Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **7 August 2012**

Public Authority: **Legal Services Commission**
Address: **8th Floor**
102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information from the Legal Services Commission (LSC) about solutions to avoid the closure of a charity involved in the provision of legal advice and representation to immigrants and asylum seekers. The LSC withheld the requested information citing the personal information and commercial interests exemptions (sections 40(2) and 43) of FOIA.

2. The Commissioner's decision is that the LSC was not entitled to rely on the commercial interests exemption. However, he upholds the citing of section 40(2).

3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:

    - disclose to the complainant the information withheld under the commercial interests exemption.

4. 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

5. The complainant wrote to the Legal Services Commission (LSC) on 11 November 2011 requesting information about solutions to avoid the closure of what he referred to as the Immigration Advice Service:

> *"A copy of any written internal notes of interviews of representatives of Immigration Advice Service and any internal minutes/notes of meetings with representatives from Immigration Advice Service in 2011, and the date of such meetings, in relation to solutions to avoid closure of the Immigration Advice Service (with any confidential info redacted).*
>
> *Please search and provide the information requested until the costs limit is reached and then stop. To assist you in this, please note I am not asking for all information just 'any'".*

6. The LSC responded on 9 December 2011. It confirmed that it held information relevant to the request, but refused to disclose it, citing section 43 of the FOIA (commercial interests). It stated that disclosure would be likely to prejudice the commercial interests of the Legal Services Commission itself.

7. The LSC upheld that decision in its internal review correspondence of 10 January 2012. The LSC also clarified that, even though the complainant's request referred to the Immigration **Advice** Service, it was responding with respect to the Immigration **Advisory** Service (IAS), an organisation that went into administration.

Scope of the case

8. The complainant contacted the Information Commissioner (the Commissioner) to complain about the way his request for information had been handled. He told the Commissioner:

> *"I strongly believe it is in the public interest for a public body such as the LSC to disclose information regarding the solutions it considered to avoid closure of the Immigration Advice Service.*
>
> *The disclosure of requested information would not be likely to prejudice the ability of the LSC to operate the legal aid scheme and it would not damage the legal aid scheme operation. The review does not show how the entire contents would be likely to prejudice the LSC's commercial interests."*

9. The Legal Services Commission runs the legal aid scheme in England and Wales. Its website explains that it works in partnership with solicitors and not-for-profit organisations to provide information, advice and legal representation to people in need.

10. The Immigration Advisory Service (IAS) held a contract with the LSC to deliver publicly funded services in the immigration and asylum categories of law. It ceased trading in July 2011.

11. The information in the scope of this request comprises a written record of a discussion on 8 July 2011 between the LSC's Director of Finance and Corporate Services and the IAS' instructed advisor. During the course of the Commissioner's investigation, the LSC advised that it recognised that, with the passage of time, some of the withheld information was suitable for disclosure. Accordingly it disclosed that information to the complainant - information that refers specifically to activities relating only to the closure of IAS. With respect to the remaining parts of the written record, it continued to withhold that information, citing section 43 and, additionally, the personal information exemption (section 40(2)).

12. In correspondence with the Commissioner, the complainant confirmed that he remained dissatisfied with the LSC's handling of his request, arguing that:

> *"The entire information should be disclosed to the fullest extent possible with figures not redacted. Any names of lawyers may be confidential but I would like the ICO to have input on this."*

13. The Commissioner considers the scope of his investigation to be the LSC's citing of the commercial interests and personal information exemptions in relation to the remaining withheld information.

Reasons for decision

14. Section 43 of FOIA sets out an exemption from the right to know if release of the information is likely to prejudice the commercial interests of any person, including those of the public authority holding the information.

15. In this case, the information withheld by the LSC by virtue of that exemption comprises a couple of short paragraphs and part of one sentence.

Applicable interests

16. When identifying the applicable interests in this case, the Commissioner must consider whether the prejudice claimed is to the interest stated. In this case, the LSC confirmed that it considered that disclosure of the requested information would prejudice the commercial interests of the LSC itself.

17. In the Commissioner's view, a commercial interest relates to a person's ability to participate competitively in a commercial activity, ie the purchase and sale of goods or services.

18. The LSC told the complainant that it considered legal aid to be a commercial activity through which legal aid services are purchased by the LSC from service providers. It explained that it considered:

> *"that the note of the 8 July meeting relates to the commercial interests of the LSC itself, namely in managing the efficient and cost-effective administration of legal aid".*

Nature of the prejudice

19. In the Commissioner's view, the term "prejudice" implies not just that the disclosure of information must have some effect on the applicable interest, but that this effect must be detrimental or damaging in some way.

20. The LSC argued that disclosure would be to the detriment of its own commercial interests as it would prejudice its ability to operate the legal aid scheme effectively.

21. It expanded on this argument, telling the complainant that it was satisfied that:

> *"disclosure of this information could prejudice the LSC's commercial interests should a similar situation, in respect of a provider potentially going into administration, arise in future".*

22. It went on to explain that, in that situation, the LSC *"may wish to (and would be entitled to) treat this provider differently"*, and that releasing the information at issue in this case would, in its view, prejudice the LSC's ability to exercise its commercial interests in this way.

23. In correspondence with the Commissioner the LSC argued that, in those circumstances, there would be:

> *"a real risk that the LSC could be prevented from proposing the most effective solution to avoid closure of a legal aid service*

provider if it was perceived to be inconsistent in its approach to legal aid firms in administrative and financial difficulty".

Likelihood of prejudice

24. With respect to the likelihood of prejudice, the LSC told the complainant:

"the release of this information is highly likely to have an adverse effect on the commercial interests of the LSC".

Is the exemption engaged?

25. The LSC described the information at issue in this case as information:

"which refers generally to the steps the LSC considers when dealing with a provider at risk of entering into administration, and the exceptional steps the LSC considered to avoid the closure of IAS".

26. Given the content of the withheld information, and having duly considered the arguments put forward by the LSC, the Commissioner is not satisfied that the likelihood of the information in question leading to prejudice of its commercial interests is substantially more than remote. Nor is he satisfied that the LSC has demonstrated that the identified prejudice is real, actual and of substance.

27. It follows that he does not find the exemption engaged in relation to the information withheld by virtue of section 43. Accordingly, he requires disclosure of that information.

Section 40 Personal information

28. The LSC is also citing the personal information exemption in this case, specifically in relation to the name of the IAS administrators' legal representative contained in the withheld information.

29. Section 40(2) provides an exemption for information that constitutes the personal data of an individual other than the requester and where the disclosure of this personal data would be in breach of any of the data protection principles.

30. As noted above, the information in question records the name of an individual and so it is clear that this information both relates to the individual named and that the individual is identifiable from this information. The Commissioner is therefore satisfied that this information constitutes personal data according to the definition in the Data Protection Act.

31. The Commissioner has issued guidance on the question of when the names of staff, officials, elected representatives or third parties acting in

a professional capacity should be released in response to an access request. In his view, the main consideration is whether it would be fair in all the circumstances to identify an individual.

32. When considering whether an individual would expect their role to be subject to public scrutiny, the Commissioner considers it appropriate to take account of the following factors:

- how senior they are;
- whether they have a public profile; and
- whether their role requires a significant level of personal judgement and individual responsibility.

33. Having considered the above criteria, he is satisfied that the individual concerned in this case would not have any reasonable expectation that their personal information would be disclosed

34. Accordingly, such personal data should be redacted from the information which the Commissioner has concluded should be disclosed on the grounds that section 43 was not engaged.

Right of appeal

35. 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

36. 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.

37. 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 ……

Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF