

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 15 April 2024

**Public Authority:** His Majesty's Land Registry  
**Address:** Trafalgar House  
1 Bedford Park  
Croydon CR0 2AQ

#### **Decision (including any steps ordered)**

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1. The Commissioner's decision is that His Majesty's Land Registry (HMLR) doesn't hold the requested lists of all the documents associated with particular land titles and that the information it does hold for the land titles is exempt under section 21(1) of FOIA as it's already reasonably accessible to the complainant.
2. It's not necessary for HMLR to take any steps.

#### **Request and response**

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3. Between 3 August 2023 and 8 August 2023, the complainant submitted five requests to HMLR for "all the documents including pre-registration documents" for different title numbers.
4. In its response to the requests on 22 August 2023 HMLR noted that it had received 39 requests from the complainant since May 2023, with 25 of the requests being received in August.
5. HMLR said that it had responded to all of the requests received in May, June, and July and to two of the requests received in August.
6. HMLR referred to section 12 of FOIA (which concerns the cost of complying), but its position was that it was relying on section 21 to

refuse 25 of the complainant's requests it had received up to 19 August 2023.

7. HMLR referred the complainant to 'Practice Guide 11<sup>1</sup>' as the route through which they could access the information they're seeking.
8. In their request for an internal review the complainant said they were seeking historical information, and that this information wasn't accessible by other means. They said that they regularly use Practice Guide 11 to obtain historical documents but that on every occasion HMLR had advised that it couldn't locate the documents. The complainant said that they would then email HMLR to request the document and after a thorough search, the document would be found in almost all cases.
9. The complainant then discussed HMLR's reference to section 12. They said that HMLR had provided information for 16 requests, they had allowed a reasonable length of time to pass, and they now wanted information for 16 further requests.
10. In its internal review, HMLR advised that it had now considered whether it holds the requested information; that is lists of documents. It confirmed that it considered that it doesn't hold it. This is because collating the information from the "building blocks" HMLR does hold would take judgement and skill.
11. HMLR noted that it has a statutory duty to make documents referred to in the register, as well as documents not referred to in the register, available for inspection and for copies (subject to exemptions). The route to obtain official copies is via an OC2 form. This is a statutory service that's subject to the payment of a fee.
12. HMLR confirmed to the complainant that their requests for "all documents held" constitutes information that HMLR doesn't hold. It acknowledged that there had been shortcomings in how their requests submitted through OC2 forms had been handled but that it was refusing requests for any documents held under section 21 of FOIA.

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<sup>1</sup> <https://www.gov.uk/government/publications/inspection-and-application-for-official-copies/practice-guide-11-inspection-and-application-for-official-copies>

## Scope of the case

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13. In their complaint to the Commissioner, the complainant raised three concerns. The Commissioner put these to HMLR and the concerns and HMLR's response to them is detailed under 'Other matters.'
14. The Commissioner has taken account of the complainant's concerns where relevant and his investigation is going to consider whether HMLR holds the specific information the complainant has requested, and its reliance on section 21 of FOIA in respect of information it does hold that's associated with the land titles concerned.

## Reasons for decision

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15. Under section 1(1)(a) of FOIA a public authority is obliged to confirm whether it holds information an applicant has requested.
16. In its submission to the Commissioner HMLR has noted that the requests are for details of "all" documents held regarding different title numbers, which amount to requests for lists of all documents held on the register of title in relation to specific properties.
17. In accordance with section 66(1) of the Land Registration Act 2002, Inspection of the registers etc, HMLR ensures that any person may inspect and make copies of any part of the register of title, and any document referred to in the register of title. In accordance with 66(2) of the same section, access to this information is made available through a payment of fees.
18. HMLR says that any documents that are held on the register of title are exempt from disclosure under FOIA in accordance with section 21 of FOIA because the information is reasonably accessible via other means. It has noted that the Commissioner has confirmed this position in a number of decisions, most recently under reference IC-173302-N4J1<sup>2</sup> which in turn makes reference to FS50685812 and FER0454056.
19. But in their requests the complainant has effectively requested lists of documents associated with particular titles. HMLR has said that such is

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<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022883/ic-173302-n4j1.pdf>

the level of skill and judgement needed to collate such lists, that information – ie lists of documents – can't be said to be held.

