

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 November 2011

Public Authority: Legal Services Commission
Address: 4 Abbey Orchard Street
London
SW1P 2BS

Decision (including any steps ordered)

1. The complainant has requested information from the Legal Services Commission about an immigration tender in which his company had been involved, and for details about instances where answers were changed in any way, with or without the applicants' knowledge. This request was refused under section 14(2) as the request was considered to be a repeated request.
2. The Information Commissioner's decision is that the Legal Services Commission was not entitled to refuse to provide the requested information under section 14(2) of the FOIA. He consequently requires the Legal Services Commission to either comply with section 1(1) of the Act, or issue a refusal notice compliant with section 17.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

4. The Legal Services Commission (the 'LSC') provided the Information Commissioner with some background to this request in order to set it in context, explaining that in 2010 it had tendered for new legal aid contracts in both civil and criminal law. This resulted in the LSC receiving a significant increase in FOIA requests, together with parliamentary questions and Ministerial correspondence.

5. In parallel, the LSC's Legal Department received a significant number of threats for Judicial Review and remains in litigation with some legal firms, one of which the complainant is employed by.
6. The complainant began submitting FOIA requests relating to the tenders at the time of the tender process and has continued to do so since that time. The LSC provided the Information Commissioner with a log of the FOIA requests made by the complainant's legal firm during the period 18 August 2010 to 16 October 2011, which also included a small number of requests from another employee of the firm. The LSC explained that, having considered seven of the complainant's previous requests, it considered that his request of 21 May 2011 was a repeated request. For the purposes of this notice, the Information Commissioner has only considered those requests submitted by the complainant himself (and not those made by another employee at the legal firm) up to 21 May 2011.
7. The LSC confirmed that, in addition to the FOIA requests relating to the tender exercise made by the complainant's firm, there has been additional correspondence relating to ongoing litigation with the LSC which has been handled by its Legal Department.

Request and response

8. On 21 May 2011, the complainant wrote to the Legal Services Commission (the 'LSC') and requested the following information:

*"1. Please provide **full details** of all the instances where the LSC changed the answer given by an applicant in any part of the Immigration Tender.*

*Please provide **full details** of all the instances where the LSC changed the answer given by an applicant in any part of the Immigration Tender with or without the knowledge of the applicant. That is with or without the express or implied approval of the applicant.*

Also where answers were changed without the knowledge of the applicant.

And all instances where an applicant was invited to change an answer he has given previously or to fill a gap where no answer was given. Or to fill a gap where no information was inserted."

9. The LSC responded on 15 June 2011. It stated that it considered this request to be repeated, explaining that the complainant had *"repeatedly asked for similar, if not identical, information"* in previous requests.

10. The LSC explained that any internal reviews are normally handled by its Legal Director, but that because this individual had already been involved in the original decision, it requested that the complainant contact the Information Commissioner as his next step if he was dissatisfied with the handling of his request. This matter is considered under the 'Other Matters' section of the notice.

Scope of the case

11. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled, making reference to the LSC *"withholding information, providing misleading information and committing excessive delays"*.
12. The Information Commissioner has considered the LSC's application of the exclusion at section 14(2) of FOIA (repeated requests) to this request.

Reasons for decision

13. Section 14(2) of FOIA states that:

"Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request."

14. The Information Commissioner's approach to section 14(2) can be found in his Awareness Guidance – available on the ICO's website – which states that a request can be refused as a repeated request if:

- "• it is made by the same person as in the previous request;*
- it is identical or substantially similar to the previous request;*
- and*
- no reasonable time has elapsed since the previous request."*

15. The Information Commissioner has therefore considered each of these aspects in turn.

Are the requests made by the same person?

16. To be repeated, the requests must have been submitted by the same person. This point has not been contested by either party and, as the

requests have been made under the same given name(s), the Information Commissioner is satisfied that they are made by the same person. As stated earlier in this notice, the Information Commissioner has only considered those requests submitted by the complainant himself in reaching his decision in this case.

Is the request identical or substantially similar to previous requests?

17. The Information Commissioner's guidance clarifies that a request will be substantially similar to a previous request, even if the wording of the request is not identical, if it requires disclosure of substantially similar information (ie with no meaningful differences) to respond to it. The guidance also states that public authorities should not refuse a request simply because it relates to the same subject or theme as a previous request, unless it would have to give the same information in response.

