

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2023

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

Decision (including any steps ordered)

1. The complainant has requested the Legal Ombudsman (LO) to disclose copies of all documents relating to his claim in 2013 against a particular firm, copies of telephone conversations and copies of all other files in respect of complaints made by others between 2013 and 2018. Part of the request was dealt with under the Data Protection Act (DPA). LO disclosed some information in relation to question 2 of the request but failed to address the remainder.
2. Those remaining elements were addressed during the Commissioner's investigation and LO applied sections 40(1) and 40(2). For question 4, it stated that the information is not held.
3. The Commissioner's decision is that LO is entitled to rely on both sections 40(1) and 40(2) of FOIA. Regarding question 4, the Commissioner is satisfied that on the balance of probabilities LO does not hold the requested information. He has however recorded a breach of section 10 and 17 of FOIA as a result of how the request was handled.
4. The Commissioner does not require any further action to be taken.

Request and response

5. On, 20 August 2022, the complainant requested LO to provide the following information:
 - “1. Copies of all documents in respect of the claim by [name redacted] in 2013 made to the Legal Ombudsman including documents submitted by [named redacted] to defend their position
 2. Copies of all other files in respect of complaints made by others against [name redacted] in the period 2013-2018.
 3. Copies of the reasons for the decision made by the Legal Ombudsman to defend the activities of [name redacted]
 4. Transcripts of telephone conversation between the Legal Ombudsman and [name redacted]”
6. LO responded on 13 September 2022. It addressed point 2 and provided a spreadsheet detailing other complaints made against the named firm prior to 2016. It did not address the other aspects of the request.
7. The complainant requested an internal review on 20 September 2022. The complainant disputed that some of the information is not held and urged LO to provide it.

Scope of the case

8. The complainant referred the matter to the Commissioner. The complaint was accepted for investigation despite no internal review being completed on 15 May 2023.
9. LO's submissions to the Commissioner address all four points of the request. The following section will address each and outline the Commissioner's decision.

Reasons for decision

Section 40(1) – personal data

Question 1 and part of question 3

10. Section 40(1) of FOIA provides that any information to which a request for information relates is exempt information if it constitutes personal data of which the requester is the data subject.
11. Section 3(2) of the DPA defines personal data as:
“any information relating to an identified or identifiable living individual.”
12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
13. Copies of all documents in respect of the complainant’s claim in 2013 and a copy of the reasons for the decision made by LO at that time are the complainant’s own personal data.
14. Information which constitutes the personal data of the applicant/complainant themselves, is exempt under FOIA by virtue of section 40(1). This is because the appropriate information access regime to consider the potential disclosure of an applicant’s own personal data is the DPA. It will always be exempt under FOIA as any request for access should be considered under the DPA.
15. LO has confirmed that it addressed this element of his request as a subject access request under the DPA and provided a response on 25 August 2022. Any issues or concerns with that response is outside the remit of FOIA.

Section 40(2) – personal data

Question 2 and remaining part of question 3

14. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. This been applied to all information which constitutes the personal data of third parties (copies of their files and decisions). LO provided a spreadsheet of the information it is able to disclose relevant to question 2.
15. The Commissioner is satisfied that this information constitutes personal data. The complaint files and the decisions reached relate to the third

parties that also complained about the named firm and they can be identified from that information.

16. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”

17. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
18. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
16. The Commissioner accepts that the complainant is pursuing a legitimate interest. They wish to establish how many other individuals have complained about the company, understand how these cases were handled and what decisions were reached. He also accepts that disclosure is necessary, as there are no less intrusive means of obtaining this information or for the complainant to see how those complaints were handled.
17. However, the Commissioner does not consider the legitimate interest identified is sufficient to outweigh the rights and freedoms of those third party individuals. Those individuals will hold a reasonable expectation that the information they shared would remain private and confidential. They would not have any expectation that their private information could be disclosed to the world at large in response to a FOIA request.
18. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful. LO is therefore entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

Question 4 – not held

19. LO advised that it does not hold telephone calls or transcripts dating back to 2013. It confirmed that it only retains telephone calls for a period of 6 years. Following that, they are destroyed in accordance with its records retention policy. LO also said that the calls would have been held on its legacy system; that system has now been disposed of.

20. LO stated that it therefore no longer holds the requested information.
21. The Commissioner is satisfied that, on the balance of probabilities, LO does not hold the requested information. It used to, but it no longer does, as the information was destroyed after 6 years in accordance with its record retention policy. He has no reason to doubt LO's submissions and has not received evidence to contrary.

Procedural matters

22. LO failed to address part of question 2 and questions 3 and 4 of the request in its response of 13 September 2022 (question 1 was addressed under the DPA and was subject to a separate response dated 25 August 2022).
23. The response of 13 September 2022 did not address the complainant's request for copies of other complainants' files and the decision LO reached in those cases, which it recently confirmed are exempt from disclosure under section 40(2) of FOIA. For question 4 the response did not confirm that the information is not held.
24. The Commissioner therefore finds LO in breach of sections 10 and 17 of FOIA – for failing to respond to these elements of the request within 20 working days of receipt of the request and for failing to issue an adequate refusal notice, which informed the complainant that some information is no longer held and the remainder is exempt under section 40(2).

Other matters

25. LO failed to carry out an internal review. The section 45 code of practice advises all public authorities to carry out internal reviews within 20 working days of receipt. This can be extended to 40 working days but this additional time is only expected to be used in the most complex and voluminous of requests, which this request is not.
26. LO has advised that there was an issue with the correspondence being directed to the relevant team. The Commissioner would like to remind LO that regardless of where in the organisation such a request may land; the date of receipt is the date of receipt by the organisation. All staff should be trained to recognise a request for information and a request for an internal review and to ensure that such correspondence is directed to the relevant staff or team promptly.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

Samantha Coward
Senior Case Officer
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