

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 September 2020

Public Authority: Architects Registration Board
Address: 8 Weymouth Street,
London, W1W 5BU

Decision (including any steps ordered)

1. The applicant has requested information relating to a complaint made to the Architects Registration Board (ARB).
2. The Commissioner's decision is that, on the balance of probabilities, ARB does not hold any further information within the scope of the request.
3. The Commissioner does not require any steps to be taken by ARB.

Background

4. The background to this case relates to a complaint about an architect that the applicant submitted to ARB in 2013.
5. When the applicant was served with a report in August 2013 on his complaint by the ARB's relevant body, he believed his complaint had not been properly addressed and that the investigations panel was presented with different allegations to those submitted by him.
6. The applicant wrote back to the ARB and challenged the report, presenting his arguments in relation to the panel's report. Subsequently, the applicant was served with a final report, which effectively upheld the preliminary report.
7. Remaining dissatisfied with the outcome of the final report, the applicant requested an independent third party review. This review was conducted by a QC appointed by the ARB. The third party review concluded that the procedure of handling the applicant's complaint by ARB was correctly applied and the complainant was informed that ARB has closed the case.

8. The applicant continued corresponding with ARB in 2014 and 2015, arguing for the re-opening of his case which ARB did not do.
9. At the same time, being convinced that his complaint was not addressed in an appropriate fashion, the applicant contacted the MHCLG (then Department for Communities and Local Government - DCLG), which is the responsible authority for overseeing the ARB, to express his concerns and seek the Department's intervention in his complaint.
10. By the end of 2014 the applicant submitted an information request to ARB asking for information held pertaining to his original complaint about the architect submitted a year earlier.
11. The outcome of the information request was followed by additional correspondence with ARB and the MHCLG¹.

Request and response

12. On 14 January 2020, the applicant wrote to the public authority and requested information in the following terms:

1. Please can you give me your understanding of the relationship between the original allegation summary points which you prepared and the content of my complaint and account as a whole?

2. Please can you confirm that your understanding is that my account and evidence should have been viewed as a whole by the Panel and should not necessarily have related specifically to the literal wording of the allegations?

3. Your understanding of the part that the wording of allegation summary points play in the findings of the Panel would be very useful?

4. On the basis that the Panel's findings are not fettered or limited by the allegations as drafted, I would like to know why serious allegations relating to deception and fraud have been ignored?

5. On the basis that the Panel are not fettered by the allegations as drafted, I have a right to know why the Panel have elected not to respond to the actual allegations?

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2616925/fs50840432.pdf>

13. The public authority responded on 7 February 2020 stating:

"Your request asks for my interpretation of the investigation of a historic complaint you made about an architect. As it is a request that would require me to create information, it is not a request that falls under the provisions of FOIA.

My 'understanding' of an investigation is not a request for information held by ARB."

14. On 8 February 2020 the applicant made a further request for information in the following terms:

"1) In what capacities and from which dates have you been employed by the Architects Registration Board?

2) From the date of first becoming manager of the Professional Standards Department (at ARB) until 23rd September 2013, how many complaint cases against architects did you handle/oversee? If greater than 100, an approximate figure will suffice."

15. ARB responded on 27 February 2020 and refused to provide any information citing section 14(1) of the FOIA. It further stated that

"Given that you have previously complained on the same grounds as to why your FOIA requests have been refused, and had those complaints rejected, there is little point in requiring you to go through the ARB procedure. Because of that you may apply directly to the Information Commissioner's Office with any complaint, as previously advised"

16. Therefore no internal review was carried out.

17. On 28 February 2020, the applicant again contacted the Commissioner as he was dissatisfied with ARB's response. A decision notice was issued on 14 April 2020 upholding ARB's application of section 14 in relation to the request of 8 February 2020².

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2617658/fs50913921.pdf>

Scope of the case

18. The applicant contacted the Commissioner on 17 April 2020 and stated that his complaint had actually related to whether ARB had provided him with all the information it held in relation to his request of 14 January 2020. It was the applicant's view that more information must be held and requested that a further investigation be carried out.
19. As stated in paragraph 13 above ARB maintained that parts 1 – 3 of the request were not valid requests under the FOIA as they requested an individual's understanding rather than recorded information. This issue was dealt with under 'Other matters' in the previous decision notice and is not in under consideration in this case.
20. In his correspondence, the applicant stated:

"As I have stated previously, I presume your opinion is based upon the notion that it seems very unlikely that ARB would go through a formal process of having the complainant approve the wording of the allegations, and then tamper with those allegations without the complainants' knowledge or consent? You have not confirmed that this is your thinking on the matter, so this has to be an assumption.

On the face of it, I can see why you would reach this conclusion, since tampering with allegations without the approval of the complainant, could easily corrupt the outcome of the complaint and would therefore be a nonsensical thing to do.

On the other hand, if the ARB are in fact "tampering" with the approved allegations without the consent of the complainant, they are unlikely to want to admit it, as it might have huge implications for them with regard to the outcome of many other complaints. I therefore suggest that these two possibilities cancel each other out, and your consideration should therefore focus on the balance of probability relating to whether the evidence I am providing suggests the allegations were tampered with in some way."

