

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 July 2017

**Public Authority:** The Legal Ombudsman  
**Address:** PO Box 6806  
Wolverhampton  
WV1 9WJ

#### Decision (including any steps ordered)

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1. The complainant requested information regarding the types of records held by the Legal Ombudsman in relation to Residential Conveyancing Complaints investigations.
2. The Legal Ombudsman initially cited section 12 of the FOIA (cost of compliance exceeds appropriate limit). During the course of the Commissioner's investigation the Legal Ombudsman stated that it did not hold information relevant to the request.
3. The Commissioner has investigated the Legal Ombudsman's handling of the request.
4. The Commissioner's decision is that the Legal Ombudsman failed to comply with its obligations under section 1 of the FOIA (general right of access) and breached section 16 of the FOIA (duty to provide advice and assistance).
5. The Commissioner requires the Legal Ombudsman to take the following steps to ensure compliance with the legislation:
  - issue a fresh response in accordance with its obligations under section 1 of the FOIA; and
  - provide the complainant with advice and assistance in accordance with its obligations under section 16 of the FOIA.
6. The Legal Ombudsman 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

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7. On 19 January 2017, the complainant wrote to the Legal Ombudsman and requested information in the following terms:

*"Please provide a complete and detailed list of all records and documentation (including, but not limited to, forms, communication, minutes, etc.) created, obtained, used, and retained by the Legal Ombudsman Service when conducting formal Residential Conveyancy [sic] Complaints Investigations into the activities Licensed Conveyancers / Legal Providers*

*Please ensure that the following information is supplied:*

- a) The Name and/or assigned designation of the Record.*
- b) A description of Record Type and its Purpose.*
- c) Does the Record exist as a Hard-Copy, Electronic-Copy, or Both?*
- d) If the Record is an Electronic-Copy, what is the name of the Electronic System where the Record kept?*
- e) At which stage of the Complaints Investigation Process is the Record is created?*
- f) Who is responsible for creating and maintaining the Record?*
- g) Is the Record a formal / mandatory requirement during the Complaint Investigation Process?*
- h) Are completed copies of the Record is available upon request (either under an FOI, SAR, or Both)?*
- i) What is the minimum duration that the Legal Ombudsman Service will retain the Record?*
- j) What is the maximum duration that the Legal Ombudsman Service will retain the Record?*
- k) Who can receive a copy of the Record?*
- l) Any other information of note relating to the Record".*

8. The Legal Ombudsman responded on 27 February 2017. It denied holding any relevant general documents or information used for the consideration of residential conveyancing complaints.
9. The Legal Ombudsman told the complainant that it would exceed the appropriate limit to search all the information it held to establish the possibility of any minute or note relating to residential conveyancing (section 12 of the FOIA, cost of compliance exceeds the appropriate limit).
10. The complainant expressed dissatisfaction with that response on 28 February 2017. Clarifying the request, he told the Legal Ombudsman:  
  
*"...As the information requested should be documents freely available and used on a daily basis ....to make the FOI easier for you to complete, instead of producing a list, I request that you supply copies of the blank templates for all documentation used during the Residential Conveyancy [sic] Investigation process".*
11. The Legal Ombudsman sent him the outcome of its internal review on 15 March 2017. It stated that there was no further information held relevant to his request and no further assistance it could provide.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 15 March 2017 to complain about the way his request for information had been handled.
13. The complainant disputes that the Legal Ombudsman does not hold any form of blank internal documentation relevant to his refined request.
14. He also considers that the Legal Ombudsman failed to provide him with reasonable advice and guidance in relation to his request for information.
15. During the course of the Commissioner's investigation, the Legal Ombudsman revisited its handling of the request. Having done so, it wrote to the Commissioner, copying the correspondence to the complainant. In its submission it provided further explanation about the way it handles complaints and the nature of the information available to its staff.
16. With respect to its provision of advice and assistance, it confirmed that it had explained the Legal Ombudsman's investigation process to the complainant and directed him to its website.

17. No reference was made to section 12 of the FOIA and no section 12 arguments were advanced.
18. In subsequent correspondence with the Commissioner, the complainant expressed concern:

*"... that throughout their latest response the Legal Ombudsman consider that my FOI Request was specific to case files when my actual focus was clearly related to documents and record templates used during the Residential Conveyancy Complaints Process [sic]"*.
19. The Commissioner is mindful of the wording of the request in this case and the clarification the complainant provided in respect of the information he was seeking.
20. The analysis below considers whether the Legal Ombudsman complied with section 1(1) of the FOIA and whether it met its obligation to offer advice and assistance under section 16 of the FOIA.

