

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 November 2017

Public Authority: Her Majesty's Land Registry (HMLR)
Address: HM Land Registry Head Office
Trafalgar House
1 Bedford Park
Croydon
CR0 2AQ

Decision (including any steps ordered)

1. The complainant has requested information relating to specific Land Registry titles. HMLR has refused to disclose the requested information relying on section 21 – information accessible by other means.
2. The Commissioner's decision is that HMLR has correctly relied on section 21 and she does not require HMLR to take any further steps.

Request and response

3. On 28 April 2017, the complainant wrote to HMLR and requested information in the following terms:

"I wrote to you 11th April 2017 with regard to your process of handling scenario and policy in relation to HM adjudication in matters of Land Registry. This information at this date has not been provided. I am therefore left to find this information from historical cases. Can you, therefore provide me documents under Freedom of Information 2000 and subsequent revisions of this Act with regard to the procedural handling by Land Registry of the following titles involving the Secretary of State at the time:

*ESX219073, ESX242205, ESX265275, ESX266177, ESX269999,
ESX271940, ESX271940, ESX271942,
ESX271945, ESX271945, ESX279145, ESX279146, ESX284121,
ESX285064, ESX79088, ESX11521,
ESX264453, ESX265275, ESX265562, ESX265562, ESX265625,
ESX266177, ESX266177, ESX266955,*

ESX271932, ESX271933, ESX271935, ESX271935, ESX271937, ESX271938, ESX271939, ESX271940, ESX271942, ESX271942, ESX271945, ESX273794, ESX273794, ESX273794, ESX274405, ESX275050 ESX275955, ESX278135, ESX279028, ESX279088, ESX279145, ESX279146, ESX279147, ESX279836, ESX279836, ESX281349, ESX284121, ESX285064, ESX289136, ESX315217, ESX78530, EX265275.

1) Can you explain whether either [named individual] or yourself [named individual] had any dealing or experience with these titles or any titles there under above in relation to point 4?

2) Can you advise me of the date of adjudication and the name of the HM adjudicator in relation to these titles above?

3) Can you provide me the Secretary of State name who dealt with these titles in relation to point 4?

4) Can you provide me all documents in relation to the titles the covenants on these titles which either hold names of [named individual] or yourself [named individual] as acting on behalf of Land Registry and any documents bearing representatives from Applicants in relation to the 1000 year covenant and any references to Mr. Herbert Triton (Historically deceased) in this paperwork?

I look forward to your urgent response in this matter. Should this requested material be large in volume I understand that you may require a fee. Can you please advise me of this cost at your earliest convenience and an address where this remittance can be sent”.

4. HMLR responded on 5 May 2017. The letter addressed issues which the complainant had raised with HMLR which were handled outside of the FOIA and also addressed the FOIA request dated 28 April 2017.
5. In respect of the FOIA request, HMLR set out that the complainant had already been told about the process for obtaining title documents held by Land Registry and relating to registered properties. Accordingly, HMLR went on to explain that section 21 exempts a public authority from providing title documents under FOIA as they are publicly available for a fee.
6. In respect of the four points raised in the request for information, HMLR set out that it was not aware that either named individual had had dealings with the titles listed; confirmed that they had not been referred to the Tribunal; set out that it did not hold any record of who was the Secretary of State when the titles were registered and stated that it was unaware of any documentation regarding a 1000 year old covenant.

