

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 18 August 2014

**Public Authority:** Ministry of Justice (Legal Aid Agency)  
**Address:** 102 Petty France  
London  
SW1H 9AJ

#### **Decision (including any steps ordered)**

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1. The complainant requested information about a tender bid process in 2010 for legal aid work from the Legal Aid Agency, which is an executive agency of the Ministry of Justice (the 'MOJ'). The request was refused on the basis that the MOJ deemed it vexatious in accordance with section 14(1) of FOIA because the complainant was acting as part of a campaign. The Commissioner's decision is that the MOJ has incorrectly applied section 14(1) of FOIA to this request.
2. During the investigation, the MOJ said that it would seek to rely on section 44(1)(c), prohibitions on disclosure if the Commissioner found that section 14(1) was not engaged. The Commissioner finds that section 44(1)(c) is engaged in relation to this request.

#### **Background**

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3. The Commissioner notes that the Legal Aid Agency (formerly the Legal Services Commission) is not a public authority itself, but is actually an executive agency of the MOJ that is responsible for it. Therefore, the public authority in this case is actually the MOJ and not the Legal Aid Agency; however, for the sake of clarity, this decision notice refers to the Legal Aid Agency as if it were the public authority. All references to the Legal Aid Agency within this notice should also be read for the former Legal Services Commission.

4. The complainant is a solicitor whose law practice was part of a tender bid in 2010 for legal aid work, for which the law practice was not successful. The complainant then brought judicial review proceedings against the Legal Aid Agency after being refused a Mental Health contract during the tender process, because he failed to submit a complete Tender Information Form (TIF). Those proceedings were unsuccessful initially in the Administrative Court; however, they were remitted back to the Administrative Court to be heard afresh where the Legal Aid Agency accepted that its evidence at the time had not been complete.
5. The further proceedings, heard in October 2013, were also unsuccessful and the complainant sought permission to appeal the decision to the Court of Appeal which was refused. He then sought to renew his application at a hearing on 1 April 2014, at which permission was again refused, bringing his proceedings to an end.
6. The MOJ believed the complainant was acting in concert with another individual in making this request. Hereon in, this individual is referred to as 'individual A'.
7. Individual A is part of another firm of solicitors, who were involved in the same tender proceedings in 2010, and was also unsuccessful. This firm also launched judicial review proceedings against the Legal Aid Agency, having been refused an immigration contract after failing to answer a number of the selection criteria questions on its application. The Commissioner notes that not only are these proceedings relating to individual A's firm ongoing, but that they were in progress at the time of the complainant's request.
8. The MOJ advised the Commissioner that individual A has submitted a number of overlapping requests in relation to his firm of solicitors and that he has, in the MOJ's words, "*an extensive history of making FOI requests relating to legal aid tender activity and in respect of which the Information Commissioner's Office has recently issued a decision notice supporting our use of FOI section 14(1).*" In this case (reference FS50505670)<sup>1</sup> individual A's request about [name of solicitor 3 redacted] was refused as vexatious on the basis that it related to his ongoing litigation, and that the MOJ was subject to unreasonable burden

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<sup>1</sup> [http://ico.org.uk/~media/documents/decisionnotices/2013/fs\\_50505670.ashx](http://ico.org.uk/~media/documents/decisionnotices/2013/fs_50505670.ashx)

imposed by dealing with his overlapping litigation and FOIA correspondence.

9. The Commissioner also understands that the Lord Chancellor involved in the legal proceedings has requested that any further requests for disclosure from individual A should be made in those proceedings, as opposed to him making FOIA requests. The court will then be able to consider the relevance of the information in the context of those proceedings, and make an informed decision as to whether or not that information should be disclosed.
  10. Section 17(6) of FOIA allows a public authority not to respond to a request if it has previously issued a notice relying on section 14 and it would be unreasonable for the public authority to issue a further refusal notice. The Commissioner will usually only consider it unreasonable to issue a further notice when an authority has previously warned the requester that it will not respond to any further vexatious requests on the same or similar topics.
  11. Such a notice was issued to individual A on 23 May 2013, where the MOJ advised him that it would no longer be responding to FOIA requests in relation to individual A's specific case or further requests which are in some way attributed to his ongoing legal action, the Legal Aid Agency's tender process, or individual tenders which have taken place over the last three and a half years.
  12. This means that individual A cannot use FOIA as a means to securing information relating to the tender process or legal action. The MOJ believes that individual A is now attempting to circumnavigate the FOIA by attempting to access the same, or substantially similar information, using third parties to make requests on his behalf, one of whom the MOJ believes is the complainant which is considered further in the 'Reasons for decision' part of this notice.
  13. The Commissioner has considered a complaint from another individual under *Reference FS50533887* whom the MOJ also believed to be acting as part of a campaign with individual A. For the purposes of this notice, the complainant in that case will be referred to here as 'individual B'. In *FS50533887* the complainant referred to below is referred to as individual C.
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## Request and response