20. HMLR has explained to the Commissioner that to collate 'document lists' detailing what information is held requires considerable skill and judgement by its trained caseworkers. Having reviewed the individual documents held, it then caseworkers would then need to determine what these individual documents are, how to classify these documents and whether these are held for the purposes of the register.
21. As noted, the route to obtain official copies of information associated with titles is via an OC2 form which is processed by the Official Copies Team at HMLR. The fee charged for this service covers the costs for searching files held within archives, ordering the associated files, scanning the files, and then reviewing these files to determine what the information is, its relevance and classification and whether it's held for the purposes of the register. This is carried out by a range of third-party processors as well as trained caseworkers and incurs a significant cost and resource drain on the organisation. Typically, HMLR receives in the region of 10,000 requests [via the OC2 form] in an average week.
22. HMLR says that when requesting copies of documents, Practice Guide 11 is clear that fees will apply to all documents provided. For documents referred to in the register, applicants need to specify what the document is; applications requesting 'all' or 'any' documents will be rejected. For documents not referred to in the register, applicants are advised to provide as much information as they can as part of their search criteria.
23. Practice Guide 11 goes on to explain:

"Avoid applications for 'all' or 'any' documents where possible. The word 'document' covers a wide range of papers as well as deeds, such as correspondence, application forms and surveys. If we were to copy all the documents in our files for a specific title the fee could be quite substantial."
24. HMLR says that requests made via FOIA to retrieve 'document lists' bypass its statutory services, and result in a significant burden to the organisation. HMLR has briefly discussed the apparent circumstances of the complainant in this case.
25. In his published guidance on determining whether information is held for the purposes of FOIA, the Commissioner advises that if a public authority has the "building blocks" necessary to produce a particular type of information, it's likely that it would hold that information. This is unless it requires particular skills or expertise to put the building blocks together. The level of skill and judgement required to compile particular

information determines whether a public authority holds that information. The more skill and judgement it takes to assemble the building blocks and the more subjective the terms of the request, the more likely it is that the authority won't hold the information.

26. In this case HMLR has explained that to compile the lists of documents the complainant has requested a trained caseworker with the necessary expertise and judgement would need to review the individual documents held under each land title. They would then need to determine what these individual documents are, how to classify these documents and whether they're held for the purposes of the register. HMLR considers it therefore can't be said to hold these lists.
27. The Commissioner accepts HMLR's reasoning. The requested information could be said to be held if, no matter which caseworker HMLR asked to draw up the requested lists, each caseworker arrived at the same documents in each list if presented with all the documents under each land title. However, judgement is required in this case. It's possible that the documents Caseworker 1 decided should be included in a list wouldn't necessarily be the same as the documents Caseworker 2 decided should be included in the same list. For that reason – because a degree of skill and judgement is needed to collate the lists that have been requested – the Commissioner finds that HMLR doesn't hold this information and has complied with section 1(1)(a) of FOIA.

### **Section 21 – information accessible to applicant by other means**

28. In its submission to the Commissioner HMLR has confirmed that where a FOIA request is made for a copy of a particular document held on the register of title, this information is exempt from disclosure under section 21 of FOIA.
29. Under section 21(1) of FOIA information which is reasonably accessible to an applicant otherwise than under section 1 is exempt information. Section 21 is an absolute exemption which means it's not subject to the public interest test.
30. Section 21(2)(a) states that information can be considered to be reasonably accessible even though it's accessible only on payment.
31. HMLR has explained that it has a statutory duty to make documents referred to in the register, as well as documents not referred to in the register, available for inspection and for copies (subject to exemptions). It has explained that the route to obtain official copies is via an OC2 form. This is a statutory service that's subject to the payment of a fee.
32. Irrespective of how it might have handled requests submitted under FOIA in the past, HMLR's position is that obtaining information

associated with the register should be done through the OC2 form and payment of a fee. Practice Guide 11 explains how to do this.

33. The Commissioner hasn't seen evidence that the complainant isn't able to access information through that route – for example because they don't have the necessary IT skills or because the fee charged is unreasonably high. HMLR has acknowledged that there had been shortcomings in how it had handled some requests the complainant submitted through OC2 forms but that isn't the same as the information not being accessible to the complainant through that route.
34. The Commissioner is satisfied, for the same reasons as those given in his decision in IC-173302-N4J1, that information about land titles that HMLR holds is exempt information under section 21(1) of FOIA.

### **Other matters**

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35. The complainant raised the following concerns with the Commissioner:
  - HMLR had complied with 14 of the requests. This set a precedent and it should have dealt with all future requests in the same way.
  - HMLR sought to rely on section 12 of FOIA. The complainant says they let a reasonable period pass before making a further request, but HMLR still refused their requests.
  - HMLR has stated that the complainant could obtain the information using its standard route; however, the information the complainant normally requires is "historic information", and not reasonably accessible to them. It's not listed on the title register of a registered title and is held within the "paper archives" that HMLR holds. After HMLR's refusal on 22 August 2023 the complainant provided six cases where they sought historical information from HMLR using its standard procedure, and on each occasion HMLR was unable to locate the information. FOIA is the only avenue available to the complainant.
36. Regarding the first, in its submission to the Commissioner HMLR says it has reviewed its records and can confirm that they show that in 2023 the complainant made 46 FOIA requests during May and August 2023 (two in May, three in June, nine in July and 32 in August). For context, this equated to approximately 25% of all FOIA requests HMLR received in the period May to August 2023.
37. HMLR says it responded to 20 of these requests. Five confirmed that no recorded information was held. For 14 HMLR confirmed it held recorded information and provided an explanation about how that information

could be obtained via its statutory services. In its response to the final request HMLR disclosed recorded information it held (with personal data redacted) and confirmed that HMLR did not hold a discretionary policy for FOIA requests.

38. HMLR has confirmed that it responded to the other 26 requests collectively and refused these under section 12 of FOIA. However, at internal review HMLR had confirmed that it didn't hold the information requested by the complainant for the purposes of FOIA.
39. HMLR says that, for the avoidance of confusion or doubt it can confirm that it pivoted from relying on section 12 of FOIA after reviewing its position. It determined that FOIA wasn't the most appropriate route for obtaining information held on the register of title. HMLR won't handle any requests for details of 'document lists' under FOIA moving forward.
40. HMLR disagrees that how it has previously responded to FOIA requests would set a precedent and, furthermore, doesn't believe that FOIA sets out any such precedent. HMLR's view is that it was reasonable in the circumstances to review its position. It had considered the volume of requests that the complainant had made; the existing statutory service that exists to allow HMLR to meet its statutory obligations; and the likelihood that the complainant would continue to submit requests which potentially would overwhelm HMLR's Information Rights team. This would potentially lead to an adverse effect on its ability to respond to requests submitted by other applicants.
41. HMLR has confirmed that it's committed to transparency and openness, but applicants have a responsibility to ensure that requests for information are made responsibly and are not burdensome. HMLR is particularly concerned that whilst the complainant had alone submitted 25% of all requests, if another applicant had also chosen to use FOIA to make requests for information held on the register, HMLR may potentially have been unable to maintain its compliance with all FOIA requests.
42. HMLR's view is that the statutory service is the appropriate route for obtaining information held on the register. Individuals wishing to obtain information held on the register of title should use this existing route to obtain the information they seek.
43. Regarding the second of the complainant's concerns, HMLR has confirmed it's not relying on section 12 of FOIA. Its final position is that it doesn't hold the specific information requested for the purposes of FOIA, but that any relevant information it does hold is exempt under section 21 because it's already reasonably accessible to the complainant.

44. Regarding the third of the complainant's concerns, HMLR has confirmed to the Commissioner that there's a prescribed route to obtain information held on the register of title, which is explained in Practice Guide 11 (this guide covers inspection of the register and how to make applications for official copies). As noted, this is a statutory service which is subject to the payment of a fee which covers the costs for retrieving and searching files held within archives.
45. Practice Guide 11 explains that applicants should specify which document they're seeking and that applications for 'all' or 'any' documents will be rejected. For any documents not referred to in the register, applicants are advised to provide as much information as they can as part of their search criteria.
46. The Head of the Official Copies team reviewed the 'six' cases that the complainant refers to and where they identified any shortcomings, actions were taken to address this, outside of the FOIA process.
47. It's HMLR's view that FOIA isn't the most appropriate mechanism for addressing any issues with the process for obtaining information that's held on the register of title. If an individual isn't content with how a particular request for an official copy has been handled, they may complain directly to the Official Copies team.



## **Right of appeal**

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48. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

49. 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.
50. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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