21. It is not within the Commissioner's remit to investigate or determine if ARB has "tampered" with the allegations made as part of the applicant's complaint. Consequently, the applicant's suggestion that the balance of probability test should focus on whether he is able to prove they were tampered with is not relevant to this investigation.
22. The Commissioner can only consider whether, on the balance of probability, ARB has provided all the information it holds within the scope of his request and therefore complied with its obligations of section 1 of the FOIA with regard to parts 4 and 5 of the request made on 14 January 2020.

Reasons for decision

Section 1 – general right of access

23. Section 1 FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to him.
24. In this case, the applicant considered that ARB held further information relating to how his complaint was investigated. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. In essence, the Commissioner determines whether it is likely, or unlikely, that the public authority holds information within the scope of the complainant's request.
25. The Commissioner considered the applicant's evidence and arguments along with the submissions provided by ARB, including actions it had taken to check what information it held. She also considered if there was any reason why it was inherently likely, or unlikely, that further undeclared information was held.
26. For clarity, the Commissioner makes clear that she is not expected to prove categorically whether or not further information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
27. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches, or other explanations offered as to why the information is not held.

The complainant's position

28. In his submission to the Commissioner, the applicant outlined the ARB complaint procedure as it was in 2013 when he first raised his complaint about the architect.
29. He further highlighted that the Investigations Panel do not meet to discuss the complaint. They are each sent copies of the complaint and independently respond to the allegations.
30. The initial complaint to ARB consisted of 13 pages of written complaint plus evidence, and was also provided to the Commissioner. The applicant stated the summary allegations which were essentially prepared for him by ARB and which he formally approved were as follows: -

[The Architect] failed to perform the survey adequately

[The Architect] deliberately concealed flaws from the complainant

[The Architect] provided a number of schemes that were not fit for purpose

[The Architect] undertook work he had not been instructed to do

[The Architect] failed to deal with a complaint or dispute about his work appropriately.

31. The applicant stated that the allegations are very brief and have a personal meaning to him as the complainant, but in terms of identifying the specific allegations to a third party (in this case the Investigations Panel), they could be interpreted in very different ways by any given individual, especially when the complaint is 13 pages long and covers a wide range of issues.
32. For the purpose of proving that the above allegations were "tampered" with in some way, the applicant focussed on allegations 2 and 5.

Allegation 2

33. The allegation the applicant formally approved states "*[The architect] deliberately concealed flaws from the complainant*". He explained that what he actually meant when he agreed to the wording of this allegation, was that the architect knew that his design was flawed, but for reasons best known to himself, chose to conceal that fact. In other words, the applicant was alleging dishonesty and the concealment of knowledge/information.
34. In order to prove this allegation, he provided three pieces of circumstantial evidence to ARB at the time and also to the Commissioner during her investigation. For brevity, the Commissioner has not repeated the evidence in full here.
35. However, the applicant considered that of these three pieces of circumstantial evidence, one was weaker than the others as there was no way that he could prove that the architect did not display the drawings in a way that could be properly viewed.
36. The applicant then referred to the Preliminary Report showing the Investigations Panel findings in regard to Allegation 2, which states: -

"It is alleged that the architect, on initially showing his drawings to the complainant, did not physically display them in a way which enabled the complainant to fully scrutinise the drawings. On taking the drawings

home, the complainant was then able to realise that one of the three proposed dwelling houses did not have a living space".

37. The applicant contended that the Investigations Panel concluded his allegation related to whether or not the architect physically concealed the drawings from him. There was no mention of the other two far more important and provable pieces of evidence and all three members of the Panel appeared to have independently decided that the allegation concerned the physical concealment of the drawings and nothing else.
38. The applicant then referred to his original complaint to ARB, his response to the Architect's response, his response to the Preliminary Report and Allegation 2, all of which were provided to the Panel before issuing their Final Report.
39. In total, this represented approximately 10 pages of argument about why the architect would have known about the flaw but didn't tell the applicant. The applicant stated that all three members of the panel have individually ignored all of this information and independently concluded that the allegation specifically concerns whether or not the architect physically concealed the drawings from him. They go on to conclude that the drawings were not physically concealed because the architect provided the drawings to take home afterwards.
40. The applicant therefore suggested that the probability of any one member of the panel incorrectly identifying the allegation in this way, given the detailed extent of his complaint and evidence, is at best 1 in 10. On that basis and given that the panel don't meet to discuss the complaint, the probability of all three members of the panel concluding that this was the actual allegation is 10 cubed which is 1 in a 1000.
41. He therefore concluded that the balance of probability is heavily weighted in favour of the Panel having been given additional recorded information to identify the specific allegation they are investigating.