7. In respect of the FOIA matter, the complainant was given the details of a specific individual to whom he should address any request for an internal review but he did not do so. It is HMLR's position that there was no specific request for an internal review of the FOIA response but that given the overall content and tone of the complainant's subsequent correspondence, HMLR's reliance on section 21 in relation to the titles was reviewed.
8. HMLR issued a further response to the complainant on 26 May 2017. This six page response was not only issued in relation to the FOIA response (which was covered in one paragraph) but again covered concerns the complainant had which fell outside of the FOIA. This letter set out that HMLR had provided the complainant with documents held in electronic and paper format in relation to the titles enquired about. These were provided to the complainant because he had experienced issues in applying for official copies of the documents. In these circumstances, HMLR provided the documents to the complainant free of charge. The letter set out the complainant's confirmation that he had received two bundles of documents from HMLR. This issue was handled under business as usual.
9. In respect of the application of section 21, the letter dated 26 May 2017 maintained HMLR's position.
10. HMLR sent a further letter to the complainant on 12 July 2017. This letter was a response to the complainant's request for a review of the letter dated 26 May 2017. Again this letter raised issues in relation to the complainant's concerns about HMLR. However, in relation to the FOIA request, HMLR set out again that information about titles is exempt from disclosure under section 21.

Scope of the case

11. The complainant contacted the Commissioner on 13 June 2017 to complain. The complainant suggested that he wished to complain about HMLR, the ICO and the Ministry of Justice (MOJ) although no supporting evidence was provided other than in relation to HMLR. The correspondence submitted to the Commissioner included a significant amount of correspondence which was not relevant to the FOIA request but was relevant to HMLR and the complainant's issues with HMLR. He also submitted documents relating to concerns raised with other organisations.
12. The Commissioner acknowledges that the issue of information in relation to titles has, amongst other issues, been ongoing between the complainant and HMLR. It is the complainant's position that prior to

submitting his request for information he believed that HMLR was withholding information and that there appeared to be two tiers of information, one which was public and one which was not. He set out to the Commissioner that he required assurances that there is *"inter communication between the keepers of these two pieces of information to ensure there are no further errors/mistakes."*

13. The complainant has gone on to set out his concerns about HMLR, making reference to *"gross serious issues involving Land Registry staff and any parties they share their information with, and would amount to processes that can derive into fraudulent matters"*.
14. The complainant further set out his complaint in relation to a letter sent by HMLR from someone *"acclaiming to be a solicitor"* and has also made reference to conversations with the Department of Health. The complainant has gone on to reference a request for documents dated 14 May 2017 and has set out that this was given a *"final clarified status and review final position"* in the letter dated 12 July 2017. The letter dated 12 July 2017 references several dates but no reference is made to 14 May 2017.
15. The Commissioner notes that the response from HMLR dated 12 July 2017 was sent in reply to the complainant's letter dated 14 June 2017. HMLR interpreted that letter as a request for a review of HMLR's letter dated 26 May 2017. Both the complainant's letter dated 14 June 2017 and the response of 12 July 2017 post-date the complaint to the Commissioner. The HMLR letter dated 26 May 2017 was issued following correspondence and conversations with the complainant dated 18 May 2017, 19 May 2017 and 22 May 2017. The letter dated 26 May 2017 refers to the crux of the issue being set out in a letter dated 11 April 2017 which is prior to the request for information.
16. In an attempt to determine the definitive scope of the request, the Commissioner initially wrote to the complainant setting out that she would only be considering the complaint against HMLR (as opposed to the ICO or MOJ). This letter asked for further documents, a letter from HMLR to the complainant dated 5 May 2017, and a copy of a request for an internal review of the FOIA response.
17. In response, the complainant provided the 5 May letter and, in respect of the internal review request, referred to the bundle of papers already provided citing correspondence dated 16 May 2017. The letter dated 5 May 2017 covered a variety of issues including the FOIA request and quite clearly set out the name, address and email address of a named individual to whom the complainant could request a review of the FOIA matters if he was dissatisfied.

