



Ministry of Justice

Information Governance

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Dave Darby

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Our Reference: 93875

5 November 2014

Freedom of Information Request

Dear Mr Darby,

Thank you for your email of 9 October 2014 in which you asked for the following information from the Ministry of Justice (MoJ):

“Under the freedom of information act, would you advise on the time scales it is required for the solicitor to advise the Legal Aid Agency of changes in funding within their contract with the Legal Aid Agency, such as the certificate now being discharged as there has been a final hearing and the case has been concluded.

Please advise the disciplinary procedure for breaching Legal Aid Agency contracts by solicitors such as but not limited to:

- 1) Penalties***
- 2) Reporting procedure***

Please also advise what proof you require from Solicitors that Legal Aid should be granted for family matters.”

Your request has been handled under the Freedom of Information Act 2000 (FOIA).

I can confirm that the MoJ holds the information requested and I have responded to each part of your query below.

The time scales it is required for the solicitor to advise the Legal Aid Agency of changes in funding within their contract

I can confirm that the Ministry of Justice (MoJ) does not hold the information that you have requested, as there is no set timescale for the requirement for a provider to notify other parties in the proceedings.

Please be advised that the FOIA does not oblige a public authority to create information to answer a request if the requested information is not held. It does not place a duty upon public authorities to answer a question unless recorded information exists. The FOIA duty is to only provide the recorded information held.

You can find out more about information held for the purposes of the Act by reading some guidance points we consider when processing a request for information, attached at the end of this letter.

Outside scope of the FOI Act and at our discretion, you may wish to note Regulation 38 (4) (b) of the Civil Legal Aid (Procedure) Regulations 2012, which you can access at the following link: <http://www.legislation.gov.uk/ukxi/2012/3098/regulation/38/made>

Regulation 38 (4) (b) states:

Notice of determinations

38. (4) Where, in relation to proceedings which have been issued, the Director amends a certificate to alter the description of the proceedings or the form of civil legal services to which the determination relates, the provider must—
(a) send a copy of the amended certificate to the court or tribunal; and
(b) give notice of the new or amended determination in a form specified by the Lord Chancellor to all parties to the proceedings, unless the Director directs otherwise.

If you have a specific query in relation to your own case relating to notification as to when there has been a change in certificated funding then I suggest that you liaise with the LAA's Case Management Directorate. You can contact them via 0300 200 2020.

The disciplinary procedure for breaching Legal Aid Agency contracts by solicitors

The information in relation to the disciplinary procedure for breaching the LAA's contracts is provided below.

Breaching LAA Contracts

The LAA have a number of options available to us if we determine that a provider has contravened the contract, which include:

- ***Issuing Contract Notices***

Contract Notices can be issued by the LAA where we have identified an activity that contravenes the Contract. The Contract Notice will identify the issue, which section of the contract has been breached and confirms that this should not happen again. The LAA will revisit those providers that have had a notice issued and investigate as to whether the provider has complied with the notice.

- ***Issuing Contract Sanctions***

These are usually issued after a provider has had one or more Contract Notices issued that they have failed to comply with. Sanctions should be considered in circumstances where a material breach is identified rather than contract management. For example, a provider refusing to pay monies owing to LAA may have a vendor hold applied. A right of appeal arises when a provider is issued with a Contract Sanction.

The following are the sanctions that can be applied:

SN1 = Sanction No. 1—suspend types of Contract Work and Delegated functions

SN2 = Sanction No. 2—refuse to pay for specified Contract Work

SN3 = Sanction No. 3—suspend payments

SN4 = Sanction No. 4—suspend you from taking on any new Matters or cases

SN5 = Sanction No. 5—exclude individuals from being Supervisors or performing Contract Work
SN6 = Sanction No. 6—suspend or remove your rota allocation (if any)
SN7 = Sanction No. 7—suspend you from holding yourself out as a Provider
SN8 = Sanction No 8 - Termination

What proof you require from Solicitors that Legal Aid should be granted for family matters

The proof that the LAA require from solicitors that legal aid should be granted for family matters is already publicly available at the links below.

Legal aid applicants solicitors need to confirm, on the relevant application form, that there are sufficient merits to the case, and provide evidence that the client is financially eligible for legal aid.

Means and merits are dealt with in more detail here: <https://www.gov.uk/work-out-who-qualifies-for-civil-legal-aid>

In addition, in most children and finance matters in private family law cases legal aid will only be available where a client has specific evidence in relation to domestic violence or child protection. This level of proof has been required since the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 on 1 April 2013.

The evidence that is required in order for an application for legal aid to be made in these matters is prescribed in the Civil Legal Aid (Procedure) Regulations 2012 (“the Procedure Regulations”) as amended. Regulation 33 deals with evidence relating to domestic violence and Regulation 34 with evidence relating to child protection.

