



Neutral citation number: [2024] UKFTT 1152 (GRC)

Case Reference: FT/EA/2024/0182

**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Heard by Cloud Video Platform  
Heard on: 3 December 2024  
Decision given on: 24 December 2024**

**Before**

**TRIBUNAL JUDGE ROPER  
TRIBUNAL JUDGE MATON  
TRIBUNAL MEMBER TAYLOR**

**Between**

**STIEBEL LETHBRIDGE LTD**

Appellant

**and**

**(1) THE INFORMATION COMMISSIONER  
(2) HM LAND REGISTRY**

Respondent(s)

**Representation:**

For the Appellant: Brad Lawlor, Counsel

For the Second Respondent: Jeremy Scott-Joynt, Counsel

The First Respondent did not appear and was not represented.

**Decision:** The appeal is Dismissed.

**REASONS**

1. In this Decision the following terms have the following meanings:

Appeal: the appeal by SLL against the Commissioner's Decision;

Commissioner: the Information Commissioner;

Commissioner's Decision: the Commissioner's decision dated 15 April 2024 which is the subject of this Appeal;

Decision Notice: the notice of the Commissioner's Decision;

FOIA: the Freedom of Information Act 2000;

HMLR: HM Land Registry;

LRA: the Land Registration Act 2002;

LRR: the Land Registration Rules 2003;

the Register: the title register kept by HMLR pursuant to the LRA;

the Requests: the five requests for information which are the subject of the Decision Notice;

the Requested Information: the information which was the subject of the Requests;

SLL: Stibel Lethbridge Ltd.

2. This is an appeal by SLL against the decision of the Commissioner given in the Decision Notice, in relation to information requests made by SLL to HMLR.
3. The hearing was conducted via the Cloud Video Platform. SLL and HMLR attended and were represented by Counsel. The Commissioner declined to attend, but provided a written response to the Appeal, which SLL, HMLR and the Tribunal had the opportunity to consider in advance of the hearing. The Tribunal is satisfied that this was a fair and just way to conduct the hearing.
4. The Tribunal received a bundle of submissions and evidence in advance of the hearing.
5. SLL submitted witness statements, together with exhibits, dated 15 November 2024 and 21 November 2024. Counsel for HMLR objected to this material being considered, on the basis that it contained errors and inaccuracies to which HMLR would not have enough time to respond; that much of it was irrelevant to the issues in the Appeal; and that it could have been provided earlier. The Tribunal considered that it was nevertheless in the interests of dealing with the Appeal fairly and justly that this evidence should be considered, and the Tribunal did so to the extent that it was relevant.
6. Counsel for HMLR prepared a skeleton argument dated two days before the hearing, but this was not received by the panel before the hearing. The Tribunal considered that it would be consistent with the overriding objective to allow this skeleton argument to be considered as part of the hearing, and accordingly adjourned the

hearing briefly so that those attending could be provided with, and consider, the skeleton argument.

7. The Tribunal is grateful to Counsel, and to the parties and their witnesses, for their time and assistance in providing submissions and evidence.

## **Background**

8. SLL made a number of requests for information to HMLR between May and August 2023 (see also paragraphs 18 to 20 below). HMLR responded to some of these requests substantively. The Decision Notice relates to five requests, referred to in this Decision as the Requests. Each of the Requests was in the following form:

*"Please let us have details of all the documents including pre-registration documents you hold in relation to title number [title number]"*

