Ms Lucy Series

xxxxxxxxxxxxxxxxxxxxxxx@xxxxxxxxxxxxxxx.xxx

Our Reference: 80758

06 March 2013

Freedom of Information Request

Dear Ms Series,

Thank you for your email of 06 February 2013, in which you asked for the following information from the Ministry of Justice (MoJ):

“Please could I see a copy of the Memorandum of Understanding as it currently stands, and any previous versions dating back to 2009. Please could I also see, if it is possible, any drafts of the Framework Documents (although I appreciate that materials which are due for future publication or for policies which are currently under development may be exempt under the FOIA).

In addition, please could you update me as to the current length of the Official Solicitor’s waiting list for taking on cases relating to Court of Protection welfare matters. If there is any data regarding the typical duration which a person remains on this list for, that would be very useful as well.

I previously put in a request about any correspondence between the OS and the MOJ regarding the COP welfare cases waiting list; please could I renew this request and ask to see any correspondence on this topic since I last asked (July 2012).”

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

I can confirm that the MOJ holds some of the information that you have asked for, and I am pleased to provide this to you.
Please find enclosed a copy of the Memorandum of Understanding (MoU) between the Official Solicitor and the Ministry of Justice which was produced in 2010 and there was no earlier version.

I will not be providing a copy of the Draft Framework Document as this will be published in due course on the Justice website.

When assessing whether or not it was in the public interest to disclose the information to you, we took into account the following factors:

**Public interest considerations favouring disclosure**

- Disclosure would improve transparency in the operations of the justice system and in particular how the Official Solicitors office operates. The principles of transparency and openness encourage government departments to release data to help the public become better informed.

**Public interest considerations favouring withholding the information**

- Information held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not), is exempt under section 22 of the Act. The section 22 exemption acknowledges that public authorities must have freedom to be able to determine their own publication timetables. Public authorities, where they have taken the decision to publish, do have a reasonable entitlement to make their own arrangements to do so, and in such a manner that publication is conveniently planned and managed. The exemption allows them to deal with the necessary preparation, administration and context of publication.

- It is also in the public interest to ensure that the information is available to all members of the public at the same time, and premature publication could undermine the principle of making the information available to all at the same time through the official publication process.

We reached the view that, on balance, the public interest is better served by withholding this information under Section 22 of the Act at this time.

You can find out more about Section 22 by reading the extract from the Act and some guidance points we consider when applying this exemption, attached at the end of this letter.


In response to your request for any correspondence between the Official Solicitor and MoJ please find attached a copy of the letter sent by the Official Solicitor to the Court of Protection Newsletter team. That letter answers your questions about the waiting list and is the only recorded information held by MoJ.

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: http://www.justice.gov.uk/information-access-rights/foi-requests/latest-moj-disclosure-log

The published information is categorised by subject area and in alphabetical order.

Yours sincerely

Nicola Gowans
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 to the Data Access and Compliance Unit within two months of the date of this letter, 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: xxxx.xxxxxx@xxxxxxx.xxx.xxx.xx

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: https://www.ico.gov.uk/Global/contact_us.aspx
EXPLANATION OF FOIA - SECTION 22 – INFORMATION FOR FUTURE PUBLICATION

We have provided below additional information about Section 22 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 22: Information intended for future publication

(1) Information is exempt information if—
   (a) the information is held by the public authority with a view to its publication, by the
authority or any other person, at some future date (whether determined or not),
   (b) the information was already held with a view to such publication at the time when
the request for information was made, and
   (c) it is reasonable in all the circumstances that the information should be withheld
from disclosure until the date referred to in paragraph (a).

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section
1(1)(a) would involve the disclosure of any information (whether or not already recorded) which
falls within subsection (1).

Guidance

Section 22 exempts information requested by an applicant if it is intended for future publication.
It encourages public authorities to place information in the public domain proactively.

The Freedom of Information Act recognises the desirability of information being freely available
in its own right, but section 22 also acknowledges that public authorities must have freedom to
be able to determine their own publication timetables. This allows them to deal with the
necessary preparation, administration and context of publication. Where information is intended
to be made available, individual requests for information should not determine the publication
timetables of public authorities. This protection is afforded whether it is the public authority itself
or another person which intends to publish – whether an individual, a company or another public
authority.

The starting point for section 22 is that it exempts information which is held by a public authority
with a view to its publication, by the authority or any other person, at some future date. The
exact date, however, does not necessarily have to be decided already. When using the section
22 exemption, you should consider whether it is possible and appropriate to disclose the
expected publication date.
Section 22 is subject to two important qualifications:

- it must be reasonable in all the circumstances to withhold the information until the date of publication
- the public interest test must be satisfied

These qualifications recognise that sometimes there will be an overriding public interest in the information being released prior to the intended publication date. Public authorities should not be able to avoid putting information in the public domain by adopting unreasonable publication timetables or an 'intention' to publish where there is little prospect of that happening within a reasonable timescale.