

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 December 2022

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

Decision (including any steps ordered)

1. The complainant requested information from the Legal Ombudsman Service ("the Ombudsman") about the number of Investigators and Ombudsmen employed by the Service who have been subject to incompetence proceedings.
2. The Commissioner is not satisfied that the Ombudsman has identified all the information held within the scope of the request and, therefore, his decision is that, on the balance of probabilities, the Ombudsman may hold further information within the scope of the request.
3. The Commissioner requires the Ombudsman to take the following steps to ensure compliance with the legislation.
 - The Ombudsman must issue a fresh response to the request following extensive searches aimed at identifying all the information held within the scope of the request.
4. The 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 29 October 2021, the complainant wrote to the Ombudsman and requested information in the following terms:

“Please provide me with separate figures for the number of Investigators and Ombudsmen employed by the Service who have been subject to incompetence proceedings (or the equivalent investigation or review) since the Legal Ombudsman Service began operating in 2010.

Please break the figures for Investigators and Ombudsmen down to provide information on the number of individuals in each case who were subject to such proceedings, investigation or review who

- a) left the Service before those proceedings completed;
- b) left when proceedings concluded;
- c) were sacked; or,
- d) who, having been subject to such proceedings, remain in the employment of the service.

Along with the totals, please also break those figures down for each complete 12 month period up to and the end of October 2021”

6. The Ombudsman responded on 21 December 2021 and advised no recorded information was held in scope of the request.
7. The complainant expressed dissatisfaction with that response on 17 February 2022.
8. Following an internal review, the Ombudsman wrote to the complainant on 1 March 2022 and provided some of the requested information but advised that no further recorded information was held.

Scope of the case

9. The complainant contacted the Commissioner on 12 May 2022, to complain about the way their request for information had been handled.
10. The Commissioner has considered whether, on the balance of probabilities, the Ombudsman holds further recorded information within scope of the request and whether it has complied with section 1(1) of FOIA.

Reasons for decision

Section 1 general right of access

11. Section 1 of FOIA states that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him”.

12. The Commissioner has sought to determine whether, on the balance of probabilities, the Ombudsman holds further requested information.

13. The Ombudsman has explained that although it has procedures in place to deal with performance and discipline as required by the Employment Rights Act 1995, there is no business requirement for its HR department to keep any such information surrounding performance management outside of the policy.

14. The Ombudsman carried out searches to review what information was available, using its internal HR excel spreadsheet, an internal tool that is used to list information on live casework, and to retain a list of subsequently closed cases thereafter. It explained that this internal tool is not a formal HR case management system and has only been in use since April 2021. Any formal sanctions awarded, under the relevant policy would be recorded on the spreadsheet as an outcome to any casework, as information only. The Ombudsman advised that there were no sanctions recorded for the previous 12 months.

15. The Ombudsman added that any detail surrounding any individual, is recorded against the person's name, and if there were any relevant Legal Ombudsman sanctions awarded, the in-depth detail would be held on the employee's personal file. It stated that its HR department does not have the technical or physical resources to perform searches on individual staff and consequently no further checks on personal files whether paper or electronic were facilitated. The Ombudsman felt that staff consultation was not necessary to obtain the information necessary to respond to the FOI request.

16. The Commissioner considers the reference to details being held on individual employee files as an indication that further information is likely held within the scope of the request. He acknowledges that the

electronic system to record sanctions used by the Ombudsman has only been in operation since 2021, but considers that individual staff records pre-date the system and therefore recorded information relevant to the request could be held within them.

17. The Commissioner is not satisfied that the Ombudsman has identified all the information it potentially holds within the scope of the request. Therefore, his decision is that, on the balance of probabilities, the Ombudsman holds further information within the scope of the request.
18. The Commissioner requires the Ombudsman to provide the complainant with a fresh response to their request following searches aimed at identifying all the information held within the scope of the request. If further information is located, that information should either be disclosed or an adequate refusal notice should be provided.

Right of appeal

19. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

20. 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.
21. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF