



LEGAL SERVICES
BOARD

Legal Services Board
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FOI request (Ref: 20181219-01)

Outcome of Internal Review

1. We write further to your email of 19 December 2018 (the “Request”) requesting information from the Legal Services Board (the “LSB”) under the Freedom of Information Act 2000 (“FOIA”), together with our response letter (the “Response”) and your email requesting an internal review, both dated 15 February 2019. Thank you also for your other correspondence with us in the period since 19 December 2018, including the written representations you sent us by email on 8 March 2019 (the “Representations”).
2. We have now considered all the correspondence exchanged between us, and have revisited our decisions on whether to maintain the relevant exemptions under FOIA, contained in the Response. Our internal review has been conducted in accordance with the Cabinet Office ‘Freedom of Information Code of Practice’ of 4 July 2018. It also follows the [LSB's Freedom of Information - Complaints procedure](#) save that, because of the earlier involvement of the Chief Executive, Neil Buckley, the internal review has been conducted by me in my capacity as General Counsel. I confirm that I was not involved in making the original decisions.
3. The outcome of the internal review is set out below. Each paragraph of the Request is included in bold with the response beneath it.
 1. ***Any correspondence (including letters and emails) which has passed between the LSB and the SRA in relation to the SRA’s investigation and prosecution of Leigh Day (SRA v Day and Others, case no. 11502-2016; [2018] EWHC 2726 (Admin)).***
4. Following receipt of the Request, the LSB identified information it holds that potentially falls within the terms of the Request. In the Response, the LSB advised you that, in relation to the above paragraph, *“we hold one document attached to email correspondence from the Solicitors Regulation Authority [(the “SRA”)] dated 30 October 2017, which refers to the Leigh Day matter.”*
5. In the Response, the LSB explained that the responsive information in the document referred to above is being withheld on the basis that it is exempt from disclosure under the absolute

exemption in s44(1)(a) FOIA. We explained that, where s44 applies, there is no requirement to consider the public interest. We further outlined that s44(1)(a) FOIA is engaged in this case because s167(1) of the Legal Services Act 2007 (“LSA”) prohibits the disclosure of ‘restricted information’ to a person other than a ‘restricted person’ and “[t]he information we hold is restricted information because it was disclosed by the SRA to the [LSB] during an investigation by the LSB exercising its functions under the LSA.”

6. I have reviewed the status of the information in question, including in light of the Representations. My decision remains that s44 applies and the information is exempt from disclosure and will be withheld.
7. To clarify our position, s167(1) LSA is an “*enactment*” for the purposes of s44(1)(a) FOIA. This is because disclosure of ‘restricted information’ by a ‘restricted person’ “*is prohibited by or under*” s167(1) LSA. The LSA is a ‘restricted person’ as defined in s167(2) LSA (“*the Board (including the Board in its capacity as an approved regulator)*”). The information in question is ‘restricted information’ because it was provided to the LSB as part of a separate, LSB investigation, unconnected with the subject matter of the Request. The relevant investigatory activities of the LSB fell within the functions of the LSB, and the information is therefore “*information (other than excluded information) which is obtained by the Board in the exercise of its functions*”. The information is not ‘excluded information’ as defined in s167(3) LSA. The information therefore meets the definition of ‘restricted information’ in s167(2) LSA and therefore “*must not be disclosed*”.
8. You have argued that such information may nevertheless be disclosed on the basis of one of the statutory ‘gateways’ in s168 LSA. We consider that s168(2) LSA is not applicable because responding to the Request does not constitute exercise of the LSB’s functions within the meaning of LSA. Nor do we consider s168(3)(a), (b), (c), (e), (f), or (g) LSA to be engaged. You have suggested that the LSB should seek consent from “*the person to whom [the ‘restricted information’] relates and (if different) the person from whom the restricted person obtained it*” so as to engage the ‘gateway’ in s168(3)(d) LSA. The LSB’s position is that consent ‘gateways’ are commonplace in enactments prohibiting disclosure of the kind that engage s44(1)(a) FOIA, and public authorities subject to FOIA are never obliged to seek consent under such ‘gateways’ to facilitate the disclosure of information pursuant to FOIA requests. There are strong policy reasons why bodies like the LSB cannot be expected to respond to FOIA requests by seeking consent in this way, especially when the information in question was, as here, obtained as part of an investigation. No court or tribunal would uphold such a requirement. Doing so in this case would be incompatible with the legislative scheme governing the LSB (in particular its conduct of investigations), as well as contrary to the legislative purpose of FOIA.

2. The dates of any meetings between the LSB and the SRA at which that investigation/prosecution has been discussed.

9. The LSB responded fully to this paragraph of the Request by disclosing the responsive information in the Response. There is nothing to add to this as a result of the internal review.

3. The dates of any telephone conversations between the LSB and the SRA at which that investigation/prosecution has been discussed.

10. The LSB responded fully to this paragraph of the Request by notifying you in the Response that we do not hold this information. There is nothing to add to this as a result of the internal review.

4. Any notes of the meetings and telephone conversations referred to in 3 and 4 [sic] above.

11. Following receipt of the Request, the LSB identified information it holds that potentially falls within the terms of the Request. In the Response, the LSB advised you that, in relation to the above paragraph, *“the LSB holds notes of the meetings between the LSB and the SRA on the dates [14/11/2018, 12/01/2018, 17/10/2017, 15/09/2017, 25/07/2017 and 18/03/2016]”* (the **“Chief Executive’s Notes”**), as well as a set of Solicitors Disciplinary Tribunal user group committee minutes from a meeting held on 13/03/2018 (the **“SDT User’s Group Minutes”**). We informed you that these documents contained some information responsive to the Request. We have revisited the documents and can confirm that the above is correct, except that the Chief Executive’s Notes relating to the meeting on 18/03/2016 do not in fact contain responsive information.
12. In the Response, the LSB explained that the responsive information in the Chief Executive’s Notes and the SDT User’s Group Minutes referred to above was being withheld on the basis that it was exempt from disclosure under the qualified exemptions in s36(2)(b)(ii) and s36(2)(c) FOIA. This was on the basis that Neil Buckley had, in his capacity as ‘qualified person’ for the LSB, concluded that in his reasonable opinion disclosure of the information either: *“(b) would or would be likely to inhibit – (ii) the free and frank exchange of views for the purposes of deliberation, or (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.”*
13. I have reviewed the status of the information in question, including in light of the Representations. I can also confirm that Mr Buckley has taken the opportunity to reconsider his opinion, taking into account the comments you have made.
14. The LSB no-longer seeks to maintain the qualified exemptions in s36(2)(b)(ii) and s36(2)(c) FOIA, and is instead disclosing to you today the responsive information contained in the Chief Executive’s Notes and the SDT User’s Group Minutes.
15. For context, and as stated in our previous correspondence, the Chief Executive’s Notes are not minutes of meetings. They are internal notes made by Mr Buckley which are not circulated or shared outside of the LSB. The SRA was therefore not aware of the existence or content of the Chief Executive’s Notes.

Next steps

16. This letter concludes our internal review of the Request and formally notifies you of the decision reached. Enclosed is a copy of the information that falls to be disclosed to you under FOIA as a result of the outcome of the review.
17. I trust that this response is satisfactory but should you remain dissatisfied with the decision, then you should direct your complaint to the [Information Commissioner's Office](#).

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

The reference for your request, which should be quoted in all correspondence, is: 20181219-01

Encs – **Annex** containing information as described above (2 pages)

ANNEX

Meeting on 14 November 2018

[Internal email dated 15/11/18 from Neil Buckley]

“Subject: Meeting with Paul Phillips – SRA CEO – Wednesday 14 November”

“Finally Paul noted that they were subject to multiple FOI requests about Leigh Day. They will therefore be publishing a range of information about their enforcement activities to cover off such issues including the costs of the litigation.”

Meeting on 12 January 2018

[Internal email dated 19/01/18 from Neil Buckley]

“Subject: Meeting with Paul Philip - 12/1”

“At this point Paul also noted that they are considering releasing under FOI the Leigh Day SRA/MoD correspondence.”

Meeting on 17 October 2017

[Internal email dated 19/10/17 from Neil Buckley]

“Subject: RE: SRA CEOs briefing”

We moved on to the subject of the Leigh Day decision. The SRA believes that under the principles set out in the Baxendale Walker case they should not be liable for Leigh Day’s costs (which confidentially amount to £7.6 million including a claimed £2m+ loss of profit from Leigh Day). Paul is not so confident that the Tribunal will not award costs. This will all then go into the pot in relation to the decision as to whether they appeal. The deadline for the appeal is apparently 30 days after the cost hearing.

Meeting on 15 September 2017

[Internal email dated 15/09/17 from Neil Buckley]

“Subject: Meeting with Paul Philip”

“The intimation was that the government are very unhappy about the outcome of the Leigh Day case. Paul affirmed that when it is published they would look at the decision and decide whether to appeal. He was very sceptical about Susan Humble’s view that the Leigh Day case did not turn on the issue of the criminal standard.”

Meeting on 25 July 2017

[Internal email dated 25/07/17 from Neil Buckley]

“Subject: Re: SRA Briefing – 25 July 2017”

“Instead, it was the SDT and the Leigh Day case. A key issue to emerge from the evidence was the interaction between the MoD and SRA. Paul was keen to emphasise that everything that occurred was very proper and that there had never been any discussion of the case or lobbying by MoD about what they should do. Paul did confirm that they had used it as an opportunity to set out their general views on the SDT, burden of proof and alternative ways that disciplinary cases could be considered.

Paul said the judgement would be late August and they would consider whether to appeal. The cost hearing is set for October. Paul thinks that under the decision in Baxendale Walker they think they should not be liable for costs.”

“SOLICITORS DISCIPLINARY TRIBUNAL USER GROUP COMMITTEE

MINUTES OF MEETING ON 13 MARCH 2018 HELD UNDER THE CHATHAM HOUSE
RULE

- 4.3.2 Appeals lodged since the last meeting:... Day, Malik, Crowther, Leigh Day - SRA appeal against majority findings, and potentially, costs;”