

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 November 2013

Public Authority: Legal Ombudsman

Address: PO Box 6806
Wolverhampton
WV1 9WJ

Decision (including any steps ordered)

1. The complainant has requested information from the Legal Ombudsman about the number of cases in which the Ombudsman agreed with the recommendation of its investigator and the number it disagreed. The Legal Ombudsman applied section 12 to the request.
2. The Commissioner's decision is that the Legal Ombudsman has correctly applied section 12 to the complainant's request and he does not require it to take any further steps to ensure compliance with the legislation.

Request and response

3. On 5 June 2013 the complainant wrote to the Legal Ombudsman and included the following request for information:

"...I would also appreciate if you could provide me with your statistics on Investigator/Ombudsman concurrence ratio; that is, how many decisions of the investigator the Ombudsman agreed with, and those rejected."

4. On 10 June 2013 the Legal Ombudsman responded. It applied section 12 to the request.
5. On 19 June 2013 the complainant wrote to the Legal Ombudsman requesting it review its decision.
6. On 10 July 2013 the Legal Ombudsman responded to the complainant. It confirmed its original decision. There was some further correspondence between the complainant and Legal Ombudsman in

connection with the complainant's dissatisfaction with its decision. The Legal Ombudsman continued to maintain its position.

Scope of the case

7. The complainant contacted the Commissioner on 6 August 2013 to complain about the way his request for information had been handled, specifically the Legal Ombudsman's application of section 12 to his request.
8. The Commissioner considered whether the Legal Ombudsman had correctly applied section 12 to the complainant's request, including whether the complainant was entitled to receive information falling within the scope of his original request up to the appropriate limit under section 12.

Reasons for decision

Section 12 – the cost of compliance exceeds the appropriate limit

9. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations").
10. The appropriate limit for central government departments is £600 and £450 for all other public authorities, such as the Legal Ombudsman. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
 - determining whether the information is held;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
11. By way of background to the complaint, the Legal Ombudsman informed the Commissioner that it was established by Parliament in order to simplify the system for dealing with complaints about the service

provided by lawyers and make sure consumers had access to an independent expert to resolve those complaints.

12. To assist the Commissioner, the Legal Ombudsman set out the complaint process. It explained that once a complaint was accepted for investigation an investigator would be assigned. The investigator firstly established if an informal resolution could be achieved with the mutual agreement of both parties. If this was not possible they considered the information provided and then gave their recommendation on how the matter should be concluded.
13. If both parties accepted that recommendation, the complaint was concluded on that basis. However, if either side disagreed with the recommendation or felt fundamental points had been missed or not given sufficient weight, they could reject the recommendation. In this situation the Legal Ombudsman invited comments on why the recommendation was not a correct reflection on the complaint. This gave an opportunity for both sides to provide constructive feedback direct to the Ombudsman setting out the arguments as to what should be a suitable conclusion to the complaint, and/or address areas which it was felt had not been given proper consideration.
14. On receipt of these comments the work of the investigator came to an end, and the complete file was placed before one of the Ombudsmen. The Ombudsman reviewed the evidence supplied by both parties, the recommendation report produced by the investigator, and the comments from each party on that recommendation. Once the Ombudsman was satisfied that they were in a position to make a decision, a final decision was made. Only an Ombudsman could legally make a final decision on a complaint, and they were not bound in anyway by the recommendation of an investigator, which was part of the informal process of resolving the complaint.
15. In relation to the complainant's request for the number of the recommendations of investigators that the Ombudsman had agreed with and the number that had been rejected, the Legal Ombudsman explained that it did not collate this information. The requested information was held within its electronic files. To retrieve that information would require it to physically opening each file and look, in the main, at two documents, the investigator's recommendation report and the Ombudsman's final decision.
16. The Legal Ombudsman informed the Commissioner that the nature of the request required consideration of only those files where an Ombudsman has made a decision. It knew that for the last three financial years there were 5,810 cases in which an Ombudsman had made a decision. However, it explained that it was not as simple as, for example, on the one hand an investigator upholding a complaint and on

the other hand an Ombudsman not upholding it. The consideration of complaints about lawyers was never that simple. It often required the examination of a lengthy history going back many years, and a voluminous amount of documentation. For example it was not uncommon for an investigator and an Ombudsman to both conclude that there had been poor service from a lawyer to his client. However, they could arrive at a different synopsis of what that poor service was, and when it occurred, as well as the type, amount and makeup of the remedy that that should be provided by the lawyer. Consequently, the information that had been requested would not be available in a simple form. In order to be able to provide this information, the content of each investigator's report and Ombudsman's decision would need to be examined.

17. The Ombudsman informed the Commissioner that the length of a recommendation report and decision could vary depending on the complexity of each case, the common length of each being between 5 – 20 typed pages. It would therefore need to examine these two documents for each of the 5,810 cases in which an Ombudsman made a decision. In some cases it might need to consider further documents in order to establish the correct position.
18. The Ombudsman had therefore concluded that in order to respond to the request it would need to do the following:
 - Determine whether the information is held – searching for the 5,810 files where an Ombudsman made a decision
 - Locate the information – searching the files for the relevant information
 - Retrieve the information - analysing the relevant documents and interpreting its written content
 - Extract the information from a document containing it – removing the relevant information from the documents, and placing it in a format capable of addressing the complainant's request.
19. The Ombudsman explained that it had carried out a sampling exercise in relation to the relevant files. It had taken a random 6 cases from the last 3 financial years and extracted the information necessary to respond to the request. This took 1 hour 35mins to complete, an average of just over 15 minutes per case file. On this basis it had calculated that it would require 1452 hours of work to fully respond to the request, well in excess of the amount of time required to exceed the appropriate limit under section 12. It confirmed that this work had been undertaken prior to responding to the complainant setting out its section 12 reasoning.

20. The Ombudsman confirmed that it held no manual case files. All its files are held electronically with documentation being scanned or “uploaded” to the file. It also confirmed that its estimate has been based on the quickest method of responding to the request and that the task of establishing how long it would take had been undertaken by a person who had day to day experience of working with its case management system. It had also sought advice from its Management Information Team who have responsibility for running management reports. They had confirmed that no standard report could be run for the information the complainant had requested.
21. In light of the evidence provided by the Ombudsman, the Commissioner is satisfied that for it to locate, retrieve and extract the information requested by the complainant would exceed the appropriate limit under section 12(1) of FOIA.
22. The Commissioner also notes that the Ombudsman contacted the complainant to see if he could narrow the scope of his request to bring it within the appropriate limit under section 12. The complainant requested that he be provided with information falling within the scope of his original request up to the appropriate limit. The Ombudsman informed the complainant that, under section 12, there was no legal obligation for it to do this.
23. The Commissioner’s view is that the Legal Ombudsman was correct in its application of section 12 in that it does not require a public authority to provide a requester with information up to the appropriate limit when asked to do so by the requester where the original request exceeds that limit.
24. In light of the above, the Commissioner has determined that the Legal Ombudsman has correctly applied section 12(1) to the request and has complied with FOIA in its response to the complainant’s request to provide him with information up to the appropriate limit. Consequently, he does not require it to take any further steps to ensure compliance with the legislation.

Right of appeal

25. 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

26. 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.
27. 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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