

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2014

Public Authority: The Legal Ombudsman
Address: PO Box 6803
Wolverhampton
WV1 9WF

Decision (including any steps ordered)

1. The complainant has requested information from the Legal Ombudsman (LeO) about the academic qualifications of a named Ombudsman. The Commissioner's decision is that the LeO has correctly applied section 40(2) to the withheld information.
2. The Commissioner does not require the LeO to take any steps.

Background

3. The Legal Ombudsman for England and Wales was set up by the Office for Legal Complaints (the OLC - the Board of the Legal Ombudsman) under the Legal Services Act 2007 as a lay organisation for dealing with complaints of poor service about lawyers. The independent and impartial organisation opened on 6 October 2010 and investigates complaints that fall within the remit of the Scheme Rules.

Request and response

4. On 30 September 2013, the complainant wrote to LeO and requested information about a named Ombudsman under the FOIA for:

1. Did (Ombudsman name redacted) consider any of the facts of the case or form any view on the merits of either party's case?
2. Was his decision not to investigate based solely on the challenge to his jurisdiction by (lawyer name redacted)?
3. What qualifications and/or legal training does (Ombudsman name redacted) have?'

5. On 1 October 2013 the Legal Ombudsman responded with answers to all three questions.

6. On 31 October 2013, the complainant queried the answer provided for question three and requested further details:

'As stated previously, (Ombudsman name redacted)'s qualifications are not listed on his profile...you must hold that information in your records...His background is a little sketchy... "is an experienced Commercial Manager, having worked negotiating and managing high value contracts for over 10 years in a number of sectors, including consumer finance, leasing, travel and facilities management". For the avoidance of doubt, could you indicate what is meant by "high value" and perhaps some of his previous employers, particularly if any were in the public sector.

As (name redacted) was only appointed as an Ombudsman in 2013, please also supply the exact date of his appointment and the number of cases he adjudicated in his role as ombudsman before considering our application.'

7. The Legal Ombudsman provided a further response and review on 6 November 2013 giving the requested information for the date of appointment and the number of decisions made by the named Ombudsman. It refused to provide the remaining requested information on his qualifications and previous employers and cited the section 40(2) exemption of the FOIA. It offered to provide the job specification for the role of an Ombudsman.

Scope of the case

8. On 20 November 2013 the complainant contacted the Commissioner to complain about the way his request for information had been

handled. He specifically raised the issue of the academic qualifications as *'members of the public should be satisfied that those in quasi-judicial positions of responsibility are sufficiently educated and qualified to hold such positions. If his decision is based on a lack of legal training his background is relevant.'*

9. The Commissioner has clarified the issues under investigation with the complainant and as such the scope of this case is to determine if the LeO has correctly applied section 40(2) of the FOIA to the academic qualifications and detailed employment history of the named Ombudsman.

Reasons for decision

Section 40(2) – Third party personal data

10. This exemption provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the DPA.

Is the withheld information personal data

11. Personal data is defined by the DPA as any information relating to a living and identifiable individual. A named individual's academic qualifications and detailed employment history is clearly personal data.

Would disclosure breach the Data Protection Principles?

12. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
13. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

Reasonable expectations

14. The view of the Commissioner is that there is an expectation that an employee in a public authority will have a certain amount of information about them disclosed i.e name, job title, work telephone number. However, the complainant has asked for information relating to detailed academic and employment history.