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14. On 26 December 2013 the complainant wrote to the MOJ and requested information in the following terms about two firms of solicitors, shown as 'solicitor 1' and 'solicitor 2':

- "(a) The date [solicitor 1] was notified about the fact that it would be awarded a contract or its tender was successful.*
- (b) The name of any applicant which had its award of contract withdrawn and which caused [solicitor 1] to be awarded a contract as a result of that withdrawal.*
- (c) The number of matter starts that was initially awarded to the applicant which had its award of contract withdrawn.*
- (d) The date the contract award was withdrawn from the applicant who had his contract withdrawn.*
- (e) A copy of any letter before claim received from [solicitor 1] and any reply to such letter.*
- (f) Copies of correspondence between the then LSC and [solicitor 1] between 1 June 2010 and 30 November 2010."*

15. As part of his request of 26 December 2013, the complainant also asked for information about a different firm of solicitors involved in the tender process:

*"Could I have copies of any correspondence between the LSC and [name of solicitor 2 redacted] regarding the process which led to the award of a full civil contract in 2011. Particularly between June 2011 and November 2011 concerning the issue of awarding a full immigration contract in 2011.*

*Please confirm who initiated the process which led to the award of a contract at that time to [solicitor2].*

*Please confirm whether [solicitor 2] submitted any new tender documents at the time in question such as supervisor declaration form. I understand that [solicitor 2's] initial tender expired on or about 28 April 2010. Furthermore, between January 2010 and September 2011 the accreditation of [solicitor 2's] supervisor expired and this caused a delay for the award of the contract to take place. Please confirm if any of those facts are correct."*

16. On 24 January 2014 the MOJ responded. It refused to provide the requested information and cited section 14(1), vexatious requests, based on its view that the complainant's request is "identical to that made by another individual, who has an extensive history of making FOI

*requests relating to legal aid tender activity and in respect of which the ICO has recently issued a decision notice supporting our use of section 14(1)."* (Reference FS50505670). The MOJ said that whether or not the complainant was making requests under FOIA in identical terms to requests made by individual A means that, "*willingly or not, your request forms part of the burden imposed on the Public Authority tasked with the answer to the request, and as such becomes part of a campaign with this individual*".

17. The complainant requested an internal review on 30 January 2014, the outcome of which the MOJ provided on 27 February 2014. It maintained its original position that the request was vexatious.

## **Scope of the case**

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18. The complainant contacted the Commissioner on 28 February 2014 to complain about the way his request for information had been handled. He disputed that his request was vexatious and contended that he was not acting as part of a campaign with another individual and highlighted that his request was the first he had made to the MOJ.
19. The Commissioner has considered whether the MOJ was entitled to rely on the vexatious exclusion contained in section 14 of FOIA. As the MOJ had said it would seek to rely on section 44(1)(c), prohibitions on disclosure, if the Commissioner did not find that section 14(1) is engaged, the Commissioner has also considered the application of section 44(1)(c) to the request.

## **Reasons for decision**

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### **Section 14 – Vexatious requests**

20. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
21. The term 'vexatious' is not defined within FOIA. However, it has been considered in the case of *The Information Commissioner and Devon County Council vs Mr Alan Dransfield (GIA/3037/2011)*<sup>2</sup>. The Upper

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<sup>2</sup> <http://www.osscc.gov.uk/judgmentfiles/j3680/GIA%203037%202011-01.doc>

Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...*manifestly unjustified, inappropriate or improper use of a formal procedure*" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

22. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff.
23. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the "*importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests*" (paragraph 45).
24. The Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests<sup>3</sup>. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

### **Detrimental impact on the public authority - Campaigns**

25. In this case the MOJ told the complainant that it had reason to believe he was acting in a campaign with an individual (individual A) who could no longer make FOIA requests associated with the 2010 tender process. The MOJ said it was aware that:

