from interested parties is a valuable tool in assisting any organisation in addressing issues and whether it is appropriate to make changes to improve performance".

The Legal Ombudsman's view – points 1-3 of the request

34. In correspondence with the Commissioner the Legal Ombudsman disagrees that it has misinterpreted the request. It described the request as a *'blanket request wanting everything we hold'*.
35. Advising the complainant that it considers section 14 applies, the Legal Ombudsman told him:

"In forming this view we have taken into account the following factors:

- the burden imposed by the request on the Legal Ombudsman*
- your motive in making this request*
- the value and serious purpose of the request".*

36. It subsequently told him it had taken into account the purpose of the request and any wider public interest, the burden on the Legal Ombudsman in attempting to respond to this request and the context and relevant history.

Burden imposed by the request

37. In this case, the Legal Ombudsman considers that complying with the request would be a substantial task - one which would place a grossly oppressive burden on its limited resources. With respect to the information in scope of the request, it told the complainant it does not have one manual on how to conduct an investigation. Rather, to comply with the request it would have to consult a number of departments and, to locate and extract the information, would need to search a number of different locations.

38. Having carried out an internal review of its refusal of his request, the Legal Ombudsman told the complainant:

"Due to the volume of information you are requesting I have to agree to compile this information for release will place a significant strain on this office in terms of resources".

39. Similarly, the Legal Ombudsman told the Commissioner:

"We consider [complainant's] requests will cause a disproportionate and unjustified level of disruption to this office".

40. Clarifying that view, the Legal Ombudsman explained:

"Requests 2 and 3 are more specific and relate to issues in the complaints we considered about [complainant]. We have no stand alone document covering the subject matter of these requests which we can provide him. However it is possible that within the various resources available there is information relevant to it. A search of indexes and electronic searches have produced nothing relevant. Therefore to answer the requests it would require going through each document, which is what request 1 requires us to undertake".

41. In correspondence with the Commissioner, the Legal Ombudsman confirmed that its staff are provided with guidance and instructions to enable it to undertake its statutory duty. Describing the guidance as a library of information rather than a single document, the Legal Ombudsman told the Commissioner:

"As with any organisation staff at the Legal Ombudsman are provided with guidance and instructions to undertake our statutory duty. We have a dedicated large section on our intranet providing a suite of documents to assist staff in the conduct of investigations. We do not have a single manual or document but rather this is a library of information".

42. In order to provide a better understanding as to the magnitude of the exercise required to comply with the request, the Legal Ombudsman provided the Commissioner with details of the information it holds that, in its view, represents the information within the scope of the first part of the request.

43. It explained that in terms of size and numbers it amounts to:

"• 111 "guidance notes" – these each range on average from 3 to 20 pages of notes providing guidance for our assessors and investigators to carry out their work

• 153 "knowledge Alerts" providing detailed advice on specific areas. These may run into a number of pages of type each, and have links to other documents or resources.

• A directory of "frequently asked questions" which is in excess of 10,000 words

• We have available 970 ombudsman decisions which are searchable in terms of area and issue. In addition we have available all training material provided to staff, which includes PowerPoint presentations, and notes to assist staff in their work".

44. Quantifying the effort involved in responding to the request, the Legal Ombudsman told the Commissioner:

"As a test we retrieved from the system 8 guidance notes. It took on average 15 mins per guidance note to retrieve, and consider its contents to determine the information within it. With 111 guidance notes this equates to 33 hours work. Guidance notes represent an estimate of only 50% of the resources available to staff".

45. The Legal Ombudsman argued that complying with the request in this case would be a substantial task: one which would not only place a grossly oppressive burden on its resources but also divert staff from front line responsibilities.

46. Of significance, the Legal Ombudsman told the Commissioner:

"It is not the case that we can simply print off this information and hand it to [the complainant]. Each item of information will have to be located, retrieved and checked by a suitably qualified member of staff for its appropriateness for release".

47. It said that the release of the requested information 'without proper check and due diligence' has the potential to prejudice its work. It argued that a considerable amount of the information would not be suitable for disclosure and therefore it would need to spend time redacting exempt information. For example, it explained that within the scope of the request there will be information on how it conducts an investigation, the release of which into the public domain may threaten its ability to carry out its work effectively.

48. It explained that individual documents may engage exemptions, saying that at the very least such an assessment would need to be made. In its view, having to sift through a substantial volume of information to isolate and extract the parts it is able to disclose, having considered relevant exemptions and redactions, imposes a burden on its limited resources.

49. In the context of its statutory duty to investigate lawyers it told the Commissioner:

"... any disruption to the resources available to look at complaints will severely impact this and importantly the delivery of our service....The diversion of staff from front line responsibilities to assess the information we hold is not a feasible option in terms of impact".

50. In support of its view that complying with the request would place an excessive burden on its resources, the Legal Ombudsman provided the

Commissioner with details of the small number of staff working in its various departments.

51. Finally, it said that it did not consider that the public interest lay in diverting its limited resources away from its statutory functions in order to disclose huge volumes of information.

