

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

### **Decision notice**

**Date:** 11 March 2024

**Public Authority:** Government Legal Department  
**Address:** 102 Petty France  
London  
SW1H 9GL

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

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1. The complainant made a 15-part request about the Government Legal Department's ('GLD') roles and responsibilities. GLD addressed each part of the request, stating that some information was not held. It said that one part was not a request for recorded information and the remainder was exempt by virtue of section 21 of FOIA (reasonably accessible to applicant by other means). GLD provided advice and assistance as per section 16 of FOIA for some parts of the request.
2. Ultimately, GLD explained that the majority of the requested information was not held and that section 21 of FOIA only applied to one part of the request.
3. The Commissioner's decision is that, on the balance of probabilities, where stated GLD does not hold the information requested. He also finds that GLD was entitled to rely on section 21 of FOIA for part of the request and that it complied with its advice and assistance obligations under section 16 of FOIA.
4. No steps are required as a result of this notice.

#### **Request and response**

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5. On 10 August 2023, the complainant wrote to GLD and requested information in the following terms:

"It came to my attention recently that amongst your many roles you also perform the following;

- The Bank of England is owned by HM Government through the Government Legal Department.

- Responsible for collecting, managing, and disposing of ownerless property and other assets in England, Wales, and Northern Ireland - bona vacantia. Is the above correct?

I wish to also raise the following;

- A) Is the GLD regulated and if so, by whom?
- B) Are the lawyers working for the GLD regulated and if so, by whom?
- C) Is the GLD satisfied that the Bar Standards Board and the Solicitors Regulation Authority are independent and if so, what reasons would you give to support such a stance?
- D) Have your activities been audited and if so, by whom and when?
- E) What is the role you play as the owner of the Bank of England?
- F) Are employees of the Bank of England civil servants?
- G) Are the financial regulators both the PRA [Prudential Regulation Authority] and the FCA [Financial Conduct Authority] independent of government?
- H) What is the legal basis upon which 'bona vacantia' conducts its business and has any 'case law' been established relating to this area of conduct?
- I) What are the procedures and methods adopted by your department for dealing with ownerless properties?
- J) What is the mechanism in place to ensure that laws are lawful?
- K) Are there any laws known to the GLD which are not lawful and if so, would you care to let me know what they are?
- L) What is the mechanism in place to achieve government policies to be lawful in the best way possible?
- M) I gather that the GLD provides advice on the development of new legislation, preparing instructions for bills to be drafted by Parliamentary counsel and assisting in the handling of bills

in Parliament. Should this be correct, what reasons would you give to support that such conduct is lawful?

N) What are the weaknesses in the justice system that have been identified by the GLD?

O) Is the GLD satisfied that the EU is a lawful entity, and the UK was a legitimate member of it?"

6. GLD responded to all parts of the request on 7 September 2023, as follows:

- It provided a response to parts A), B) and H).
- It said that part O) was not a request for recorded information.
- For parts D), F), I), J), K), L) and M) GLD cited section 21 of FOIA – information reasonably accessible by other means.
- For part C) GLD said it does not hold the information and provided section 16 advice and assistance suggesting the complainant submit a request to the Bar Standards Board.
- For part E) GLD said it does not hold the information and provided section 16 advice and assistance suggesting the complainant submit a request to the Treasury.
- For part G) GLD said it does not hold the information and provided section 16 advice and assistance suggesting the complainant submit a request to the Bank of England.
- For part N) GLD said it does not hold the information.

7. The complainant requested an internal review on 11 September 2023.

8. Following its internal review, GLD wrote to the complainant on 20 September 2023 and maintained its original position.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 23 September 2023 to complain about the way their request for information had been handled, requesting that an investigation be conducted.

10. On 28 November 2023, the Commissioner made some initial enquiries seeking to establish the complainant's specific grounds of complaint. In response, the complainant did not clarify their grounds of complaint but

submitted a new FOIA request, which the Commissioner has dealt with separately as is his usual practice.

11. On 8 December 2023 the complainant asked the Commissioner for their case to be 'stayed' until 31 January 2024, stating:

"I have made my position known to you. However, it is not clear to me whether there could be some developments between now and 31 January 2024 which would address certain concerns I have. Should this be the case, then it may not become necessary to pursue this matter."

12. The Commissioner took a pragmatic view and agreed that the case could be stayed. He contacted the complainant again on 29 January 2024 to ask whether the matter had now been resolved. In the event that it was not, the Commissioner asked the complainant to briefly set out their grounds of complaint.

13. On 12 February 2024, the complainant provided their grounds of complaint, advising that they felt that some parts of their request had not been fully answered. The Commissioner relayed these concerns to GLD as part of his investigation and received GLD's response on 4 March 2024.

14. The Commissioner considers it useful for all parties to set out here the key points which he is considering before going onto his full analysis:

- Part A) - the complainant felt their request had not been fully answered (namely whether any organisation regulates GLD). In response GLD explained that:

"GLD is a department governed under the Attorney Generals Office by the Solicitor General. Details of authorities which conduct regular audits of GLD's operations and accounts can be found in the Annual Report and Accounts. Namely these include, the National Audit Office (NAO), His Majesties Treasury (HMT) and the Government Internal Audit Agency (GIAA)."