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<sup>3</sup> [http://www.ico.org.uk/~/media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

- Based on correspondence sent by the complainant to the Legal Aid Agency and the pleadings he had filed in his own legal proceedings, the complainant had been in communication with individual A since at least April 2011.
  - Individual A had previously sought to join proceedings he had brought in the Administrative Court to those brought by the complainant.
  - The complainant had attended the inspection of documents disclosed by the Legal Aid Agency at its office on 18 April 2013 with individual A.
  - Individual A had attended the complainant's hearing and hand down of judgment.
  - The disclosure sought by the complainant through his request was of no possible relevance to his case, but has been the subject of previous requests from individual A.
  - The MOJ told the complainant it also has evidence of individual A using third parties to make FOIA requests in the past, and said it had received an almost identical request to the complainant's from another individual (individual B) about [solicitor 1], which is one of the firms of solicitors involved in the tender process around the time of receiving the complainant's request.
26. The complainant told the Commissioner that *"although the request maybe identical to that of another individual this of itself cannot be a factor in determining that my request is vexatious as this is my first request"*.
27. When determining if a complainant can be seen as acting in concert for the purposes of deciding if the request is vexatious, the Commissioner defers to his guidance on this<sup>4</sup>, which includes *"If a public authority had reason to believe that several different requesters are acting in concert as part of a campaign to disrupt the organisation by virtue of the sheer weight of FOIA requests being submitted, then it may take this into*

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<sup>4</sup> Paragraphs 89-95

[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)



*account when determining whether any of those requests are vexatious."*

28. His guidance suggests that there must be some tangible evidence to substantiate the claim of a link between requests, for example that the requests are similar, the requesters copy each other into requests, the pattern of requests is unusual or frequent, or the group has a website which references a campaign against the public authority. The Commissioner has considered this point very carefully as he is conscious of the fact that accepting that requesters are acting in concert will add much greater validity to the claims that the request in this case is vexatious.
29. In response to the Commissioner's investigation, the MOJ sent a 'schedule of interaction' between individual A, the complainant and individual B which highlights the requests made and the areas of crossover. The Commissioner has examined the schedule and accepts that the requests are very similar in theme. He also agrees that the timing of the complainant's request coincides with individual A no longer being able to submit requests which relate to his litigation.
30. The MOJ contended "*The wording of the requests is substantially similar and it is the Department's assessment that the requests are so particular in their nature and proximate in time to the ICO's decision in [individual A's] case that it is highly unlikely that they would now have been requested independently by an individual unaware of the specifics of [individual A's] litigation.*"
31. In addition the MOJ submitted evidence in support of its view that individual A is using other third parties to circumnavigate the FOIA, showing possible links between individual A and individual B, together with an email from individual A to one of the Legal Aid Agency lawyers which shows that individual A had requested the same information about [solicitor 1] as both the complainant and individual B. The Commissioner has reviewed the evidence and accepts that the complainant had requested similar information about [solicitor 1] as individuals A and B. However, he notes that the complainant also requested information about [solicitor 2], in addition to [solicitor 1]. The Commissioner has not seen any evidence that requests have been made about [solicitor 2] by individuals A or B. He also notes that individual A and individual B made similar requests about another firm of solicitors [solicitor 3] involved in the tender process.
32. The MOJ also forwarded an email from the Legal Aid Agency's legal team to their Information Governance team which enclosed documents which



make express reference to the complainant's association with individual A in relation to litigation.