9. Each of the Requests gave further specifics, including referencing a time period for the relevant documents, such as the time between two dates.
10. On 22 August 2023, HMLR wrote to SLL regarding "the multiple freedom of information requests received by [HMLR] since May 2023" from SLL, stating that there was a total of 39 such requests. In that letter, HMLR stated that it had conducted a review of these requests "based on [its] determination that the cost of compliance would exceed the appropriate limit set within the legislation", and would refuse to disclose information in relation to these 39 requests, including the Requests, citing s21 FOIA. HMLR also referred SLL to its Practice Guide 11, "Inspection and Application for Official Copies".
11. SLL replied on 6 September 2023, requesting an internal review of HMLR's decision, disputing that s21 FOIA applied to the relevant information.
12. HMLR replied to SLL on 4 October 2023 giving the outcome of its internal review, stating that it would uphold its refusal to disclose the requested information on the basis that it was not held by HMLR. HMLR stated that the requests for "details of documents held" amounted to requests for lists of all documents falling within a particular description; argued that it would require considerable skill and judgment on the part of HMLR caseworkers to compile the information; stated that, with reference to the Commissioner's published guidance "Determining whether we hold information", this meant that the information could not be said to "held" for the purposes of FOIA; and referred SLL to HMLR's published process for obtaining copies of documents. In relation to documents specifically, HMLR stated that s21 FOIA would apply to requests for such information.
13. On 7 December 2023, SLL submitted a complaint to the Commissioner regarding HMLR's refusal. The Commissioner's office conducted an investigation, as a result of which the Commissioner concluded, as set out in the Decision Notice, that HMLR

did not hold the information which was the subject of the Requests, and the Commissioner did not require HMLR to take any action as a result.

14. SLL appealed to the Tribunal.

### **The appeal**

15. SLL raised five grounds in its appeal:

- (a) Ground 1: that the information requested was not "reasonably accessible";
- (b) Ground 2: that the procedure to which HMLR had referred SLL as the proper route for accessing the documents was not effective;
- (c) Ground 3: that the Commissioner was incorrect to rely on there being a degree of skill and judgment needed to collate the relevant information;
- (d) Ground 4: that having responded previously to similar requests, HMLR had established a precedent that it would deal with future similar requests in the same way;
- (e) Ground 5: relating to an internal HMLR meeting which was said to have taken place on 4 August 2023.

16. Each of these Grounds is considered below.

17. To some extent, SLL's Grounds rely on criticisms of the ways in which HMLR and the Commissioner approached their decisions in relation to the Requests. The role of the Tribunal in this matter is not to review the way in which HMLR or the Commissioner made their decisions, but to consider afresh the decision which was made by the Commissioner (see *Montague v Information Commissioner and Department for International Trade* [2022] UKUT 104 (AAC) at [114]).

### **Preliminary matter**

18. In his written response to the Appeal, the Commissioner referred the Tribunal to there being some inconsistency in the use of names and email addresses by SLL in correspondence with HMLR relating to the Requests and the content of the complaint form received by the Commissioner in relation to the Requests, and suggested that there might be some lack of clarity about whether the proper appellant was SLL or an individual acting on its behalf. Only the complainant, the Commissioner or the relevant public authority may bring an appeal to the Tribunal in relation to the Commissioner's decisions on FOIA requests (s57(1) FOIA).

19. The Requests were made, and correspondence relating to the Requests was undertaken, via email addresses using SLL's email domain, and the Requests were made in emails using SLL's company details. The complaint form submitted to the Commissioner in relation to the Requests names an individual and includes the entry "false" in relation to the field "I'm acting on behalf of someone else". The complaint

form was submitted using an SLL email address, and correspondence with the Commissioner in relation to the complaint was carried on via that address.

20. Having considered these matters the Tribunal finds that as a matter of law the complaint to the Commissioner was made by SLL, and therefore SLL has standing to bring this Appeal.
21. At the outset of the hearing, the Tribunal gave the parties the opportunity to make submissions on any exemptions to the requirement to disclose which HMLR might wish to rely on in addition to those referred to in the Decision Notice. None were raised. Mr Scott-Joynt on behalf of HMLR disclaimed any reliance on s12 FOIA (exemption where cost of compliance exceeds appropriate limit). The Tribunal has not identified any other relevant exemptions in its deliberations.

### **Relevant law**

22. SLL made the Requests, and the Appeal, pursuant to FOIA. None of the parties disputed that FOIA was applicable to the Appeal. In its deliberations, the Tribunal considered whether the correct regime was FOIA or the Environmental Information Regulations 2004. The Tribunal considered that the Requested Information was not "environmental information" for the purposes of those Regulations and accordingly that FOIA was the proper regime. The Tribunal's findings on the nature of the Requested Information are set out at paragraphs 29 to 31 below.