15. The Commissioner has issued guidance about requests for personal data about public authority employees:
http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/section_40_requests_for_personal_data_about_employees.ashx
16. This guidance talks about whether the information requested relates to them as an individual or in their professional role, and is information contained in their personnel file as opposed to actions they have taken in carrying out their job. It also suggests consideration should be given to whether the employees are senior within the organisation or have a public facing role. The more senior the individual and/or the more public facing their roles are the greater their expectation should be that information about them would be released and the more likely it would be to conclude that it would be fair to do so. The LeO has confirmed that the role of an Ombudsman is a senior role.
17. The LeO has also confirmed that it holds the academic qualifications of the named Ombudsman as declared when applying for the position at the Legal Ombudsman but it was provided in confidence. *'There is a clear understanding on both our parts, and the applicants of this confidentiality.'* The LeO considers that the named Ombudsman has a reasonable expectation that his actual qualifications would not be disclosed to the public under FOIA.
18. The LeO has explained to the Commissioner that the Office for Legal Complaints (the OLC - the Board of the Legal Ombudsman) determines who is appropriate to act as an Ombudsman and their job specification sets out their requirements. During the Commissioner's investigation, this job specification was provided to the complainant.
19. In the job specification, the OLC base their considerations for a suitable candidate on evidence of behaviours – key result areas (section 1), accountabilities (section 2), competencies (section 3) and skills and knowledge (section 4). Particular qualifications or level of qualifications are not specified within the job specification and there is no assessment of educational or academic qualifications.
20. In addition, as a lay organisation there is no requirement for legal qualifications. To this end at section 4 of the Ombudsman job specification it specifically states *"Knowledge of the law or legal profession is not essential because ombudsmen review service provision and do not comment on the legal content of that service"*.
21. The LeO confirmed that those appointed to the advertised post of Ombudsman have gone through an open and transparent recruitment process and a brief biographical synopsis is disclosed to

the public based on the job specification. The LeO argues that it is not in the public interest to disclose data that was not pertinent to the obtaining of the post. This remains information that relates to the private and not the public life of an Ombudsman.

22. Therefore the Commissioner understands that the LeO would not routinely make public such information and the individual in this case has not consented to such a disclosure.
23. The complainant has argued that the named Ombudsman is in a senior role making important decisions and that it is a matter of public interest that those holding such positions are '*sufficiently educated and qualified...if his decision is based on a lack of legal training his background is relevant*'.
24. However, the Commissioner appreciates that academic and employment details have been provided in confidence to the LeO and do not form part of the job specification for the role of Ombudsman. Therefore to disclose information that is not assessed or specified in the job specification would not be fair to the individual.

Consequences of disclosure

25. The LeO has not provided the Commissioner with any detailed explanation as to the possible consequences of disclosure. However, it has stated that as disclosure would be contrary to the named Ombudsman's expectations and therefore unfair, it considers that disclosure would cause some distress to him.
26. The Commissioner is satisfied that the named Ombudsman would have a reasonable expectation that the information in question, that had been provided to the LeO in confidence as part of his appointment to the role, would not be placed into the public domain by disclosure under the FOIA. Therefore he considers that disclosure of this information would be an invasion of the privacy of the individual, and as such may cause him some distress.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

27. Notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if there is a more compelling public interest in disclosure.
28. However, the Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interests of the members of staff concerned.

The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information.

29. The Commissioner notes that the complainant may have a personal interest in knowing the academic and employment details of the data subject (the named Ombudsman) as he believes that it relates to the decision made by him in his case. The Commissioner also accepts that there is a general public interest in terms of the transparency and accountability of public sector organisations. However, the Commissioner does not consider that in this case any legitimate public interest extends to the disclosure of the academic qualifications requested by the complainant. It adds nothing to the transparency or accountability of the LeO as the requested information does not form part of the job specification on which Ombudsmen are appointed.
30. The LeO has argued that it publishes information about all its Ombudsmen in accordance with their appointment under the legislation, rules and regulations of the Office for Legal Complaints.
31. In a similar case, [FS50463355](#), the Commissioner decided that it would be unfair to disclose the confidential information provided to the General Dental Council (GDC) as part of the application for registration. The GDC publishes some standard information about registrants in accordance with its regulations but withholds all the other additional information that is provided at the time of application for registration.
32. Balancing the above, the Commissioner is satisfied that the data subject would have no reasonable expectation that the information in question would be disclosed to the world at large. The information was provided in confidence and the LeO does not publish such information.
33. Therefore, the Commissioner is satisfied that the withheld information is personal data and that disclosure would breach the first data protection principle as it would be unfair to the individual concerned. The Commissioner upholds the LeO's application of the exemption provided at section 40(2) of the FOIA.

Conclusions

34. The Commissioner is satisfied that it would be unfair to provide information concerning the academic and employment experience of the named Ombudsman. Such disclosure would contravene the first data protection principle and would not be fair.

35. The Commissioner is therefore satisfied that the LeO was correct to refuse to disclose this information under section 40(2) of the FOIA.
36. As the Commissioner is satisfied that providing the requested information would contravene the first data protection principle, he has not gone on to consider the other data protection principles.

Right of appeal

37. 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

38. 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.
39. 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

Pamela Clements
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