

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 17 November 2011

Public Authority: Office of the Legal Services Ombudsman

Address: PO Box 16079
Birmingham
B30 9EF

Decision (including any steps ordered)

1. The complainant has requested information relating to the Office of the Legal Services Ombudsman's (the OLSO) procedures, policies, rules and guidelines used by its caseworkers in their investigations and additionally its own internal complaints procedures. The OLSO responded and provided two casework advisory manuals and a copy of its internal complaints procedure.
2. The Information Commissioner's decision is that the OLSO has provided the information it held at the time of the request.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 13 March 2009, the complainant wrote to the OLSO and requested information in the following terms:

"Therefore I formally request that I be supplied with the OLSO's Procedures, Policies, Rules and Guidances [by whatever name] t/w an indication as to where LSO precedents may be found. If necessary, though I do not think so, you may take this as a request under the FOI Act for disclosure of same."

5. The OLSO responded on 20 March 2009 and referred the complainant to its Publication Scheme and Internal Accounts¹. (The Commissioner viewed this website and noted that it provided general information about the operation of the OLSO.) On 26 March 2009 the OLSO responded further and stated that its written guidelines for investigations teams were held but refused to disclose this information by relying on the exemption at section 31 (Law enforcement) of the Freedom of Information Act ('the FOIA').
6. The complainant was dissatisfied with this response, and following an internal review the OLSO wrote to the complainant on 15 April 2009. It stated that it upheld its decision to withhold the information.
7. The complainant had originally asked the OLSO to investigate a complaint he had submitted to it only after he had received the information he requested on 13 March 2009. The OLSO contacted the complainant on 4 June 2009 after the internal review had been provided to ask if it may now proceed with its investigation. The complainant responded to this communication and on 8 June 2009 repeated his request for the information detailed in his request of 13 March 2009.
8. Following the repeated request, correspondence flowed between the complainant, the OLSO and the ICO.
9. During a telephone conversation between the ICO and the OLSO, and prior to the Commissioner beginning his formal investigation of this complaint, the OLSO confirmed that it was no longer relying on the section 31 exemption in respect of the guidelines followed by its investigations teams. It further confirmed that it had sent the complainant a copy of its internal complaints procedure on 17 December 2009 and on 19 December 2009, copies of two casework manuals which contain the procedures followed by its investigations teams in respect of the complaints received by OLSO.
10. The complainant considered that the information provided by OLSO did not describe any procedure, rule or service standard and contained inaccurate statements; principally, that the Ombudsman is a quasi judicial office holder. The complainant maintained his position that the OLSO had not complied with his request in either the letter or spirit of the Act.
11. The ICO accepted the complaint on 22 July 2010.

¹ <http://www.olso.org/publications/AnnualReports/files/AR2010-english.pdf>

Scope of the case

12. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant was dissatisfied by the responses to his information request, principally the content of the information provided. The complainant stated:

"The documents previously supplied by the OLSO are themselves difficult to describe as procedures, policies etc."

13. The Commissioner's investigation focused on what relevant information was held by the OLSO at the time of the request, and what information had been provided in order to comply with the request. The Commissioner has not considered the OSLO's application of section 31 which it initially relied on to withhold information falling within the scope of the complainant's request. This is because the OSLO withdrew its reliance on the exemption and disclosed the withheld information.

Reasons for decision

14. Section 1(1) of the FOIA provides that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him.

15. In determining whether a public authority holds any requested information the Commissioner applies 'a test' which is, on the balance of probabilities, is the requested information held?

16. In deciding where the balance lies in this case the Commissioner considers:

- explanations offered by the parties as to why the information is / is not held; and
- the scope, quality, thoroughness and results of any searches undertaken by the public authority.

17. In correspondence with the complainant and the Commissioner the OLSO stated that it had nothing further to add to its confirmation that all the information held by the OSLO falling within the scope of the request had been provided to the complainant. The OSLO acknowledged that the complainant was clearly not content with the information provided but

was unable to provide him with information that the Office does not have.

18. At the time of the Commissioner's investigation the OLSO was in the process of preparing to transfer to a new organisation ('the Legal Ombudsman'), having been abolished under the Legal Services Act 2007.
19. Following the enactment of the Legal Services Act, the OLSO had started to prepare for the closure of its offices and for the transfer of its functions to the new ombudsman. This led to the OLSO sending the complainant its only remaining copies of the two casework manuals referred to in paragraph 9 above. The OLSO confirmed to the Commissioner that it no longer held physical copies of the casework manuals and that this information was not held electronically.
20. However, in order to examine the manuals, the Commissioner was directed to a case he had considered in August 2009 for which the OSLO had provided its casework manuals. In respect of the internal complaints procedure, the Commissioner was provided with a copy of a one page document entitled, "Internal Procedures for Dealing with Complaints about the Service provided to users by the Office of the Legal Services Ombudsman (OSLO)".
21. The Commissioner considers that the OSLO's confirmation that no further information within the scope of the request is held is legitimate in the circumstances of this case. In the Commissioner's opinion it is reasonable to accept that the OSLO would not need to search for its own policies, procedures and guidelines concerning its investigations in the same way that, for example, it would need to search for correspondence on a particular topic, which potentially might be found in numerous locations.
22. At no point in the Commissioner's investigation did the OSLO suggest that information in the scope of the request could not be provided because it had been destroyed for any reason.
23. The complainant was given the opportunity to examine the casework manuals held by the Commissioner. The complainant pointed out that the two sets of manuals were materially different in a number of respects. The Commissioner was able to explain these differences to the complainant by informing him that the OLSO had made revisions to its manuals in the period between its receipt of the complainant's request and the Commissioner's consideration of the case he considered in August 2009.

24. The complainant made clear his opinion and his concerns regarding whether the information disclosed could provide sufficient or consistent guidance and procedures for caseworkers to follow. The Commissioner has some appreciation of his concerns and noted the lack of detail in the single sheet, "Internal Procedures for Dealing with Complaints about the Service provided to users by the Office of the Legal Services Ombudsman (OSLO)". However the Commissioner questioned the OSLO to ascertain if this was the only information held and the OSLO restated its confirmation that this was the only information held.
25. The Commissioner understands why the complainant is not satisfied with the substantive procedures and guidance followed by the OLSO when it was in operation. However, the Commissioner's role is solely to determine whether the OLSO properly responded to the complainant's request for information according to the requirements of the Freedom of Information Act. The question of whether the OLSO's procedures and guidance were sufficient or adequate for its own requirements is not a matter for the Commissioner; the Commissioner would be acting beyond his powers to make such a judgment. Similarly it is not for the Commissioner to determine whether the ombudsman was accurate in stating that she is a quasi judicial office holder. The Commissioner would only question a statement of this nature if it was materially relevant to the way in which a public authority had responded to a request, for example, by applying an exemption where the statement was relevant. At the point where it withdrew its application of section 31, the OLSO's position is that it has provided to the complainant all the information it held at the time of his request.
26. In view of his enquiries to the OLSO and of the responses made to these the Commissioner has decided that, at the time of the complainant's request and on the balance of probabilities, the OLSO held no further information falling within the scope of the request which has not subsequently provided to the complainant.

Right of appeal

27. 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

28. 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.
29. 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

Alexander Ganotis
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