23. The relevant provisions of FOIA are as follows:

- 1 *General right of access to information held by public authorities.*

- (1) *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.*

[...]

- 2 *Effect of the exemptions in Part II.*

[...]

- (2) *In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –*

- (a) *the information is exempt information by virtue of a provision conferring absolute exemption,*

[...]

- (3) *For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –*

(a) section 21,

[...]

21 Information accessible to applicant by other means.

(1) 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.

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

[...]

58 Determination of appeals.

(1) If on an appeal under section 57 the Tribunal considers –

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

24. The LRA requires HMLR to keep the Register, and makes provision for what the Register is to contain. Broadly speaking, the Register contains information relating to legal rights and obligations affecting registered land in England and Wales, by reference to registered titles, each of which represents an interest in land which is registered.

25. Sections 66 to 69 LRA make provision about the availability of information on the Register. Section 66 LRA provides for a public right of inspection, as follows:

(1) *Any person may inspect and make copies of, or of any part of –*

*(a) the register of title,*

*(b) any document kept by the registrar which is referred to in the register of title,*

*(c) any other document kept by the registrar which relates to an application to him, or*

*(d) the register of cautions against first registration.*

(2) *The right under subsection (1) is subject to rules which may, in particular –*

*(a) provide for exceptions to the right, and*

*(b) impose conditions on its exercise, including conditions requiring the payment of fees.*

26. Separately, s69 LRA provides a power for HMLR to make available information about the history of a registered title:

(1) *The registrar may on application provide information about the history of a registered title.*

(2) *Rules may make provision about applications for the exercise of the power conferred by subsection (1).*

(3) *The registrar may –*

*(a) arrange for the provision of information about the history of registered titles, and*

*(b) authorise anyone who has the function of providing information under paragraph (a) to have access on such terms as the registrar thinks fit to any relevant information kept by him.*

27. The LRR, made under powers in the LRA, make further provision regarding access to copy documents, in particular in rules 133 and 135.

28. Rule 135 of the LRR provides:

135. – (1) *Subject to paragraph (2), a person may apply for an official copy of –*

*(a) any document referred to in the register of title and kept by the registrar,*

*(b) any other document kept by the registrar that relates to an application to the registrar.*

(2) *Excepted documents, and any part of them, are excepted from paragraph (1).*

(3) *Subject to rule 132(1), an application under paragraph (1) must be made in Form OC2.*

[...]

(5) *A person may apply for an official copy of part of a document only during the currency of a relevant notice given under Schedule 2, and subject to and in accordance with the limitations contained in the notice.*

(6) *The registrar must provide the official copy of part of a document in the manner specified in the relevant notice.*

## **Discussion**

*What was the Requested Information?*

29. In order properly to consider the Appeal, it is necessary for the Tribunal to determine specifically what the Requested Information is.
30. The Requests are referred to at paragraph 8 above. HMLR interpreted these as requests for "lists of documents". In its Grounds of Appeal, SLL stated that "the requests are for documents not referred to on the register"; but also that there was "some element of skill and judgment that is required to compile the list requests" and to the "level of skill required to collate such lists".
31. The Tribunal finds that HMLR was correct to interpret the Requests as referring to lists of documents relating to registered titles, rather than to the underlying documents themselves and that, properly interpreted, the Requested Information would be in the form of detailed lists, describing the relevant documents.
32. Before dealing with the specific Grounds of Appeal it is appropriate to deal with the question whether the Requested Information was "held" by HMLR for the purposes of FOIA.

