

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 November 2022

Public Authority: UK Endorsement Board
Address: 1 Victoria Street
London
SW1H 0ET

Decision (including any steps ordered)

1. The complainant has requested the UK Endorsement Board (UKEB) to disclose all correspondence and records of meetings concerning the procurement or potential procurement of legal advice from any member of Erskine Chambers, including Martin Moore QC and Michael Todd QC from 1 April 2021 onwards. UKEB refused to disclose the information it holds under section 42 of FOIA.
2. The Commissioner's decision is that, on the balance of probabilities, UKEB does not hold the requested information for Martin Moore QC. But in terms of the information it does hold relating to the legal advice it obtained from others, section 42 of FOIA applies.
3. He does not require any further action to be taken.

Request and response

4. On 25 November 2022, the complainant wrote to UKEB and requested information in the following terms:

"All correspondence, and records of meetings, concerning the procurement or potential procurement of legal advice from any member of Erskine Chambers, including Martin Moore QC and Michael Todd QC

The period covered by this request is from 1 April 2021 to date, 25 November 2021.”

5. The UKEB responded on 21 December 2021. It refused to disclose the requested information citing sections 40, 42 and 43 of FOIA.
6. The complainant requested an internal review on 14 January 2022.
7. The UKEB carried out an internal review and notified the complainant of its findings on 11 February 2022. It upheld its previous application of sections 40, 42 and 43 of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 14 February 2022 to complain about the way their request for information had been handled. They are unhappy that the UKEB has claimed legal professional privilege (LPP) for correspondence with Martin Moore QC. He does not consider LPP can apply. This is because Parliamentary Answers said that Martin Moore QC was not used and emails released by a journalist acknowledged a conflict of interest with him, but that he would be “acting behind the scenes”. The complainant does not consider legal professional privilege (LPP) can apply in respect of Martin Moore QC and the proposed mode of operating is evidence of wrongdoing.
9. UKEB has confirmed that it does not hold any correspondence or records of meetings concerning the procurement or potential procurement of legal advice with Martin Moore QC. He was not instructed by the UKEB. However, it does hold this information for Michael Todd QC and another legal adviser but it considers this information is exempt under section 42 of FOIA.
10. The Commissioner agrees with UKEB’s position on both and the following section of this notice will explain why.

Reasons for decision

11. With regards to any correspondence or records of meetings concerning the procurement or potential procurement of legal advice with Martin Moore QC, UKEB confirms that it does not hold this information for the simple reason that Martin Moore QC was not instructed by UKEB, nor was he invited to participate in a procurement for legal advice. As no information is held, the question of LPP or the public interest does not arise.

12. It said that the complainant contends that UKEB holds information relating to Martin Moore QC based on his assumption from a leaked email, which stated that Martin Moore QC had been asked to 'act behind the scenes'. The evidence he provided to support his allegations is also based on the same leaked email, which UKEB confirmed was misinterpreted.
13. UKEB confirmed that there were no written discussions with or about Martin Moore QC within the given period or at all. There was a courtesy conversation with Martin Moore QC and the leaked email is the only written record of that conversation, which UKEB states was an inaccurate reflection of the UKEB's position at that time. There is no other recorded information held, as Martin Moore QC was never instructed nor invited to participate.
14. UKEB explained further that the leaked email reflected Martin Moore QC's willingness, which was never actioned, to answer questions on his earlier opinions should counsel advising UKEB require. It said the specific wording of the leaked email was unfortunate and did not reflect the UKEB's actual position, which was UKEB had made a decision not to include Martin Moore QC on the shortlist of counsel to be considered due to the possibility of a conflict arising with his earlier advice to the FRC. It concluded by saying that there was never an intention on the part of the UKEB that he would be involved (in any capacity) in the process of providing legal advice in this matter.
15. The Commissioner is satisfied that UKEB has explained its position fully and outlined how the leaked email was misinterpreted. On the balance of probabilities, UKEB does not hold the requested information in relation to Martin Moore QC.
16. With regards to the information it does hold relating to Michael Todd QC and another legal adviser, the Commissioner is satisfied that it is subject to LPP. It is communications between client and lawyer for the dominant purpose of seeking and obtaining legal advice. Section 42 of FOIA therefore applies.
17. In terms of the public interest, the Commissioner accepts that there is a public interest in accountability and transparency and gaining access to information upon which public authorities may or may not rely when making its decisions. However, there is a strong public interest in maintaining UKEB's ability to communicate freely and openly with its legal advisers to ensure that candid and robust advice is obtained for the effective conduct of its business. If disclosure were ordered it would be likely to dilute the robustness and frankness of such advice which would in turn hinder the UKEB's decision making processes.

18. The Commissioner considers there is an inherent and strong public interest in protecting the long standing principle of LPP and the ability to seek and obtain effective and candid legal advice. There are no overwhelming public interest arguments in favour of disclosure in this case that would warrant going against that.
19. For the above reasons the Commissioner is satisfied that section 42 of FOIA applies and the public interest rests in maintaining the exemption.
20. The Commissioner notes that UKEB has now published the legal advice it obtained. This was not the case at the time of the request or internal review and the Commissioner can only consider the circumstances at the time of the request. UKEB remains of the view that the documents relating to the procurement and provision of advice are still exempt under section 42.

Right of appeal

21. 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

22. 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.
23. 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
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF