

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 July 2014

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

Decision (including any steps ordered)

1. The complainant submitted two requests for information relating to a tender bid process in 2010 for legal aid work. Neither request was responded to by the Ministry of Justice (the 'MOJ') in reliance on section 17(6) of the FOIA.
2. The Commissioner's decision is that the MOJ has properly applied section 17(6) to both requests and he therefore does not require the public authority to take any steps.

Background

3. The Legal Aid Agency was created as an executive agency of the MOJ on 1 April 2013 when the Legal Service Commission was abolished. The Commissioner notes that the Legal Aid Agency is not a public authority itself, but is actually an executive agency of the MoJ, which is responsible for it. Therefore, the public authority in this case is actually the MOJ and not the Legal Aid Agency; however, for the sake of clarity, this decision notice refers to the Legal Aid Agency as if it were the public authority. As this notice covers issues which occurred at the time the Legal Services Commission existed, and following the creation of the Legal Aid Agency, it contains references to both.
4. The complainant is a solicitor whose law practice was part of a tender bid in 2010 for legal aid work; his law practice was not successful. The Commissioner understands that this firm has launched judicial review proceedings against the Legal Aid Agency ('LAA') which are ongoing,

having been refused a contract after failing to answer a number of the selection criteria questions on its application.

5. On 21 May 2011 the complainant made a request which is identical to one that he made on 10 February 2014 (set out under 'Request and response' below). Although the 21 May 2011 request was refused by the MOJ as being a repeat request (section 14(2) of the FOIA) the Commissioner found in his decision notice FS50398766¹ that the request was not a repeat request and required the Legal Services Commission (the 'LSC') to provide a response.
6. The LSC responded on 21 December 2011, disclosing some information and withholding some under section 12(1) of the FOIA (cost of compliance). On 1 May 2012 the complainant became aware that the LSC held additional information about another firm of solicitors which it had failed to disclose in response to decision notice FS50398766.
7. On 30 March 2013, the complainant contacted the Commissioner again on the basis that he felt the information previously provided was "*inaccurate*" and "*incomplete*". On 15 April 2013, the Commissioner wrote to the complainant explaining that the undue delay in bringing his concerns to the Commissioner's attention meant that he could not pursue the matter further. He suggested that the complainant might want to resubmit his request of 21 May 2011 to ascertain what the LSC would provide in response.
8. The complainant did not re-request this information until 10 February 2014, by which time a section 17(6) notice had been issued declaring that requests on the topic of the tender process and associated proceedings would not be responded to, as described in the following paragraph.
9. On 18 December 2013 the Commissioner issued decision notice FS50505670² in relation to a further request which the complainant had made on 19 April 2013, again about the tender bid. The Commissioner found that the MOJ was correct to declare this request "vexatious" under

1

http://ico.org.uk/~media/documents/decisionnotices/2011/fs_50398766.aspx

2

http://ico.org.uk/~media/documents/decisionnotices/2013/fs_50505670.aspx

section 14(1) of FOIA. The MOJ advised the complainant that it would no longer be responding to requests in relation to the tender process or the associated proceedings in accordance with section 17(6) of the FOIA.

Request and response

10. On 24 January 2014 the complainant wrote to the MOJ about a named firm of solicitors and requested information in the following terms:

1. *What is the name of the firm that had its 1 award of a contract withdrawn in August 2010?*
 2. *How many Asylum New Matter Starts (NMS) and how many non-asylum NMS were awarded to this the firm that had its 1 award of a contract withdrawn in August 2010?*
 3. *On what date was the 1 award of a contract withdrawn in August 2010 from the firm concerned?*
 4. *On what date did the LAA first inform [named solicitor] about the fact that its Luton bid was successful.*
 5. *What was the initial score of the firm that had its 1 award of a contract withdrawn in August 2010?*
 6. *I understand that the LSC received a letter before claim from [named solicitor]. Can you confirm that is the case and if so the date of the letter before claim and the date of the response to the letter before claim?*
 7. *Could I have copies of all the correspondence between the LSC and [named solicitor] concerning the Luton tender, between 28 June 2010 and November 2010.*
 8. *Could I also have a copy of the full grounds of appeal filed by [named solicitor] concerning their Luton bid?*
 9. *Could I have any other relevant material relating to this bid."*
6. The complainant submitted another request on 10 February 2014 for the following:
- "Please provide full details of all the instances where the LSC changed the answer given by an applicant in any part of the Immigration Tender.*

