

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 April 2014

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

Decision (including any steps ordered)

1. The complainant requested information from the Ministry of Justice (MoJ) relating to members of the Residential Property Tribunal/Leasehold Valuation Tribunal.
2. The MoJ provided some information within the scope of the request, but denied holding the remainder.
3. The Commissioner's decision is that, on the balance of probabilities, the remaining requested information is not held and therefore he requires no further action to be taken.

Background

4. The First-tier Tribunal – Property Chamber (Residential Property) has regional offices which provide an independent service in England for settling disputes involving private rented and leasehold property.
5. Each region has a Regional Judge, assisted by one or more Deputy Regional Judges or Deputy Regional Valuers, who is responsible for the tribunal members and in particular decides which members should be appointed to hear and decide a particular case.
6. Tribunal members may be surveyors, other professional people or lay people.

Request and response

7. During the course of his investigation, the Commissioner has had the opportunity to consider the correspondence that has passed between the public authority and the complainant. While the correspondence has variously been between the complainant and the First-tier Tribunal (Property Chamber) Residential Property and the MoJ the Commissioner has, for the purposes of this decision notice, referred to the public authority as the MoJ.

8. On 22 July 2013 the complainant wrote to the MoJ and requested information of the following description:

"I seek to obtain a list of all such qualified persons including details of their respective regulators and their personal membership number. This includes details of the President and all named and anonymous person, having dealt on my account".

9. Following earlier correspondence about the Leasehold Valuation Tribunal (LVT), the complainant wrote to the MoJ on 6 August 2013 requesting:

"... information on all the professionally regulated LVT staff dealing with my case, in respect of Name, Qualification, Regulatory Authority and Identify Reference, in order I can instigate an enquiry into the individual's activity and infact if they breach their Regulatory Code of Conduct".

10. The MoJ sought clarification of the request on 15 August 2013:

"Can you confirm whether you are after information in connection with the members who heard your case on 15 July or all Residential Property members?"

11. The complainant replied later that same day:

"Yes to first question".

12. He also told the MoJ on 15 August 2013:

"Therefore the list of persons I seek to determine their respective full professional qualification, Faculty and registration detail are:

*The President Leasehold Valuation Tribunal: Mrs Siobhan McGrath
The Judge: Mr P H Leighton
The Judge: Ms Dowell & Judicial Status as a Judge
Technical Expert: [name redacted]
Deputy Regional Valuer: [name redacted]*

*Lay Person: [name redacted] & Basis of Appointment
All Procedural Directors, including Anonymous, involved in decision making on my case.*

I'm particularly interested in the Law that authorises Anonymity and the legal rejection of a legally authorities Medical Certificate and that which the LVT relies on to determine their authority".

13. The MoJ responded on 6 September 2013. It told the complainant:

"Although the Residential Property does hold some of the information that you have requested such as some of the qualifications for some of the members.... we do not hold most of the information. For example we do not hold personal membership numbers for any regulatory authority. To find out what information existed a search of the members personal files was carried out".

14. The MoJ provided the complainant with the details of qualifications of the individuals named in his request that are held on its records.

15. It confirmed that it does not hold personal membership numbers for any regulatory authority.

16. The complainant expressed dissatisfaction with the MoJ's response on 3 December 2013 and 21 December 2013. He told the MoJ:

"One assumes ... that a procedure exists, for fully recording details of all appointment applications".

17. Following the Commissioner's intervention, the MoJ sent him the outcome of its internal review on 21 January 2014. It upheld its original position, confirming that:

"You were provided with the information held".

18. In relation to the other information requested it confirmed that:

"all possible areas of the business that would possibly hold the additional information you seek have been checked and therefore it is not possible to gather any further information in regards to the information you have requested".

Scope of the case

19. The complainant provided the Commissioner with the relevant documentation on 29 January 2014 to complain about the way his request for information had been handled.

20. He told the Commissioner:

"It is obvious that I'm getting the run-around, therefore your further assistance is requested. To suggest a Judge is appointed without any record of qualification, or that the Tribunal can treat such information as confidential is totally ridiculous.

All professional bodies keep such records to facilitate enquiries into breaches of Conduct Rules".

21. The Commissioner considers the scope of his investigation to be whether the MoJ is correct when it says that it does not hold the disputed requested information – information relating to professional membership.

Reasons for decision

Section 1 general right of access

22. Section 1 of FOIA states 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."

23. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of Information Rights Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, he must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

24. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, the MoJ holds the requested professional membership information.

25. In deciding where the balance of probabilities lies, the Commissioner will consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and results the searches yielded. He will also consider any other

information or explanation offered by the public authority which is relevant to his determination.

26. In progressing his investigation, the Commissioner asked the MoJ to respond to him, including with respect to:

- the searches it carried out for information falling within the scope of the request and the search terms used;
- whether any recorded information relevant to the scope of the complainant's request had ever been held but had been deleted/destroyed; and
- whether the MoJ has a business purpose for which the requested information should be held.

27. In its substantive response to the Commissioner, the MoJ confirmed:

"We have provided qualifications where known for all the tribunal members and Judges named in the request".

28. With regard to the disputed requested information the MoJ explained the nature of the searches it had conducted. It told the Commissioner:

"The relevant business area, the Residential Property Tribunal, carried out a search of its own electronic and manual records".

29. It also confirmed:

"As part of this review, a search of the Court and Tribunals Judicial Appointments Team's files has been carried out".

30. The MoJ also provided further explanation in support of its view that it does not hold the disputed information. For example it explained that:

"Certain checks are made when appointing tribunal Judges and members so to ensure that the business area can be satisfied that they can be recommended for appointment".

31. However, while checks are made regarding membership, the MoJ told the Commissioner that it has no business reason to request or hold information regarding specific membership details.

32. The Commissioner has considered the nature of the searches that have been conducted. He has also considered the MoJ's reasons for saying that no further relevant information is held.

33. In correspondence with the MoJ, the complainant said:

"One assumes such people are not simply pick [sic] at random from the common herd and that a procedure exists, for fully recording details of all appointment applications. It follows that all claimed qualifications, are certified prior to appointment and therefore, the information is readily available and contained in system files".

34. While appreciating the complainant's frustration that the MoJ does not hold the specific information he has asked for, the Commissioner is mindful of the comments made by the Information Tribunal in the case of *Johnson / MoJ* (EA2006/0085)¹ that the FOIA:

"does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".

35. Having considered the MoJ's response, and on the basis of the evidence provided to him, the Commissioner is satisfied that on the balance of probabilities the MoJ does not hold the requested information.

¹ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i90/Johnson.pdf>

Right of appeal

36. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

37. 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.
38. 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
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