

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 December 2024

Public Authority: Ministry of Justice

Address: 102 Petty France

London

SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information related to the Measles, Mumps and Rubella ('MMR') litigation Authority to Do Contract Work awarded to a named solicitor between specified dates. The Ministry of Justice (the 'MOJ') initially aggregated the complainant's request with others made within 29 working days and relied on section 12(2) of FOIA (the 'neither confirm nor deny' provision for the cost of compliance). During the course of the Commissioner's investigation, the MOJ revised its position and provided a one page document. Ultimately, the MOJ confirmed that no further recorded information in scope of this request was held, which the complainant disputed.
2. The Commissioner's decision is, on the balance of probabilities, that the MOJ does not hold any further information than has been provided.
3. No steps are required as a result of this notice.

Request and response

4. On 10 May 2024, the complainant wrote to the Legal Aid Agency (the 'LAA'), which falls under the remit of the MOJ, and requested information in the following terms:

"Please provide copies of all amendments to the MMR litigation [MPA 94/2] Authority To Do Contract Work [26/9/94] awarded to Alexander Harris Solicitors [7/9/99] between that date and 1/10/03."

5. The MOJ responded on 10 June 2024 and refused to provide the requested information citing section 12(2) of FOIA. The MOJ said it had aggregated this request with earlier requests made by the complainant, and offered advice and assistance in accordance with its section 16 of FOIA obligations.
6. The complainant requested an internal review on 10 June 2024. She contested the MOJ's position that these requests had been for the "same or similar information".
7. Following its internal review the MOJ wrote to the complainant on 8 July 2024 and maintained that section 12 of FOIA applied.

Scope of the case

8. The complainant contacted the Commissioner on 11 July 2024 to complain about the way her request for information had been handled. She submitted a 21-page letter setting out her grounds of complaint.
9. The Commissioner secured the complainant's consent to send her grounds of complaint in full to the MOJ as part of his investigation.
10. On 11 November 2024, the MOJ revised its position and wrote to both the complainant and the Commissioner. The MOJ said it maintained that section 12(2) applied at the time of the complainant's request (ie 10 May 2024) but:

"...due to the passage of time since the previous requests with which it was originally aggregated, we are treating your [the complainant's] request as a fresh request for this information (as received on 15 October 2024) to resolve your complaint."
11. The MOJ also provided the complainant with a one page document, with personal information redacted under section 40(2) of FOIA – personal information. The MOJ said that the document disclosed was titled 'Amendment No 2' recording a transfer of the Contract from Alexander Harris Solicitors to a new firm.
12. The complainant told the Commissioner she had already received this document in response to a previous FOIA request she had made to the MOJ on 4 December 2023. She argued that there must be more than one amendment.
13. The Commissioner raised this issue with the MOJ on 12 November 2024. There followed various written exchanges, administered by the Commissioner, between the MOJ and the complainant. The Commissioner has not detailed the various exchanges given all parties

have copies of this correspondence, and are apprised of each other's positions.

14. The MOJ confirmed it had:

"...manually rechecked all of the documentation it held relating to the MMR litigation. It was unable to locate any other documents which on its face appeared to be an amendment made to the Authority to Do Contract Work in the dates specified in [the complainant's] request

The LAA [MOJ] disclosed the document on 11 November, as it reasonably considered it to fall within the scope of [the complainant's] request because it was specifically titled as being an 'Amendment to Contract'".

15. It also provided further explanations as to why it had initially relied on section 12(2) of FOIA, including:

"The amount of information within the scope of the request has little bearing on the cost limit. The same amount of manual review is required to identify a single one-page document as to identify multiple 100-page documents."

16. Following the various written exchanges, the complainant remained dissatisfied with the MOJ's assertion that only the disclosed one page document was held in scope of her request. She also expressed concern about the way in which the MOJ had said the requested information was held, and her view that it could therefore not determine with any certainty whether further information was held.

17. At the end of the Commissioner's investigation, the complainant also considered that the MOJ's responses were "conflicting". The Commissioner put her concerns to the MOJ which responded as below:

"The LAA disagrees that the statements are conflicting. In its response of 26 November [2024], which attempted to address specific concerns about its compliance with Section 2.3.9 of the Code of Practice, the LAA set out that it had clear processes in place to identify, locate and retrieve information relating to the MMR Multi Party Action litigation, which forms the subject of [the complainant's] various FOI requests. This is set against a context of where the LAA holds files and records relating to hundreds of thousands of individual legal aid funded cases both electronically and physically in a number of off-site locations.

This includes ensuring archived files are all assigned unique reference numbers and can be located and called for to obtain individual documents within the files. It is not, for example, the

case that the files relating to individual legal aid applications cannot be identified and retrieved without undertaking a full manual search of **all** historic case files stored in archive.

In the letter of 26 November [2024], the LAA further clarified that each box containing files and individual records would have some broad description to enable more targeted searches where a specific document is requested, which could potentially be located without a full search. However, where a class of document or a broader request is made it will always be necessary to search through all boxes containing the documentation relating to the specific case in order to determine conclusively if the information is held and if it were to ensure all material within the scope of the request was identified.