The LAA has also published the following guidance on evidence requirements for private family law matters:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/345515/legal-aid-evidence-for-private-family-law-matters.pdf

This information is therefore exempt under section 21 of the FOI Act because it is reasonably accessible to you. Section 21 (2) of the FOI Act exempts disclosure of information that is reasonably accessible by other means, and the terms of the exemption mean that we do not have to consider whether or not it would be in the public interest for you to have the information. You can find out more about Section 21 by reading the extract from the Act and some guidance points we consider when applying this exemption, attached at the end of this letter.

You can also find more information by reading the full text of the Act, available at <http://www.legislation.gov.uk/ukpga/2000/36/section/1>.

You have the right to appeal our decision if you think it is incorrect. Details can be found in the ‘How to Appeal’ section attached at the end of this letter.

Disclosure Log

You can also view information that the Ministry of Justice has disclosed in response to previous Freedom of Information requests. Responses are anonymised and published on our on-line disclosure log which can be found on the MoJ website: <https://www.gov.uk/government/organisations/ministry-of-justice/series/freedom-of-information-disclosure-log>

Yours sincerely

Cate Jolley

How to Appeal

Internal Review

If you are not satisfied with this response, you have the right to an internal review. The handling of your request will be looked at by someone who was not responsible for the original case, and they will make a decision as to whether we answered your request correctly.

If you would like to request a review, please write or send an email **within two months of the date of this letter** to the Data Access and Compliance Unit at the following address:

Data Access and Compliance Unit (10.34),
Information & Communications Directorate,
Ministry of Justice,
102 Petty France,
London
SW1H 9AJ

E-mail: data.access@justice.gsi.gov.uk

Information Commissioner's Office

If you remain dissatisfied after an internal review decision, you have the right to apply to the Information Commissioner's Office. The Commissioner is an independent regulator who has the power to direct us to respond to your request differently, if he considers that we have handled it incorrectly.

You can contact the Information Commissioner's Office at the following address:

Information Commissioner's Office,
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire
SK9 5AF
Internet address: <http://www.ico.org.uk/>

EXPLANATION OF INFORMATION HELD FOR THE PURPOSES OF THE ACT

We have provided below additional information for information held for the purposes of the Freedom of Information Act. We have included some of the guidance we use when considering requests for information. I hope you find this information useful.

Is the information 'held' for the purposes of the Act?

A person may request any information 'held' in any recorded form by a public authority (or held by another on behalf of a public authority).

If the requester is asking for an opinion on an issue or asking for information that is not already held to be created, this is not a Freedom of Information Act request.

Information covered by the Act

All recorded information 'held' by a public authority is within the scope of the Freedom of Information Act. It includes files, letters, emails and photographs and extends to closed files and archived material.

Recorded information

The right of access applies to information recorded in any form. This includes:

- information that is held electronically (such as on a laptop computer or an electronic records management system)
- information that is recorded on paper (such as a letter, memorandum or papers in a file)
- sound and video recordings (such as a CD or videotape)
- hand-written notes or comments, including those written in note pads or on Post-it notes

Is the information 'held' under the Freedom of Information Act?

'Holding' information includes holding a copy of a record produced or supplied by someone else. However, if a public authority only holds information on behalf of someone else, for example a department holding trade union information on their computer system, then that public authority may not have to provide the information in response to a Freedom of Information Act request.

In some cases, it may not be clear whether information which is physically present on your premises or systems is properly to be regarded as 'held' by your public authority, for the purposes of the Freedom of Information Act. Examples include:

- private material brought into the office by ministers or officials
- material belonging to other people or bodies
- trade union material
- constituency material
- material relating to party political matters.

EXPLANATION OF FOIA - SECTION 21 – INFORMATION ACCESSIBLE BY OTHER MEANS

We have provided below additional information about Section 21 of the Freedom of Information Act. We have included some extracts from the legislation, as well as some of the guidance we use when applying it. We hope you find this information useful.

The legislation

Section 1: Right of Access to information held by public authorities

- (1) 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.

Section 21: Information accessible to applicant by other means

- (1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.
- (2) For the purposes of subsection (1)—
- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
 - (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.
- (3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

Guidance

Section 21 exempts information from the right of access under the Freedom of Information Act if that information is reasonably accessible to the applicant by other means.

Section 21 is aimed at preserving intact all existing laws providing access to information. The Freedom of Information Act is not designed to subsume other legal access rights, nor to give alternative routes of access where existing regimes are already available. The Freedom of Information Act access rights build on, but do not replace, previous access rights. Those existing rights, and the separate procedural regimes which are tailored to them, continue in place, and the Freedom of Information Act observes corresponding limits to its role.

Section 21 also confirms that the Freedom of Information Act does not provide alternative means of access to information which is already freely available, either through commercial publishing operations or through existing publicly funded provision. The Freedom of Information Act rights are designed to supplement, and

not to duplicate, the usual flow of information to the public through the commercial electronic and print media, and through existing library and archive services.

Section 21 is an absolute exemption, which means that no consideration of the public interest test is required to withhold information.