

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 October 2015

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

Decision (including any steps ordered)

1. The complainant requested the metadata of the correspondence between the Legal Service Commission and particular legal organisations in the Luton area within a specified timeframe. The Ministry of Justice (MoJ) refused the request, citing the exemptions in sections 43(2) (commercial interests) and 44(1)(c) (prohibitions of disclosure) of the FOIA.
2. The Commissioner has investigated MoJ's application of section 44. His decision is that it was entitled to apply section 44(1)(c) to the requested information. However, he finds that MoJ breached section 1(1)(a) of FOIA by failing to confirm or deny whether it holds the requested information within the statutory time limit.
3. He requires no steps to be taken as a result of this decision notice.

Background

4. The Legal Aid Agency is an executive agency of the Ministry of Justice (MoJ) and falls within its remit for the purposes of FOIA. MoJ is therefore the appropriate public authority in this case.

5. According to the Commissioner's guidance:¹

"When an electronic document is created and subsequently worked on, information about its properties is automatically generated and stored. This information records details such as the author, dates, editing history, size, file paths, security settings and any email routing history. It is commonly known as metadata".

Request and response

6. On 5 April 2015 the complainant wrote to the Legal Aid Agency and requested information in the following terms:

"Please send me the metadata for all the correspondence between the Legal Service Commission (now Legal Aid Agency) and all the legal organisations in Luton that had their offer of contracts withdrawn between 30 June 2010 and 1 January 2011".

7. In response to its request for clarification about the scope of the information requested, he told MoJ:

"By metadata I meant the dates of correspondences between the LSC and the organisations in Luton that had their offer of contracts withdrawn.

By metadata I also meant the dates of correspondences and times of correspondences for example the LSC sent a letter on 21 June 2010 at 1520 to an organisation that had its offer of contract withdrawn

In respect of your second question the information that I need relates to the Immigration category".

8. MoJ responded on 16 June 2015. It refused to provide the requested information on the basis that the request was vexatious (section 14 of FOIA). It also cited section 43(2) of FOIA (commercial interests).
9. The complainant requested an internal review on 17 June 2015. MoJ sent him the outcome of its internal review on 7 July 2015 in which it

¹ https://ico.org.uk/media/for-organisations/documents/1169/determining_whether_information_is_held_for_eir.pdf

revised its position. MoJ told him that it no longer considers that section 14 applies. It confirmed that it considers section 43(2) applies and told the complainant that it also considers that section 44(1) of FOIA (prohibitions on disclosure) applies in this case.

Scope of the case

10. The complainant contacted the Commissioner on 10 July 2015 to complain about the way his request for information had been handled. In particular, he was dissatisfied that MoJ had failed to confirm or deny – explicitly - whether it holds the requested information. With reference to the subsections relied on by MoJ he told the Commissioner:

"I note that the LAA has not relied on sections 43(3) and 44(2) of the Act. Therefore, I am entitled to know whether the information I requested is held regardless of whether the information should be released to me".

11. The analysis below considers MoJ's application of exemptions to the requested information. The Commissioner has also considered whether it has met its obligations under section 1(1)(a) (general right of access to information) of the FOIA.

Reasons for decision

Section 44 prohibitions on disclosure

12. Section 44 of the FOIA provides that:

"(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –

(a) is prohibited by or under any enactment,

(b) is incompatible with any Community obligation, or

(c) would constitute or be punishable as a contempt of court."

13. Section 44 is a class based exemption: if the information conforms to the class described in this section, the exemption is engaged.

14. In this case MoJ considers that section 44(1)(c) applies.

Would disclosure constitute or be punishable as a contempt of court

15. MoJ told the complainant:

"There is a High Court Order dated 17 July 2013 in relation to proceedings instigated by other persons which provides expressly that specific information shall not be disclosed without the express permission of the Court".

16. It provided him with details of what it considers to be the relevant paragraph of that Order, namely:

"7. The names of comparator firms in the pleadings shall be treated as confidential. The parties shall file a covering note with the pleadings stating that details of third party firms are confidential and that the pleadings should not be disclosed to anyone other than the parties save with the express permission of the Administrative Court. The Court shall refer to all these firms by their anonymisation numbers and no person may report or disclose the names of those third party firms or the detail of the information requested to be clarified by the Defendant save with the express permission of the Administrative Court."

17. By way of explanation, MoJ told the complainant that the Administrative Court was concerned with the circumstances by which the third party firms named in the pleadings came to be awarded legal aid contracts in the 2010 tender process. It explained that the Order was put in place to protect the sequence of events which led to them being awarded a contract.

18. MoJ explained why it considers that, if the requested information was provided, it would be caught by the Court Order. It told the complainant:

"Although you have not named specific solicitor's firms in your request, I consider that, if the information that you have requested were provided, it would be caught by the Court Order, because it would identify, or make it relatively easy to identify, the circumstances by which one or more third party firms named in the pleadings came to be awarded contracts, contrary to the spirit and purpose of the Court Order. The Order was live at the time of your request and remains in place".

19. MoJ provided the Commissioner with a copy of the Order during the course of his investigation.

20. The complainant told the Commissioner:

"The dates of correspondences cannot cause the organizations involved to be identified or cause the release of sensitive commercial information under any circumstances".

21. The Commissioner has considered the High Court Order and the submissions of the complainant and the MoJ.
22. Having considered the matter and with due regard to the wording of the request in this case, the Commissioner accepts that disclosure in response to the request would breach the Order and that that would constitute contempt of court. The exemption provided by section 44(1)(c) is therefore engaged in relation to this information.
23. Section 44 is an absolute exemption, which means that if information is covered by any of the subsections in section 44 then it is exempt from disclosure. There is no need to consider whether there might be a stronger public interest in disclosing the information than in not disclosing it.

Other exemptions

24. As the Commissioner has decided that section 44 FOIA applies, he has not gone on to make a decision about MoJ's application of the section 43(2) exemption to the same information.

Section 1 general right of access

25. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request.
26. In this case the Commissioner notes that MoJ's correspondence of 16 June 2015 and 17 July 2015 does not clearly do this and consequently he finds that MoJ breached section 1(1)(a).

Right of appeal

27. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

28. 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.
29. 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
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