Please provide full details of all the instances where the LSC changed the answer given by the applicant in any part of the Immigration Tender with or without the knowledge of the applicant. That is with or without the express or implied approval of the applicant.

Also where answers were changed without the knowledge of the applicant.

And all instances where an instances where an applicant was invited to change an answer he has given previously or to fill a gap where no answer was given. Or to fill a gap where no information was inserted."

11. The MOJ did not respond to either request.

Scope of the case

12. The complainant contacted the Commissioner on 22 March 2014 to complain about the way his requests for information of 24 January 2014 and 10 February 2014 had been handled.
13. The complainant asked the Commissioner to consider whether the requests were vexatious; however, the Commissioner clarified that his remit in this case was to determine whether the MOJ was correct not to have responded to either request in accordance with section 17(6) of the FOIA.
14. The Commissioner has therefore considered whether the MOJ was entitled to rely on its previously issued section 17(6) refusal notice in not responding to both requests.

Reasons for decision

15. Section 17(5) of the FOIA provides that:

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section (1), give the applicant a notice stating that fact."

16. Section 17(6) of the FOIA states that a public authority is not required to provide a refusal notice where:

"(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."

17. The Commissioner has viewed the section 17(6) refusal notice issued to the complainant on 20 May 2013, in which earlier requests on the subject of the tender bid process were declared vexatious. The MOJ advised the complainant:

"Additionally, please be advised that under section 17 (6) of the Act the MOJ gives notice that we will no longer be responding to Freedom of Information requests in relation to this specific case or further requests which are in some way attributed to your ongoing legal action, the LSC/LAA's tender process, or individual tenders that have taken place over the last three and a half years."

18. The Commissioner is satisfied that the requests of 24 January 2014 and 10 February 2014 are both about the tender process. Details about vexatious requests and how section 17(6) works can be found in the Commissioner's guidance on page 28³:

"The ICO will usually only accept that it would be unreasonable to issue a further refusal notice if the authority has already warned the complainant that further requests on the same or similar topics will not receive any response."

19. In this case, the MOJ had warned the complainant that further requests on the same or similar topics would not receive any response. The Commissioner therefore cannot conclude that the MOJ has acted unreasonably.
20. The Commissioner wrote to the complainant on 15 April 2014, setting out his preliminary view with the aim of informally resolving the case. The complainant declined and requested time to prepare a response

3

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

with a view to all parties resolving the case informally, to which the Commissioner agreed.

21. The complainant forwarded his response in two parts on 15 and 22 June 2014. His main contention centred on the issue of his requests of 24 January 2014 and 10 February 2014 not being 'vexatious requests'. The Commissioner wrote to the complainant on 24 June 2014, advising that his remit in this case, as already stated, has been only to consider whether the MOJ acted in accordance with the FOIA in refusing to respond to the complainant's requests of 24 January 2014 and 10 February 2014, not to reconsider whether the MOJ was correct to apply section 14(1) to his earlier request, as this had already been considered by the Commissioner and a decision notice issued under FS50505670. The complainant still required that the Commissioner issue a decision notice in this case.
22. The Commissioner's view is that the MOJ has complied with the FOIA in its handling of the complainant's requests of 24 January 2014 and 10 February 2014, and was correct to rely on section 17(6) of the FOIA in not responding to either request.

Right of appeal

23. 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

24. 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.
25. 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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