Allegation 5

42. The applicant provided similar detail with regard to allegation 5 in that the formally approved allegation states "*[The architect] failed to deal with a complaint or dispute about his work appropriately*". What he actually meant, was that the architect was repeatedly dishonest in the way he responded to him, and more specifically, one particular letter was untrue. It was the applicant's opinion, that being thoroughly dishonest would be an inappropriate way to deal with a complaint or dispute.
43. In order to prove this allegation, the applicant went through each of the statements contained within the architect's letter (a copy was provided to the Commissioner) and by reference to other evidence submitted by

the architect, proved that 4 of the 5 statements could not be true. In total this amounted to approximately 12 pages of written proof plus all the evidence.

44. Again the applicant referred to the Preliminary Report showing the Investigations Panel findings in regard to allegation to 5, which states: -

"The complainant alleges the architect failed to deal with his complaint about his work appropriately, choosing to continue with works and bill the complainant for the full outline proposal process, despite being informed of the complainant's dissatisfaction with his service".

45. The panel go on to state *"...the allegation is not supported by the documentation. The complainant gave the architect permission to continue with work after their meeting of the 5 December 2012, where the complainant had expressed dissatisfaction with the architect's work."*

46. The applicant argued that the reason the allegation is not supported by the documentation is because the Panel's interpretation of the allegation is wholly incorrect.

47. Again, all three members of the Panel independently ignored anything to do with dishonesty in connection with the architect's letter, and concluded that the allegation concerned the process by which the architect dealt with the complaint, stating *"[the architect] was entitled to treat the dispute with the complainant as a fee dispute rather than a complaint"*.

48. The applicant stated there was nothing anywhere in his complaint which suggested he was complaining about the process the architect followed, and yet all three members of the Panel independently came to the same conclusion that the complaint was about process and had nothing to do with content.

49. The applicant referred to other documents representing approximately 12 pages of argument plus evidence, explaining and proving why the architect's letter was dishonest. Again, all three members of the panel individually ignored all of this information and independently concluded that the allegation concerned whether or not the architect responded to the complaint using an appropriate process.

50. The applicant considered that there is no reason why the Panel should simply ignore this allegation of dishonesty, and yet they all independently decided that the architect's letter had nothing to do with the allegation or the complaint as a whole.

"I am completely at a loss to understand how it would be possible for all three members of the Panel to independently come to the above conclusion, especially as I spelt out in fine detail exactly what I was

complaining about in my response to the Preliminary Report. Surely at least one (if not all) of the Panel would question whether or not they had correctly interpreted the approved allegation?

I wouldn't even like to hazard a guess at what the probability of this oversight might be, other than to say it must be close to impossible without the Panel being given recorded information telling them specifically what it is they're being asked to investigate."

51. The applicant therefore concluded that the balance of probability is heavily weighted in favour of the Panel having been given additional recorded information to identify the specific allegation they are investigating.

ARB's position

52. Having reconsidered the request ARB confirmed it held information relevant to questions 4 and 5. It advised the Commissioner that the applicant has previously been provided with all of the information held as part of a subject access request; however it acknowledged that for the purposes of FOIA, a consideration must be made as to whether that information should be made publicly available.
53. ARB consider that as the information relates to a confidential investigation about an architect the information contains personal data of a third party which is exempt from disclosure pursuant to section 40(2) FOIA.
54. ARB provided the Commissioner with a copy of the file of information that was provided to the applicant as part of his subject access request in 2014. It further stated that for the avoidance of any doubt, the applicant has been provided with all of the information ARB holds in relation to the investigation of his complaint.
55. ARB confirmed that it carried out searches for relevant information when responding to the applicant's subject access request in 2014. It further confirmed that all complaints which reach Investigations Panel stage are retained permanently, in line with its data retention policy.
56. The Commissioner was provided with a copy of the 2013 Investigations Rules, although ARB were unable to clarify what guidance documents were available to the Investigations Panels at that time. It confirmed, that the Panel did not meet in person to consider the applicant's complaint. There is no requirement for this under the Investigations Rules.

Commissioner's decision

57. The Commissioner invited the applicant to submit further evidence in support of his case before coming to a decision. She pointed out that that evidence must be factual and not his own views or opinions.
58. Having considered the additional information provided, the Commissioner is of the view that there is no factual evidence to indicate that any further information is held.
59. The applicant's arguments are speculative and the 'odds' quoted are entirely hypothetical.
60. Consequently, she finds that, on the balance of probabilities, ARB does not hold any further information within the scope of the applicant's request.

Other matters

Data retention

61. The Commissioner recommends that the ARB review its data retention policy to ensure compliance with the GDPR. Further guidance is available here <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/storage-limitation/>
62. ARB advised the Commissioner that it considered section 40(2) would apply to the requested information if it were to be disclosed under FOIA. It further considered that if the information were to be redacted before disclosure, it would be rendered meaningless. The Commissioner has reviewed all the information available and considers that this is not in fact the case. However, as the complaint relates to what information is actually held she has not considered this further.
63. The Commissioner recommends that ARB accesses the guidance on her website when dealing with any future information requests to ensure it is familiar with any relevant exemptions being considered.

Right of appeal

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

65. 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.

66. 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

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