*Was the Requested Information held by HMLR?*

33. The Decision Notice concludes that HMLR does not hold the Requested Information. This is on the basis that collating the requested lists of documents would require skill and judgment.
34. Witness evidence was submitted on behalf of HMLR as to HMLR's storage arrangements and the process for preparing a list of documents of the kind requested by the Requests. HMLR holds a very large number of registered titles, paper files and correspondence. On this evidence, providing detailed lists of documents would require the interrogation of HMLR's electronic and paper records so far as relevant, together with judgment as to whether particular documents ought to be included in or excluded from the scope of a particular request.



35. The Decision Notice refers to the Commissioner's public guidance regarding whether information is held by a public authority, and states that, if a public authority has the building blocks necessary to produce a particular type of information, then it is likely that the authority will hold that information for the purposes of FOIA; but that if putting together the information requires particular skill and judgment, then the relevant information may not be held. The Information Tribunal has considered this approach – see *Michael Leo Johnson v Information Commissioner and Ministry of Justice* EA 2006/0085.
36. The Tribunal considered the application of this approach to the Requested Information. The Tribunal accepts HMLR's evidence as to the degree of skill and judgment which would be required to assemble the Requested Information and that, due to the nature of the underlying documents, it is possible that different case officers would produce different lists if seeking to compile lists in response to the Requests. On this basis the Tribunal finds that the Requested Information – being detailed lists of documents relating to specific registered titles – is not “held” by HMLR.
37. The Tribunal's finding on this point is sufficient to dismiss the Appeal. Nevertheless, in the interests of giving full consideration to the arguments in the case, the Tribunal has considered SLL's specific Grounds of Appeal on their own terms.

#### *Ground 1*

38. SLL argued that the Requested Information was not "reasonably accessible" for the purposes of s21 FOIA.
39. SLL's arguments in relation to this Ground focus on documents which are not referred to on the Register. SLL argues that the Commissioner failed properly to consider the Requests on this basis.
40. Section 21(2)(b) FOIA provides that information is to be taken to be reasonably accessible to an applicant if the public authority is obliged by or under any enactment to communicate it (otherwise than by making it available for inspection) to members of the public on request, whether free of charge or on payment.
41. Mr Scott-Joynt submitted that s66 LRA obliges HMLR to do this in relation to all documents relating to specific registered titles, whether or not those documents are formally held on the Register, and whether they are held in paper or electronic form. He further submitted that where s66(1)(c) LRA refers to "any [...] document kept by [HMLR] which relates to an application to [HMLR]" this in substance refers to all documents relating to any specific registered title. This is on the basis that HMLR will not hold any such information unless it has been the subject of an application to HMLR, whether for first registration of a title or for an amendment to that registered title. The Tribunal accepts this submission.
42. HMLR's Practice Guide 11, "Inspection and Application for Official Copies" gives guidance on how to apply for official copies of, and copies of documents on the

Register, and of other documents held by HMLR. Section 2 of Practice Guide 11 states that:

*"With some important exceptions referred to in Documents not available as of right, any person can apply to inspect or obtain official copies of the following as of right:*

- *the register or caution register of an individual title*
- *any title plan or caution plan of an individual title*
- *any document referred to in the register*
- *any document not referred to in the register which relates to an application*

*Note: You cannot request this information under the Freedom of Information Act 2000, as it is "reasonably accessible" to you within the meaning of section 21 of the Freedom of Information Act 2000."*

43. The process for applying to HMLR for copies of documents is either to use HMLR's digital application service, or to apply by post using a Form OC2, together with the payment of a fee as appropriate.
44. It is clear from the wording of s66 LRA and r135 LRR that, subject to applicants following the relevant process, HMLR is obliged to provide copies of documents which fall within the scope of those provisions. The requirement to pay a fee does not prevent s21 FOIA from applying (s21(2)(a)).
45. Accordingly, the Tribunal finds that, if the Requested Information did include specific documents relating to registered titles (which the Tribunal has found that it did not), that information would be exempt from disclosure under FOIA by reference to s21 FOIA, and the Tribunal rejects this Ground.