18. In its response to the complainant on 15 June 2011, the LSC stated:

"Your latest request is the seventh request you have made relating to the tender process and to your own tender submission. You have repeatedly asked for similar, if not identical, information throughout your emails. Your current request relates to amendments made to tender applications and follows a series of similar questions relating to where clarification was sought..."

19. The LSC explained to the Information Commissioner that in its view the complainant's requests had *"made repeated reference to 'clarifications' and 'amendments' within tender applications and we have responded on all points as fully as possible, except where an exemption has applied"*. It also stated, *"Although the wording used in this current request is not identical to that previously submitted we interpret [name of complainant redacted] to be for the same information"*.

20. The LSC told the Information Commissioner that *"...we interpret requests for 'clarifications' and 'amendments' to relate to the reasoning behind contract applicants being contacted by the LSC in connection with their tender submissions and that we have therefore supplied [complainant's name redacted] with the information available already (subject to the cost limit)"*.

21. The complainant contended that his earlier requests had clearly *"related to instances when clarifications were sought"* whereas this request relates to: *"instances when the LSC made amendments to tenders. As opposed to instances when application provided supplementary information by"*. He also claimed that it had been *"partially necessary"* for him to submit a number of requests because the LSC *"originally provide misleading information"*.

22. The Information Commissioner has considered the specific wording of this request and has concluded that, although the subject matter is inextricably linked to the issue of the immigration tender, the complainant had not previously asked these exact questions about the immigration tender. (The Information Commissioner does nevertheless note that the LSC provided the complainant with overall numbers of bidders who were contacted for clarification in its response of 11 January 2011 to an earlier request.)

Has a reasonable time elapsed since the previous request?

22. The Information Commissioner is mindful of the volume of correspondence between the two parties which is being handled by the LSC's legal team, some of it outside the remit of the FOIA; however, he has to consider whether this request has been made previously and whether a reasonable interval has passed since the last request was submitted. The LSC has not specified a particular request or date on which it considers this request has been made previously, instead referring to seven previous requests as having been made "*relating to the tender process and to [your] own tender submission*" between 18 August 2010 and to the date of this request of 21 May 2011.
23. Given that he is not convinced that the request has been submitted previously, the Information Commissioner has not considered further whether a reasonable interval has elapsed.
23. The Information Commissioner is satisfied in regard to the request of 21 May 2011, that there was no delay in the LSC providing its response. Similarly, given that the LSC applied the exclusion for repeated requests to this request, he has not considered further the complainant's view that it provided misleading information in this case.

Other matters

24. (Please see paragraph 10 of this notice). In this case the public authority was not prepared to offer the complainant an internal review because such reviews are normally undertaken by its Legal Director who had already been involved in the original decision. As such the complainant had in effect exhausted the internal review procedures and his complaint was accepted by the Information Commissioner.
25. As a general rule internal reviews should be encouraged as they have benefits for both public authority and applicant. They provide the public authority with a chance to check its original handling of the request and so avoid possible adverse decisions by us. More importantly it provides the public authority with the opportunity to rebuild its relationship with the member of the public. For the applicant it should

provide the opportunity for a swift reconsideration of the request which can result in either the provisions of further information or a fuller explanation of the grounds for the request being refused which should assist the applicant in deciding whether to appeal.

26. In this case, the Information Commissioner notes that where the request concerned a procurement exercise the Legal Director is involved in the original request handling and therefore the LSC is concerned any internal review conducted by the Legal Director would not be independent. The section 45 code states that the review should 'enable a fresh decision to be taken' (paragraph 39) and should be 'undertaken by someone senior to the person who took the original decisions, where this is reasonably practicable' (paragraph 40). In light of this, the Information Commissioner appreciates the LSC's difficulties in offering a review where someone as senior as the Legal Director was involved in the original decision.
27. However, given that the LSC received an increase in requests relating to legal aid contracts it would seem prudent for the public authority to anticipate similar cases in the future. The Information Commissioner would suggest that the LSC should identify who else could carry out an internal review other than the Legal Director, such as other directors who are on the same level or potentially the Chief Executive Officer.

Right of appeal

28. 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: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm
29. 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.
30. 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

Jon Manners
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