

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2012

Public Authority: Law Commission
Address: Steel House
11 Tothill Street
London
SW1H 9LJ

Decision (including any steps ordered)

1. The complainant requested information concerning the rights of mental health patients. The Law Commission did not regard the request as valid for the purposes of the FOIA. The Commissioner's decision is that the Law Commission has breached the FOIA in that the request was valid and so should have been responded to in accordance with the requirements of section 1 of the FOIA. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation: provide to the complainant a response to her request that is compliant with section 1 of the FOIA (this response should confirm or deny whether information falling within the scope of the request is held; where information is held, this should either be disclosed, or a valid explanation provided to the complainant as to why it will be withheld).
2. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

3. On 4 February 2012, the complainant wrote to the Law Commission and requested information in the following terms:

"Why are [mental health] patients denied access to solicitors of their own choice?"

"What regulations govern the rights of patients [under the Mental Health Act?]".

4. The Law Commission responded on 7 February 2012. The wording above was at the start of a lengthy email in which the complainant discussed various aspects of mental health legislation. The Law Commission focussed on this email as a whole and stated that it did not accept that the complainant had made a valid request for recorded information that fell to be addressed under the FOIA.
5. The complainant responded on 8 February 2012 and requested an internal review. When doing so, the complainant paraphrased her information request as follows:

"Why cannot a [mental health] patient choose their own solicitor?"

6. The Law Commission wrote to the complainant on 13 February 2012. It stated that it maintained that the complainant had not made a request valid for the purposes of the FOIA.

Scope of the case

7. The complainant contacted the Information Commissioner (the Commissioner) on 13 February 2012 to complain about the way her request for information had been handled.

Reasons for decision

8. Section 1(1) of the FOIA requires that a public authority should respond to an information request with confirmation or denial of whether it holds the information requested. In relation to any information that is held, this should either be disclosed, or the requester should be given a valid explanation as to why the requested information will not be disclosed.
9. In this case the position of the Law Commission is that the complainant's email of 4 February 2012 did not contain a valid request for recorded information and so it was not required to respond in accordance with the FOIA. The task for the Commissioner here is to decide if the complainant did make a valid information request. If the conclusion of the Commissioner is that the complainant did make a valid

information request, this will indicate that the Law Commission breached section 1(1) of the Act by failing to respond to this request appropriately.

10. Section 8(1) sets out the requirements of the FOIA for a request to be valid. These are that:
 - the request is in writing;
 - the requester states their name and gives an address for correspondence;
 - the information requested is described.
11. That the first two requirements above were met is not in question. The position of the Law Commission is therefore that the complainant did not describe the information requested.
12. The view of the Commissioner is that the complainant did describe the information she requested. The wording used in both the original email and in the internal review request was, in the view of the Commissioner, sufficient to describe the information that was sought. If the Law Commission required further explanation to identify precisely what was requested, it would have been appropriate and in line with the requirement to provide advice and assistance imposed by section 16(1) of the FOIA for it to contact the complainant and seek clarification about this.
13. It appears to be the case that the Law Commission concentrated on the remainder of the email, rather than on the wording at the start of it. The Commissioner agrees that the remainder of the email does not form a valid information request. Instead, it consists of objections to various points of mental health legislation. This does not mean, however, that it would not have been possible for the Law Commission to distinguish the information request from the remainder of the content.
14. The view of the Commissioner is that the complainant did describe the information requested and so all of the requirements of section 8(1) were met. His conclusion is, therefore, that the request was valid for the purposes of the FOIA and so the Law Commission breached the requirement of section 1(1) by failing to respond to this request in accordance with the requirements of the FOIA. At paragraph 1 above the Law Commission is now required to respond to the request in accordance with the requirements of the FOIA.

Right of appeal

15. 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

16. 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.
17. 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
Group Manager
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Wycliffe House
Water Lane
Wilmslow
Cheshire
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