## Reasons for decision

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### *Section 1 general right of access*

21. Section 1(1) of the FOIA says that an individual who asks for information from a public authority is entitled to (a) be informed whether the authority holds the information and, (b) if the information is held, to have that information communicated to them. This is subject to any exemptions or exclusions that may apply.
22. Under section 1(3) of the FOIA, where a public authority reasonably requires further information in order to identify and locate the information requested, and has informed the applicant that it requires clarification of the request, it is not obliged to comply with the request unless it is supplied with that clarification.

### *The complainant's view*

23. The complainant considers that the Legal Ombudsman must hold information that falls within the scope of his request - for example progress checklists and preliminary investigation forms.
24. In that respect, he wrote to the Legal Ombudsman clarifying that his request focussed on processes used by the Legal Ombudsman and its representatives:

*"As a professional organisation, whose remit is to conduct process-led investigations into consumer complaints raised against Legal Providers/licensed Conveyancers (and the delivery of fair,*

*reasonable, and consistent outcomes), I believe that representatives of your organisation will have access to documents that will enable them to fulfil their daily duties in accordance with the aforementioned process-led investigations”.*

*The Legal Ombudsman's view*

25. Following the Commissioner's intervention, the Legal Ombudsman explained that:

*“.. the records and documentation created, used, and retained when investigating each complaint about residential conveyancing services will contain information that is specific to the facts of the case. .... Therefore case documents are not discloseable to [the complainant] as they are subject to legal professional privilege, they will contain personal information and disclosure would also be a breach of the Data Protection Act 1998 (sections 42 and 40 of the FOIA.)”.*

26. With regard to the refined request, the Legal Ombudsman confirmed that its staff have access to a number of template letters that can be used in investigating a complaint accepted for investigation. However, it said that none of those template documents - documents which it described as 'fairly basic' - are specific to residential conveyancing cases.
27. The Legal Ombudsman also confirmed that it held an electronic list of the template letters that can be used in investigating a complaint. However, it stated that the list did not fall within the scope of the request as the templates are not specific to residential conveyancing cases.
28. It also described other resources it held, but stated that such information was not in scope of the request either because it was not specific to complaints about residential conveyancing matters or because it did not form part of any complaint file.

*The Commissioner's view*

29. The Commissioner's guidance<sup>1</sup> on section 1 of the FOIA makes it clear that public authorities must interpret information requests objectively

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

and avoid reading into the request any meanings that are not absolutely clear from the wording.

30. When an authority receives an unclear or ambiguous FOIA request, section 1(3) permits it to ask for such clarification as is necessary to help it identify and locate the information requested. Furthermore, its duty under section 16 of the FOIA to provide reasonable advice and assistance may also be triggered, requiring it to go back to the requester to ask for clarification.
31. If, following the provision of reasonable advice and assistance, the requester is still unable to supply the required clarification, the authority will not be expected to offer advice and assistance a second time.
32. On receipt of its original response, in which the Legal Ombudsman indicated that complying with his request would exceed the appropriate cost limit, the complainant emailed the Legal Ombudsman to request an internal review. That email described the requested information as:  
  
*"... documents freely available and used on a daily basis by The Legal Ombudsman Service and its representatives, ... copies of the blank templates for all documentation used during the Residential Conveyancy [sic] Investigation process".*
33. From the evidence she has seen, the Commissioner is not satisfied that the Legal Ombudsman attempted to bring the two parties together in a common understanding of the scope of the request. It follows that she is not satisfied that the Legal Ombudsman has accurately confirmed or denied whether it holds information within the scope of the request. She therefore finds that the Legal Ombudsman failed to handle the request in accordance with the provisions of section 1 of the FOIA.

#### *Section 16 advice and assistance*

34. Section 16(1) of the FOIA places a duty on the public authority to offer the applicant advice and assistance, so far as it would be reasonable.
35. When he made his request for information, the complainant stated:  
  
*"If it is not possible to provide the information requested due to the information exceeding the cost of compliance limits identified in Section 12, please provide advice and assistance, under your Section 16 obligations, as to how I can refine my request to be included in the scope of the Act".*
36. The complainant also sought advice and assistance from the Legal Ombudsman when he requested a review of its decision:

*"If I can provide any further assistance with answering any questions that you may have or if you are unsure on any points that I have raised, please contact me .... Additionally, if you have any advice or guidance as part of your Section 16 obligations that you wish to provide, then please get in touch.*

37. From the evidence the Commissioner has seen, no such contact was made or appropriate advice provided.
38. The Commissioner considers that best practice would suggest that, if the reasons the complainant put forward for requesting an internal review raised doubt over the information within the scope of his request, the Legal Ombudsman should have contacted him to provide advice and assistance, for example with respect to helping him focus his request.
39. In the circumstances of this case, by failing to give appropriate advice and assistance to the complainant, the Legal Ombudsman breached section 16(1) of the FOIA.

## Right of appeal

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40. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

41. 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.
42. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**