#### *Ground 2*

46. SLL argued this Ground by reference to its submission that documents are not always available using the OC2 process. It submits that on five occasions in August 2023 it made requests for specific identified documents using the OC2 process, and on each occasion HMLR had responded saying that the relevant document could not be located.
47. SLL argued that this indicates that HMLR's OC2 process is defective; and that in practice only documents dated after 2006 (when, it says, HMLR began routinely scanning documents) are available using this route.
48. HMLR submitted that SLL had misapprehended the process and that there is no practical distinction between the availability of documents using the OC2 process by reference to a particular date. HMLR acknowledged that it had made some errors in processing some OC2 requests for SLL but submitted that this did not mean that the relevant documents were not reasonably accessible for this purpose.

49. The Tribunal finds that the evidence does not demonstrate that the process frustrates the reasonable accessibility of documents for the purposes of s21 FOIA. It is not for the Tribunal to adjudicate whether HMLR made errors in processing individual applications; if such errors were made, this does not compromise the application of s21(2)(b) FOIA, which applies to information which the public authority "is obliged by or under any enactment to communicate [...] to members of the public on request".
50. Accordingly, the Tribunal rejects this Ground.

*Ground 3*

51. SLL argues, while acknowledging that there is some element of skill and judgment required to compile the Requested Information, that the Commissioner should not have accepted this as a basis for upholding HMLR's refusal. In support of this, SLL refers to what it says were 21 previous requests to which HMLR responded without difficulty.
52. HMLR submits that SLL's acknowledgement that some skill and judgment is required should be enough to dismiss this Ground; and that SLL's assertion is unevicenced.
53. In the Tribunal's view, this Ground and the arguments made in relation to it do not address the relevance of skill and judgment in the assessment of the case. As set out at paragraph 35 above, the relevance is that, where skill and judgment is required to the extent that the result of the compilation exercise might be different depending on which officer conducted it, the result is that the information is not "held" by the relevant public authority. As noted at paragraph 36 above, the Tribunal accepts that this is the case in relation to the Requested Information.
54. The Tribunal accordingly rejects this Ground.

*Ground 4*

55. SLL argued that the Commissioner should have considered whether HMLR's substantive consideration of previous requests set a precedent which it ought to have followed in relation to the Requests. In oral submissions, Mr Lawlor, on behalf of SLL, clarified that the term "precedent" may not have been precisely apt for the point being made on SLL's behalf, but that SLL felt that HMLR could and should have acted consistently with its previous approach.
56. The obligation of a public authority under s1 FOIA is to inform an applicant whether it holds requested information, and if it does, to communicate that information to the applicant, subject to other relevant provisions of FOIA. Each such request must be considered by the public authority on its own terms.
57. Provided that it has the legal power to do so, it is open to a public authority to disclose to a requester information which it would be entitled to withhold in reliance on an exemption in FOIA (see section 78 FOIA, which expressly provides for this); but

doing so in one case does not prevent a public authority from relying on relevant exemptions in future cases. HMLR's response to prior requests from SLL does not bind it, as a matter of practice under FOIA, to respond in a similar way to similar future requests (see *Ingle v Information Commissioner and Cambridgeshire County Council* [2023] UKUT 80 (AAC) at [33]).

58. The Tribunal accordingly rejects this ground.

*Ground 5*

59. In its submissions, SLL made reference to an internal meeting of HMLR staff and the fact that HMLR had not disclosed further information to SLL in relation to this meeting.

60. These matters were dealt with in Case Management Directions, prior to the oral hearing of the Appeal, pursuant to which the Tribunal found that no further relevant evidence existed beyond that already contained in the hearing bundle. Accordingly, this Ground has no bearing on the decision of this Tribunal regarding the Appeal (and the documents which existed in connection with that meeting formed no part of the Requested Information in any event).

61. The Tribunal rejects this Ground.

**Conclusion**

62. For all of the reasons given, the Tribunal finds no basis to conclude that the Decision Notice was not in accordance with the law, or that the Commissioner ought to have exercised his discretion differently in relation to the Commissioner's Decision.

63. The Appeal is therefore dismissed.

Signed

Tribunal Judge Maton

Date:

23 December 2024