33. Having reviewed the email and individual A's request made as part of the litigation proceedings, the Commissioner is satisfied that individual A's request is very similar to that made by the complainant about [solicitor1], but he can find no evidence that individual A has made any reference to an association with the complainant. Instead, the association is referenced by the Legal Aid Agency's Information Governance officer.
34. In support of its view that individual A was acting in concert with third parties, the MOJ also highlighted that in December 2013, individual B had submitted what the MOJ considered to be an identical request to that submitted by the complainant about [solicitor 1]. The following month (January 2014) individual A submitted another similar request about [solicitor 1]. The Commissioner has examined the three requests in question which are about [solicitor1] and accepts that there is some overlap in the information requested.
35. The MOJ said because all the information requests it highlighted are similar in nature and relate to the legal aid tender process, and were received within a few weeks of each other, that it believes this is no coincidence. It said that in its view it is unlikely that the complainant has requested the information "*without external influence*".
36. The MOJ told the Commissioner that to respond to the complainant's request (which it assessed as unlikely to end with one request about this matter) would therefore, contribute to the burden on its resource that individual A's request and litigation have caused.
37. The MOJ explained that it had concluded that section 14(1) of FOIA applied to the complainant's request as it had taken this chronology of events as evidence that the complainant was acting in a campaign with individual A, and in doing so he was helping individual A to continue to request the same information and bypass section 17(6) of FOIA. The MOJ stated that while FOIA poses no limitations on what a requester can do with the information disclosed to them, it "*would be improper for the Department to allow individuals to act collaboratively to circumnavigate the decision of both the Department and the ICO (the Commissioner), and continue to allow disproportionate Departmental time and resource to be spent on their case.*"
38. In summary, to support its view that individual A is using third parties to make request on his behalf, the MOJ said its contentions are based upon

the similar wording of the requests submitted by individuals A and B and the complainant, and the fact that the requests cover information that would not be widely known to the public because there is a High Court Order, dated 17 July 2013, which expressly prohibits the names of third party firms of solicitors being used by the claimants other than in the course of the litigation.

39. In addition the MOJ said individual A has also asked a barrister [name redacted] to make requests on his behalf, despite being clearly aware of the findings of the Department and the Commissioner in relation to sections 14(1) and 17(6) of FOIA. The MOJ advised that it has recently received tabled Parliamentary Questions from an MP, which again ask for the information in question. It said that *"this evidence illustrates a pattern which has come about since the Department stopped responding to FOI requests which it determines related to [individual A's] litigation"*.
40. Included in the documents which the complainant submitted to the Commissioner in support of his complaint is a copy of the complainant's QC's 'skeleton argument' produced for his appeal case. At paragraph 11 of this document it states *"On 18 April 2011 [the complainant] the principal of [organisation name redacted], was contacted out of the blue by [individual A]. He told [the complainant] that he had read of the case, that he was a solicitor, which was bringing a similar case against the Defendant [Legal Aid Agency], and that he had some information which might be of interest. He sent a bundle of papers, which included a letter from the Defendant to his firm dated 11 January 2011."*
41. The complainant told the Commissioner that *"Each request must be seen in the context of the person requesting it not by way of what someone else had requested 4 years before."* He also said that the Legal Aid Agency *"did not provide any evidence whatsoever to show that the individual concerned made a similar request. Even if he did I have no control over his conduct."*
42. On 1 May 2014 the complainant wrote to the Commissioner and said he was not aware *"of any person making an identical request"*. He stated that it was wrong of the MOJ to say that the information can be of no use to him (see paragraph 25 of this notice), and that he needed it to support his claim that the Legal Aid Agency had treated him unequally compared to the other firms which applied for contracts, adding *"In essence I am alleging that the Legal Aid Agency had awarded contracts to other firms which submitted defective tender applications like [solicitor 2] and [solicitor 1] AND refused my application for contract on the basis that my tender was defective."*

43. The MOJ said that as the complainant's litigation has closed, having been considered via both the Administrative Court and the Court of Appeal, it had assessed that as the requested information serves no purpose in respect of the concluded litigation and given the established relationship with individual A, that section 14(1) as part of a campaign with individual A seems the more relevant approach in this case.
44. The Commissioner accepts that the complainant has an association with individual A, and that they have failed tender bids in common. He further accepts that the subject matter of part of the complainant's request about [solicitor 1] is the same as that requested by individual A. He also notes that the timing of the complainant's request (26 December 2013), is around the time that the Commissioner's decision notice FS50505670 was issued to individual A (18 December 2013) upholding the MOJ's decision to apply section 14(1) to individual A's request.
45. Taking this into account the Commissioner has determined that there is sufficient evidence to link individual A with both the complainant and individual B and to accept they may be acting in concert. The Commissioner has gone on to consider whether the requesters are acting in concert to obtain information about a genuine underlying issue or to engage in a campaign of disruption under the headings below. He has focused on whether the aggregated impact of dealing with the requests would cause a disproportionate and unjustified level of disruption, irritation or distress.

