

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 13 June 2011

**Public Authority:** Ministry of Justice  
**Address:** 102 Petty France  
London  
SW1H 9AJ

### Summary

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The Ministry of Justice (MoJ) received a request for information relating to payments of legal aid to individual QCs. It confirmed that it did not hold any information relevant to the complainant's request. The MOJ directed the complainant to make his request to the Legal Services Commission (LSC). The Commissioner accepts that on the balance of probabilities the MoJ does not hold the requested information. However, the Commissioner has determined that, in not replying to the complainant's request within the prescribed 20 working days, the MoJ breached section 10(1).

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. The complainant requested the following information on 16 August 2010:  
  
'Full Disclosure of how much Legal Aid Money has been Paid to 'individual' FAMILY LAW QC's including those active as Family Court Judges!'
3. The MoJ responded to the complainant on 27 September 2010. It confirmed that it did not hold the requested information. It advised the

complainant to contact the Legal Services Commission (LSC) as this is the public authority which may hold the requested information.

4. The complainant expressed his dissatisfaction with the MoJ's refusal notice to the Commissioner. On 18 October 2010 the Commissioner corresponded with the MoJ requesting it perform an internal review. The internal review was provided to the complainant on 26 October 2010. It upheld the MoJ's original decision by confirming that the information was not held and the complainant should direct his request to the LSC.

## **The Investigation**

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### **Scope of the case**

5. Further correspondence from the complainant to the Commissioner made clear his dissatisfaction with the MoJ's internal review response. The Commissioner accepted this as a complaint about the internal review decision. He pursued the complaint on the basis that the complainant felt that the requested information was held by the MoJ.

### **Chronology**

6. On 1 December 2010 the Commissioner wrote to the complainant to confirm that he would investigate whether the MOJ held the information he had requested. He also wrote to the MOJ to confirm the scope of his investigation and to make enquiries relevant to his investigation.
7. Unfortunately the MOJ did not respond to the Commissioner's enquiries until 4 April 2011. This was due to confusion within the MoJ as to who it had assigned the case. The MOJ's response to the Commissioner's enquiries, together with its previous submissions, provide the basis of this Notice.

## **Analysis**

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### **Substantive Procedural Matters**

8. Section 1(1) of the Act provides that:

'Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.'

9. The effect of section 1(1)(a) and (b) is that a public authority is under a duty to confirm to a requestor whether or not it holds the requested information and if it does, to provide it to the requestor unless it can rely on one of the Act's exemptions.
10. In determining whether a public authority holds requested information, the Commissioner makes enquiries that will satisfy the civil standard of proof, that is, on the balance of probabilities, does the public authority hold the requested information?
11. In deciding where the balance of probabilities lies, the Commissioner will consider the searches carried out by the public authority, the extent of those searches, the quality and thoroughness of the searches and the results the searches yielded. He will also consider any other information or explanation offered by the public authority which is relevant for his consideration of this matter.
12. The MoJ informed the Commissioner that it did not perform any searches when the request was received and explained why it chose not to undertake any searches for the requested information. It advised the Commissioner that:

'No searches were carried out. We do not hold this information, nor are we required to. Details of Legal Aid expenditure are entirely a matter for the Legal Services Commission (LSC). The LSC are listed in schedule 1 of FOIA and answer there [sic] own FOI requests.'
13. The MOJ advised the Commissioner that, although the Legal Aid budget does come from MoJ funds, the administration and grant of legal aid in individual cases is handled by the LSC. It again asserted that the LSC is the most appropriate public authority from which to request the required information.
14. The Commissioner reviewed the LSC's website. This clearly indicates that the LSC runs the legal aid scheme in England and Wales. He therefore accepts that it is the most appropriate authority to contact for the relevant information. He further accepts that there is no current business need or statutory requirement for the MoJ to hold such information.
15. The Commissioner therefore accepts that on the balance of probabilities, the MoJ does not hold the requested information and was correct to state this to the complainant in its refusal notice. In doing so, the MOJ satisfied the requirements of section 1(1)(a) of the Act.

16. Section 10(1) of the Act provides that:

“Subject to subsections (2) and (3), 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.”

17. The complainant made his request on 16 August 2010 and a response was provided to him on 27 September 2010. The time taken by the MoJ to respond to the complainant’s request exceeds the 20 working days provided by section 10(1) of the Act and therefore the MoJ breached this section.

## **The Decision**

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18. The Commissioner’s decision is that the public authority dealt with the following element of the request in accordance with the requirements of the Act:

- It correctly confirmed that it did not hold the requested information following section 1(1)(a) of the Act.

19. However, the Commissioner has also decided that the following element of the request was not dealt with in accordance with the Act:

- In not responding to the complainant’s request in the prescribed 20 working days, the MoJ was in breach of section 10(1) of the Act.

## **Steps Required**

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20. The Commissioner requires no steps to be taken.

## Right of Appeal

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21. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

22. 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.
23. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 13<sup>th</sup> day of June 2011**

**Signed .....**

**Alexander Ganotis  
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