

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 June 2024

Public Authority: Legal Services Board
Address: The Rookery
3rd Floor
2 Dyott Street
London
WC1A 1DE

Decision (including any steps ordered)

1. The complainant requested specified email addresses and related information from the Legal Services Board (the 'LSB'). In response, the LSB provided weblinks to publicly available contact information but refused to provide the remaining requested information, citing section 40(2) – the FOIA exemption for personal information.
2. The Commissioner's decision is that the LSB has properly relied on section 40(2) of FOIA to withhold the remaining requested information.
3. The Commissioner does not require any steps as a result of this decision.

Background

4. The LSB has explained that it is a public body, established by statute – the Legal Services Act 2007 – to discharge functions as oversight regulator of legal services. As such, it is classified as an arm's length public body ('ALB'), with a sponsor government department - the Ministry of Justice ('MOJ') under the Lord Chancellor. The LSB's operational working relationship day to day with the MOJ is through its ALB Centre of Expertise.

Request and response

5. On 22 November 2023 , the complainant wrote to the LSB and requested information in the following terms (numbers added for ease of reference):

“Please acknowledge this email as a Freedom of Information Request.

1. All of Board of Directors, direct email addresses?
 2. Who oversees the Legal Services Board and their direct email addresses?
 3. Who the Legal Services Board are accountable too [sic], and their direct email addresses?
 4. A full list of the Legal Services employees, their Job Role and direct email addresses.”
6. The LSB responded on 4 December 2023. For **part 1**, it provided a general “Contact us” email address which it said should be used in the first instance for anyone wishing to contact its Board members. It also provided weblinks its Enquiries page¹ and to its Board Secretary contact details.²
7. For **part 2** of the request, the LSB said it does not have an oversight regulator.
8. For **part 3**, the LSB explained that it is accountable to Parliament through the Lord Chancellor and is sponsored by the Ministry of Justice (the ‘MOJ’). It told the complainant that the LSB is an ‘arms length body’ to the MOJ with the relationship being governed by a Framework Document, available here.³ The LSB explained ALB Centre of Expertise is the department at the MOJ it engages with and provided the relevant contact details.
9. For **part 4**, the LSB provided publicly available URL links relating to the Board⁴, other LSB staff⁵ and to the Legal Services Consumer Panel⁶.

¹ <https://legalservicesboard.org.uk/enquiries/contact-us>

² <https://legalservicesboard.org.uk/freedom-of-information>

³ <https://legalservicesboard.org.uk/our-relationships/lsb-framework-document>

⁴ <https://legalservicesboard.org.uk/about-us/our-board>

⁵ <https://legalservicesboard.org.uk/about-us/our-staff>

⁶ <https://www.legalservicesconsumerpanel.org.uk/about-us/panel-members>

10. Finally, the LSB confirmed it was withholding the following requested information under section 40(2) of FOIA:
 - Names and email addresses of [the remaining] LSB and MOJ members of staff.
 - Direct email addresses for LSB's public facing members of staff whose names and other information are publicly available [via the URLs provided].
11. The complainant requested an internal review on 4 December 2023.
12. Following its internal review, the LSB wrote to the complainant on 21 December 2023. It maintained its original position.

Scope of the case

13. The complainant contacted the Commissioner on 21 December 2023 to complain about the way his request for information had been handled.
14. The LSB told the Commissioner that:

“We ought to also note that we provided information in response to the request that is already publicly available (LSB contact details, names of the LSB Board members and senior leadership team and MOJ contact information). However, it was open to the LSB to refuse this aspect of the request on the basis that it was exempt from disclosure under section 21(1) FOIA, being information that is reasonably accessible to [the complainant] by other means – it is published on the LSB website and the MOJ website.”
15. The Commissioner notes that the LSB chose not to invoke section 21 of FOIA and that this exemption was not formally cited in this case.
16. In its submissions to the Commissioner, the LSB confirmed it was withholding the following information under section 40(2) of FOIA:
 - The direct email addresses of the Board of Directors (**part 1** of request).
 - The direct email addresses of MOJ staff (**part 3** of the request).
 - A full list of the Legal Services employees, their job roles and direct email addresses (**part 4** of the request).
17. The Commissioner understands that the FOIA request is part of what the LSB has described as “ongoing correspondence” (outside of FOIA) with

the complainant. The LSB also provided context to this request in relation to previous correspondence between itself and the complainant, explaining that the complainant had sent:

'multiple emails to multiple recipients including the LSB with no content other than "hello," and "Dear all," (forwarding emails to other third parties)'.

18. In addition, the Commissioner has reviewed the publicly available information and notes where information has been withheld under section 40(2) of FOIA, that this is not available via the URLs provided. He has not deemed it necessary to view the withheld information in order to reach his decision in this case.
19. The Commissioner has considered whether the LSB was entitled to withhold the remaining requested information under section 40(2) of FOIA.

Reasons for decision

Section 40 - personal information

20. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
21. In this case the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
22. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
23. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP (Data Protection) principles.

Is the information personal data?

24. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

25. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
26. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
27. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
28. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information does relate to the data subjects, ie named employees. Their names are obviously information that both relates to and identifies those concerned. A direct email address usually also contains the name of the data subject (particularly when used in a work-related capacity) and a list of job roles, together with the accompanying names and email addresses would also identify employees.
29. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
30. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
31. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

32. Article 5(1)(a) of the UK GDPR states that:

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

33. 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.
34. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the UK GDPR

35. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”⁷.

36. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

37. The Commissioner considers that the test of ‘necessity’ under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

38. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.

39. Further, a wide range of interests may be legitimate interests. They can be the requester’s own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be

⁷ Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

40. The complainant did not submit any specific legitimate interest arguments.
41. The LSB acknowledged that there is a legitimate interest in disclosure of the information, namely to provide the complainant with a wider means of communication with the MOJ and the LSB.

Is disclosure necessary?

42. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
43. The LSB told the complainant, in its substantive response and again at internal review, that:

"...we have determined that disclosure of LSB and MOJ employee names and/or direct email addresses is not necessary for either of the above purposes, as you have been provided with an appropriate means of contacting the MOJ and the LSB via the contact information provided above".
44. The LSB deemed it not to be necessary for the complainant to have an alternative means of contacting individuals directly, given the general email addresses provided to him.
45. However, the LSB also acknowledged that:

"There are no other means to obtain a full list of legal services employees, job roles and email addresses other than through FOIA (on the basis that legal services employees refer to LSB employees)."
46. Whilst recognising that the complainant has a means of contacting the LSB and MOJ, the Commissioner cannot see how a specific individual within either organisation may be contacted directly by the complainant should he wish to do so.
47. The Commissioner recognises the rationale adopted by the LSB in that it is seeking to minimise the disruptive effect of receiving multiple emails from the complainant (which would be the case for any other member of the public who would similarly gain access to this information via FOIA) with no actual content beyond "Hello" or "Dear All". In spite of this, the

Commissioner is satisfied in this case that there are no less intrusive means of achieving the legitimate aims identified - the complainant is not able to email individuals directly where he does not have their direct contact details.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

48. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
49. In considering this balancing test, the Commissioner has taken into account the following factors:
 - the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
50. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
51. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
52. The LSB told the Commissioner:

“We considered that legitimate interests in disclosure of the withheld information and found that on balance there is no overriding legitimate interest or necessity in disclosure that overrides the reasonable expectations of privacy of the individuals concerned. [The complainant] is pursuing his private interests in making the request and his motivation seems to be target individuals with his emails. His emails to date, the nature of which is described elsewhere, have diverted LSB's limited

resources as a small public body discharging regulatory functions, and caused distress to the individuals that he has targeted in this manner. In the circumstances, we do not consider that any legitimate interest in disclosing direct email addresses overrides the individuals' rights to privacy and would present an unwarranted interference.

The important public interest in the public being able to contact the LSB (and MOJ) directly for reasons stated elsewhere in this letter has been met in response to the request, and accessible information publicly available."

53. In its submissions to the Commissioner, the LSB confirmed that the names and email addresses "are of individuals who have no public facing role".
54. The LSB has explained that the Board members of the LSB itself are public appointments and that their expectation is that their names and how they may be contacted will be in the public domain. The LSB also accepts that senior MOJ officials and members of the LSB senior leadership team have the same expectations. It explained:

"Junior members of LSB and the MOJ reasonably expect their names and direct contact details not to be in the public domain, they are not publicly accountable for the LSB and the MOJ's decisions respectively – that accountability is met by the LSB Board members, LSB senior management team, and senior MOJ officials and responsible ministers including the Lord Chancellor.

We consider that the direct contact details LSB of Board members, MOJ officials, and LSB employees including those at a senior level is personal information, only disclosed when appropriate, and if it is in the public interest to disclose.

The important public interest there is in disclosure of the withheld information has been met in the information already held by [the complainant], including that disclosed to him, and contact information published on the LSB website and MOJ website. The disclosure of the information withheld would be unfair, be an unwarranted interference with the individuals' right to privacy and in breach of the first data protection principle. In reaching this conclusion, we have taken account of the motive of the requester...".

55. The Commissioner's guidance on personal data⁸ includes the following:

"Most authorities publish the details of their most senior employees, such as their Chief Executive and Directors of departments, on their website and in other material. The section 40 exemption therefore does not arise in respect of this information.

...

This does not mean that there is a requirement to publish the names of all the post holders; usually only the names of senior managers are published.

...

The more senior an employee is and the more responsibility they have for decision making and expenditure of public money, the greater their expectation should be that you disclose their name. However, seniority within the organisational structure is not the sole determining factor. Employees who represent their authority to the outside world should also expect that their authority will disclose their names".

56. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The complainant is able to contact the LSB and MOJ via the same channels as other members of the public and has provided no rationale to explain why a more intrusive disclosure of information is necessary. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
57. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.

⁸ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

Right of appeal

58. 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

59. 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.

60. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Carol Scott
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