This is not inconsistent with the general statement in the letter dated 18 November [2024], which addressed different concerns regarding potential incorrect application of s.12 FOIA, that the case files relating to the MMR litigation (and other historic legal aid funded cases) are not indexed or in any particular order. Therefore, in most cases, and specifically in the case of [the complainant's] current request, it would be necessary to manually search through all of the individual files relating to the funding of the MMR litigation. This was the one of the largest multi-party action cases funded by the LAA and so the number of boxes containing records is significantly more for this case than other legal aid funded cases.

As explained in our previous response, the case files are very historic and pre-date use of electronic case management systems and digital file structures. The LAA has much more sophisticated tools and processes in place to enable the effective and efficient location and retrieval of information that is stored in digital format."

18. As the MOJ is no longer relying on section 12(2) of FOIA, the Commissioner has not considered its original position. He has instead determined whether, on the balance of probabilities, the MOJ (LAA) holds any further recorded information in scope of this request beyond that already provided to the complainant.
19. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA.
20. FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public

authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

Section 1 – general right of access

21. Section 1(1) of FOIA states that:

“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.”

22. The Commissioner is mindful that when he receives a complaint alleging that a public authority has stated incorrectly that it does not hold any further requested information, it is seldom possible to prove with absolute certainty whether the requested information is held. In such cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide on the ‘balance of probabilities’ whether more information is held.

23. The Commissioner will consider the complainant’s evidence and arguments. He will also consider the actions taken by the public authority to check whether any further information is held and any other reasons offered by the public authority to explain why no further information is held. He will also consider any reason why it is inherently likely or unlikely that additional information is not held. For clarity, the Commissioner is not expected to prove categorically whether any further information is held; he is only required to make a judgement on whether further information is held on the civil standard of proof of the balance of probabilities.

24. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, the MOJ holds any further recorded information within the scope of the request. Accordingly, he asked the MOJ to explain what enquiries it had made in order to reach the view that it did not hold any further information.

25. In reply, the MOJ said it had located and disclosed the information held (namely 'Contract Amendment No 2' dated 7 September 1999) to the complainant on 11 November 2024. It explained that:

"The searches undertaken included manual review by two members of staff (one who works in the records management team and a LAA KILO [Knowledge & Information Liaison Officer]) of the files relating to the legal aid funding of a multi-party action case concerning the MMR vaccine.

[The complainant] has made several similar requests relating to the MMR contract. Therefore a number of searches have been conducted over a relatively short period of time. The members of staff searching the files have progressively become more familiar with what information is stored within the boxes that have been retained and filed. A limited number of generic documents relevant to all litigant case files has been catalogued to help speed up searching. There is an administration folder titled 'contract and correspondence' this forms the starting point for the searches and was reviewed in considerable detail, as the most likely place the requested information was filed.

The remaining 36 boxes, each containing hundreds of individual litigant files, including personal correspondence, medical records, expert reports, claims for payment are then manually reviewed. However, this entails a much quicker scan for information to rule out possibility of the requested information being misfiled. More time is spent thoroughly reviewing the 'contract and correspondence' files.

We are satisfied that these searches are likely to retrieve relevant information on the basis that they **did** locate information within the scope of the request. Relevant information was found relating to this request and the previous six linked FOIA request [sic] made by [the complainant]. This is the first occasion on which [the complainant] has found cause to query whether all relevant information was disclosed to her.

A second search, conducted on basis outlined above, was carried out following your email to MOJ dated 12 November [2024] which made clear [the complainant] was dissatisfied with the information disclosed to her on 11 November [2024]."

26. The MOJ also told the Commissioner that:

"There are no electronic records relating to this case. It predates use of electronic file management by the LAA.

In addition, there are a small number of operational staff still employed by the LAA who were involved in management of the Multi Party Action Contract. As such enquiries were made ahead of searches on each occasion [the complainant] submitted and [sic] FOI to establish likelihood of whether any information was held. These consultations also helped to clarify the type of information that would fall within the request and what it would look like to assist those tasked with conducting searches who were not necessarily experts regarding historic legal aid applications and contract amendments."

27. The MOJ said that no records relevant to this request had been destroyed or deleted. In answer as to whether there any business purpose for which the requested information was held, the MOJ replied:

"Not any longer as the files are historic, and the case closed. When [sic] case was live it was necessary to maintain the records in order to validate any claim for payment at end of [sic] case and make decisions about LAA statutory charge if money was recovered or preserved."

28. The MOJ advised that there is no longer any statutory requirement upon it to retain the requested information due to the "historic nature of the legal aid funding".

Conclusion

29. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed the information that a complainant believes it must hold, it is seldom possible to prove with absolute certainty that it holds no further relevant information. However, as set out in the paragraphs above, the Commissioner is required to make a finding on the balance of probabilities.
30. Having considered the explanation provided by the MOJ, whilst also taking account of the complainant's view, the Commissioner is satisfied that the MOJ undertook appropriate searches in order to ascertain whether or not it held any further relevant recorded information. In conclusion, based on the later interpretation of the request and on the civil standard of the balance of probabilities, the Commissioner finds that no further recorded information within the scope of the request is held by the MOJ.

Right of appeal

31. 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

32. 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.
33. 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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