Purpose of the request

52. In the Legal Ombudsman's view, the request lacks proportionality and demonstrates no serious purpose or value. In the context of the request being a major burden on limited resources, the Legal Ombudsman told the Commissioner that it is difficult to see what value such a mass of information would provide to the complainant.

Motive

53. The Legal Ombudsman told the Commissioner that, in its view, any legitimate motivation the complainant may have in making a broad request is outweighed by the detrimental impact on the Legal Ombudsman's office.

Context

54. In its submissions to the Commissioner, the Legal Ombudsman explained why it considers that the background and wider context to this matter are relevant in this case.
55. In that respect it told the Commissioner:

"These unfocused requests demonstrate no clear thought as to what he seeks, therefore can only be seen as an intention to cause disruption and vent anger at decisions made against [complainant] by this office".

56. The Commissioner understands that the complainant has had previous contact with the Legal Ombudsman as a result of which he has, for example, raised complaints about the service provided by the public authority. The Legal Ombudsman confirmed that, as a result, the department continues to be engaged with him.

Conclusion

57. In assessing the Legal Ombudsman's grounds for applying section 14 the Commissioner has first considered the Legal Ombudsman's interpretation of parts 1-3 of the request.
58. Having considered the correspondence between the complainant and the Legal Ombudsman about this request, the Commissioner notes that the

complainant did raise the issue of this interpretation with the Legal Ombudsman when requesting an internal review:

"As for the answer received it is obvious that my request relates to what current members of staff have available to them".

59. However, from the evidence he has seen, the Commissioner is satisfied that, regardless of how the request was interpreted, the Legal Ombudsman does not hold a single manual on how to conduct an investigation. In his view, in responding to a request for all written material available to staff, it would be legitimate for the Legal Ombudsman to include a search of its library of information.
60. The Commissioner has considered the arguments put forward by both the complainant and the Legal Ombudsman, together with the context in which the request was made and the evidence supplied. He accepts the evidence provided by the Legal Ombudsman that to comply with the complainant's request would cause a significant burden upon its limited resources in terms of the time and costs to collate all of the information in scope of the request, assess it and apply any required redactions and FOIA exemptions. From the evidence he has seen, the Commissioner accepts that complying with the request will cause a disproportionate and unjustified level of disruption to the office.
61. In his view, the purpose and value of the request does not justify the detriment that would be caused to the Legal Ombudsman. In that respect, the Commissioner notes that, while declining to comply with his request, the Legal Ombudsman invited the complainant to submit any specific questions or information he may require, explaining that it always seeks to provide advice and assistance in relation to how it works and looks at complaints.
62. The complainant chose not to do so.
63. Taking account of the background and history of the complainant's contact with the Legal Ombudsman, the Commissioner would suggest that disclosure is unlikely to satisfy the complainant and that further correspondence and requests may well ensue.
64. For all these reasons the Commissioner has decided that the Legal Ombudsman was correct to refuse the request as vexatious by relying on section 14(1) of FOIA.
65. Since the Commissioner's decision is that section 14 of the FOIA can be applied to the request, he has not gone on to consider the Legal Ombudsman's application of section 12.

Section 1 general right of access

66. Turning to the Legal Ombudsman's handling of paragraph 4 of the request, the wording of that part of the request states:

"Would you also please say whether in the reporting period which commenced after 1st April 2013 there was, as compared with the previous year, an alteration in the ratio of the number complaints actually received against and number of complaints accepted?" [sic]

67. The Legal Ombudsman's response was:

"We have not seen a marked variation in the number of people contacting us compared against the number of complaints accepted for investigation".

68. In addition, it provided a table of figures.

69. The Commissioner notes that that part of the request was not responded to until the internal review. The complainant has therefore not had the opportunity to ask the Legal Ombudsman to reconsider its response.

70. Regarding that response, the complainant told the Commissioner:

"The ordinary use of language and the application of common sense should have enabled LeO to understand that the request did not relate to the ratio of complaints accepted for investigation as a percentage of total contacts received by LeO..."

The request for information is based upon what I contend is an obvious premise, namely that for a contact to become a 'complaint actually received' the Legal Ombudsman must do something more than having a chat with someone on the telephone....All matters which do not result in a case file being opened will remain merely 'contacts', and will be irrelevant to the request..

I have used the phrase 'complaint actually received' to describe a complaint which has resulted in a new file with a case reference number but has yet to go through the assessment process".

71. The Commissioner's guidance² on how to access information from a public body states:

² <https://ico.org.uk/for-the-public/official-information/>

"Your request can be in the form of a question, rather than a request for specific documents, but the authority does not have to answer your question if this would mean creating new information or giving an opinion or judgment that is not already recorded".

72. Having considered the matter, and taking the wording of the request into account, the Commissioner is satisfied that the Legal Ombudsman provided a response – in the form of a yes/no response - to the question posed.
73. In light of the above he requires no steps to be taken.

Right of appeal

74. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

75. 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.
76. 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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