### **Is the request vexatious?**

#### *Burden imposed by request*

46. The Commissioner's guidance states that:

*"a request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. An example of this would be where an individual is placing a significant strain on an authority's resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden".*

47. The guidance also states that a requester's past pattern of behaviour may also be a relevant consideration. For instance, if an authority's experience of dealing with a requester previously suggests that they are unlikely to be satisfied with any response and will submit further follow-up correspondence, then this evidence could strengthen any argument

that responding to the current request will impose a disproportionate burden on the authority.

48. The *Dransfield* tribunal said that "*the purpose of section 14 must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA*".
49. In this case, the MOJ said it believes individual A is using third parties to make requests on his behalf because he has been issued with a section 17(6) refusal notice, which prevents him from making requests about the 2010 legal aid tender bid process. The MOJ believes that one of those third parties is the complainant.
50. The MOJ explained that its view is based upon the similar wording of requests submitted by individual A, individual B and the complainant and it forwarded a document highlighting the overlap and similarities between those requests.
51. In addition, the MOJ pointed out that the requests cover information which would not be widely known to the public, particularly given that the High Court has ordered that the names of the third party firms involved in the litigation must remain confidential. The MOJ said that it was aware that individual A has also asked a barrister to make requests on his behalf.
52. The MOJ explained that it had also received tabled Parliamentary Questions from an MP which again asked for the information in question.
53. The MOJ said that this evidence illustrates a pattern which has come about since it stopped responding to FOIA requests which it determines related to individual A's litigation.
54. In terms of the burden, the MOJ said that it is already expending "*significant resource in handling [individual A's] litigation in terms of staff time. Any further information related to that litigation that is provided to [individual A] outside of the appropriate legal disclosure routes would add further burden to Departmental resources. [individual A] has adequate routes to obtain the information he requires outside of the FOIA*".
55. The MOJ said it believed that the complainant's request would be unlikely to end with one request about the matter and would therefore contribute to the burden on its resource that individual A's requests and litigation have caused.

56. In addition, the MOJ explained that it had applied section 14(1) to the complainant's request as it had taken the chronology and timing of events as evidence that he was acting in a campaign with individual A and, in doing so, he was helping individual A to continue to request the same information and bypass section 17(6) of the FOIA. The MOJ acknowledged that the FOIA poses no limitations on what a requester can do with the information disclosed to them, but said it would be *"improper for the Department to allow individuals to act collaboratively to circumnavigate the decision of both the Department and the ICO, and continue to allow disproportionate Departmental time and resource to be spent on their case."*

*Motive of the requester*

57. It is important to note that it is not the requester who is 'vexatious' but his or her request(s). However, the Commissioner's view is that different requesters can make the same request and receive differing outcomes in terms of whether the request is vexatious, once the relevant context has been considered for each of those individuals.
58. FOIA is generally considered to be applicant blind but this does not mean an authority cannot take into account the wider context in which the request is made and any evidence the requester volunteers about the purpose behind his or her request.
59. Given the MOJ's view that individual A is using the complainant to make requests on his behalf, the MOJ explained that it had assessed that responding to the complainant's request could result in *"significant burden in terms of expense and distraction on various teams in the LAA (Legal Aid Agency) and the MOJ; create an unjustified level of irritation; and lead to a further significant burden on the LAA by generating further follow-up correspondence from [individual A] or others"*.
60. In support of this the MOJ quoted the First Tier Tribunal's decision *EA/2011/0163*, in which Judge Angus Hamilton accepted the FOIA request in question *"which in isolation was not particularly burdensome"* was rendered vexatious by a number of characteristics, including:
- "15(g) The question is whether a request is vexatious, rather than whether the requester is vexatious. There is no mechanism for an individual to be treated as being the FOI equivalent of a 'vexatious litigant', so as to lose his right to make requests to a specific public authority or to public authorities generally. Each request needs to be considered on its own merits. But that does not mean that requests can be viewed in isolation. A request needs to be looked at in its*

*context and history, and by reference to the previous course of dealing between the requester and the public authority....It follows that it may be proper to treat a request as vexatious, even if the same request made by a different individual would not be vexatious.*

*15(h) Thus a request which viewed in isolation, is unobjectionable, can still be vexatious because of the previous course of dealing between the requester and the public authority... Likewise, a request that on its face is not burdensome to reply to may nevertheless be vexatious because of the further correspondence to which any response is likely to give rise...".*