18. The Commissioner wrote again to the complainant setting out that there were three items of correspondence dated 16 May 2017 in the bundle provided, two from the complainant to HMLR and one from HMLR to the complainant. As it was unclear which of these, if any, was a request for an internal review of the refusal of the FOIA request under section 21, the Commissioner asked the complainant which of these letters was a request for a review of the FOIA decision. The Commissioner referred to the letter dated 5 May 2017 which set out the internal review process for the FOIA response and asked the complainant if he had sought an internal review in accordance with that letter.
19. In response the complainant sent a letter setting out the background to the case and setting out his position that the document being requested must be a document dated 12 July 2017 from HMLR. This letter clearly post-dated the complaint to the Commissioner.
20. The Commissioner again attempted to clarify the scope of the investigation by ascertaining whether the complainant had sought an internal review of the FOIA response.
21. In response, the complainant still did not provide detail relating to the FOIA response or any review of it. His letter was aggressive, bordering on offensive and he set out that under FOIA, the letter of 12 July 2017 is what 'warrants a review'.
22. In light of this response, the Commissioner wrote to the complainant setting out that her investigation would only consider the application of section 21 to his request dated 28 April 2017 about titles and would not extend beyond that. She advised the complainant that she would not respond to any further correspondence from him.
23. The complainant did submit further correspondence which set out, amongst general concerns about the ICO investigation and HMLR's handling of the case, that investigating his complaint under section 21 only did not provide an investigation of a named individual at HMLR.
24. It is clear that the complainant's concerns about HMLR extend significantly beyond the remit of any investigation the Commissioner is able to conduct and that the scope of her investigation is unlikely to meet the complainant's expectations.
25. In the circumstances, the Commissioner considers the scope of the investigation is to determine whether or not HMLR was correct to refuse the request dated 28 April 2017 for title information by relying on section 21 FOIA. She will not consider any requests for information prior to or subsequent to this request nor will she comment on the complainant's concerns about HMLR or its personnel.

Reasons for decision

Section 21 – information accessible to applicant by other means

26. Section 21 of FOIA states that:

"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1) -

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment."

27. Section 21 is an absolute exemption and is not therefore subject to public interest considerations.

28. HMLR has set out to the Commissioner that The Register of Title held by HMLR is a public register and that section 66 of the Land Registration Act 2002 provides for inspection (and copies) of that register and the documents retained by the Registrar in connection with the register. The term 'documents', HMLR has explained, is wide and does not only mean title deeds but includes application forms, correspondence and items created by HMLR or commissioned as part of its work. It cited the example of the result of a survey of land.

29. The Practice Guide published by HMLR¹ explains what information is available and how to request it. It also makes clear that information which is available as of right under s66 Land Registration Act 2002 and rule 135 Land Registration Rules 2003 cannot be requested under the FOIA as it is 'reasonably accessible' to the applicant within the meaning of section 21 FOIA.

30. In its submission, HMLR set out that anyone requesting a copy of documents retained in connection with the register must complete an application form and pay a fee in accordance with the Land Registration

¹ <https://www.gov.uk/government/publications/inspection-and-application-for-official-copies/practice-guide-11-inspection-and-application-for-official-copies>

Fee Order 2013. HMLR provided the Commissioner with the relevant link and explained that the link has been provided to the complainant.²

31. In respect of the four questions asked by the complainant, these were responded to in the letter dated 5 May 2017. Given that the letter dated 5 May 2017 covers a wide range of issues, it was initially difficult to tell whether the responses were provided as 'business as usual' or under FOIA. HMLR has since clarified that these questions were addressed as business as usual.
32. Given the significant correspondence between the complainant and HMLR, the Commissioner considers that it was not unreasonable of HMLR to respond to these questions as business as usual and notes that the complainant has not specifically raised these responses as being of concern to him. It is clear from the documents submitted that the correspondence, which began in December 2016, covers a wide range of issues which have primarily been dealt with as business as usual and in these particular circumstances the Commissioner accepts that HMLR was entitled to handle the questions as business as usual and did so in an attempt to be helpful.
33. In conclusion, the Commissioner considers that the requested information in relation to titles is available from HMLR's website for a fee. This position is long established at HMLR and consequently the Commissioner is satisfied that section 21 is clearly engaged in relation to the request for titles.

² <https://www.gov.uk/get-information-about-property-and-land>

Right of appeal

34. 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 7395836

Email: GRC@hmcts.gsi.gov.uk

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

35. 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.
36. 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

Sarah O’Cathain
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Wilmslow
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SK9 5AF