61. The MOJ said that although the complainant's request was not vexatious in isolation, given its connection to the requests made previously by individual A, *"they must all be seen in the context of a previous course of dealings that has seen the LSC/LAA face an extended campaign of requests that have persisted over what is now a number of years. Taken in aggregate, the volume and frequency of these requests represents a burden to staff across various teams within the LAA that we considered vexatious"*.
62. The Commissioner accepts that individual A may be acting in concert with other parties, but he also recognises that the complainant being an unsuccessful party to the bid process himself and, having exhausted all the judicial review and appeals processes, may still be attempting to seek answers via the FOIA.
63. The complainant said *"I have made my request conscientiously in good faith in order to obtain information which I had great interest"*. He told the Commissioner he wished to gather the information to help him file a complaint about the Legal Aid Agency to the Ombudsman.
64. He commented *"The LAA in essence treated my request as vexatious because in their view there is an individual that I know who made a similar request"*. The complainant has not denied that he knows individual A. He also said that, although the MOJ has not provided him with any evidence that another individual has made a similar request, even if he had *"I have no control over his conduct"*.
65. The complainant said that there were some 300 solicitor firms that had failed to obtain contracts in what he referred to as *"very cloudy circumstances"* and commented that the Legal Aid Agency received large numbers of requests because it awards contracts to firms of solicitors.
66. After careful consideration, the Commissioner accepts that the purpose of the complainant's request, which is the first he has submitted to the



MOJ, is related to a genuine underlying issue and the Commissioner does not consider that the request was intended to disrupt the main functions of the MOJ.

*Harassment or distress caused to staff*

67. The MOJ has not claimed that the request has caused any of its staff to feel harassed or distressed per se, but rather that the burden imposed by what it considers to be a campaign has resulted in "irritation" and staff being distracted.
68. The complainant said "*No reasonable person would regard my request as obsessive, burdensome or one that is motivated by a desire to harass the employees of the public body.*"
69. The Commissioner is aware that there is a lot of strong feeling from the complainant on the issues raised in his request, as there is from the other requesters, and can find no evidence of, for example, disparaging remarks or inappropriate use of language.

*Value or serious purpose of request*

70. The complainant told the Commissioner that he wanted to understand what he viewed as "*unequal treatment*" by the Legal Aid Agency of applicants who had submitted tenders in 2010 and to use the FOIA process to help him file a complaint about the Legal Aid Agency to the Ombudsman.
71. The Commissioner accepts that the complainant's request has a serious purpose, and has considered the aggregated impact on the MOJ of dealing with individual A, individual B and the complainant's requests as a whole. The Commissioner finds that while there is potentially some evidence of these individuals acting in concert, he does not consider that there is sufficient evidence of them acting as part of a campaign to disrupt. He also finds insufficient evidence of the complainant having made improper use of the formal procedure to request information under FOIA.

*Conclusion*

72. After careful consideration of the evidence before him, the Commissioner has concluded that whilst there is some evidence to suggest that the complainant and individual A may be working together to try to get the information denied to individual A in court, this could be also be circumstantial. Even if the complainant and individual A are working together, the Commissioner considers that there is insufficient



evidence to indicate that they are part of a campaign to disrupt. He has therefore concluded that the MOJ has wrongly applied section 14(1) to the complainant's request.

#### **Section 44 – Prohibitions on disclosure**

73. During the investigation, the MOJ said that if the Commissioner did not uphold its reliance on section 14(1), then it would seek instead to rely on section 44(1)(c) of the FOIA. This provides an exemption for information for which the disclosure would constitute or be punishable as a contempt of court. Section 44(1)(c) is a class based exemption; if the information conforms to the class described in this section, the exemption is engaged.
74. The MOJ explained that there is a High Court Order dated 17 July 2013 and has provided the Commissioner with a copy. This Order provides expressly that specific information shall not be disclosed save with the express permission of the court. The MOJ considers the information within the scope of the complainant's request is caught by the Court Order. The Order was live at the time of the request and remains in place.
75. The MOJ considered that disclosure in response to the complainant's request would breach this Order and that this would constitute contempt of court. The task for the Commissioner here is to consider whether disclosure of the information in question would breach the Order made by the High Court and, if so, whether this would constitute, or be punishable as, contempt of court.
76. Having carefully considered the High Court Order and the representations of the MOJ the Commissioner accepts that breaching this Order by responding to the request would constitute contempt of court. The exemption provided by section 44(1)(c) is, therefore, engaged in relation to this information.

## Right of appeal

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77. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

78. 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.
79. 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 .....**

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**