- Part H) - the complainant felt their request had not been fully addressed. GLD said:

"It was in fact explained to the complainant that the origins of the Bona Vacantia service are underpinned by extensive common law precedents. Specifically, in our response to H, we explained that there are two types of bona vacantia which are derived from statute. Firstly, s.46 of the Administration of Estates Act 1925 and s.1012 Companies Act 2006. The case law around both these pieces of legislation is extensive."

- GLD also told the Commissioner that:

“There appears to be a fundamental misunderstanding on part of the complainant about what GLD’s function in Government is, which meant most of the questions could only be responded to under the FOIA section 16 requirement to assist the applicant, steering them towards more direct sources of information.”
- Having questioned GLD about its reliance on section 21 of FOIA, it explained that it does not hold the requested information for parts D), F), J), K), L) and M) of the request. Where it provided URLs, it did so in a bid to assist the complainant, rather than it actually holding all of the recorded information itself.
- The complainant told the Commissioner that they had been unable to locate the information requested at part D) and did not feel that that GLD had addressed their point about ownerless properties at part I). With regard to the URLs, GLD expanded as follows:

“D) Details of GLD’s audits can be found in the published Annual Report and Accounts to which the complainant was provided with a link. Page 33 of the report provides the answer to the question.

F) GLD does not hold this information. To help the complainant, a link was provided to the Bank of England’s published staff handbook which explains some of the context of its relationship to the Civil Service.

J), L) & M) - GLD does not hold this information. To help, provided the complainant with a link to published information about how Laws are made in the UK with details about the various checks and balances involved.

K) - GLD does not hold this information. To help, we provided the complainant to a link to Judicial Review processes in the Courts and Tribunals of the Judiciary where laws and how they are practiced can be challenged.”
- For part I), where section 21 of FOIA was originally cited, GLD told the Commissioner:

“GLD’s Bona Vacantia division lists assets and estates which are held by the Crown awaiting probate. Links were provided to detailed advice and guidance on how the complainant can engage with Bona Vacantia services to support the exercise rights over a property.”

- GLD maintained that no information is held for parts C), E), G) and N) of the request.
15. The Commissioner notes that GLD is no longer relying on section 21 for any part of the request other than part I).
  16. GLD has explained that no information is held for C), D), E), F), G), J), K), L), M) and N) of the request.
  17. GLD has provided more details in paragraph 14 above in respect of parts A) and H) of the request, in which it further explains its position. The Commissioner considers that this is an adequate response, based on both the comments made by the complainant and an objective reading of the wording of these parts of the request. He does not therefore find it necessary to further consider GLD's response to parts A) and H) of the request in this notice.
  18. In this case, the Commissioner has considered whether, on the civil standard of the balance of probabilities, any recorded information is held in respect of parts C), D), E), F), G), J), K), L), M) and N) of the request. He will also consider GLD's reliance on section 21 for part I) and advice and assistance given under section 16 of FOIA.

### **Reasons for decision**

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19. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA.
20. FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.
21. The Commissioner will first consider whether, on the balance of probabilities, GLD holds any requested information for the parts of the request detailed below.

### **Section 1 – general right of access (parts C), D), E), F), G), J), K), L), M) and N))**

22. Section 1(1) of FOIA states that:

"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.”
23. The Commissioner is mindful that when he receives a complaint alleging that a public authority has stated incorrectly that it does not hold any further requested information, it is seldom possible to prove with absolute certainty whether the requested information is held. In such cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide on the ‘balance of probabilities’ whether information is held.
24. The Commissioner will consider the complainant’s evidence and arguments. He will also consider the actions taken by the public authority to check whether any information is held for these parts of the request, and any other reasons offered by the public authority to explain why no information is held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether any recorded information is held; he is only required to make a judgement on whether information is held on the civil standard of proof of the balance of probabilities.
25. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, GLD holds any recorded information within the scope of the above listed parts of the request. Accordingly, he asked GLD to explain what enquiries it had made in order to reach the view that it did not hold any information.
26. In reply, GLD said:

“GLD have robust methods for searching and extracting information that it holds. Searches are conducted by ‘knowledge and information management’ teams, who work closely with our Freedom of Information team, and have access to all relevant and necessary databases.

In the case of [this request], GLD conducted searches for relevant information across our Case Management System (where our case related information is held), Outlook (for email correspondence) and personal drives of the lawyers involved. Searches were also carried out on offsite paper records held with Iron Mountain using the supplier’s online portal.

These are the main repositories for all the departments information assets and most likely places to hold relevant data. Unfortunately, the searches conducted did not yield the information [the complainant] claims GLD must hold. It is highly unlikely that any further search of our databases would result in any 'new' information being returned.

To give some clarity on why GLD does not hold the information, it is pertinent to provide some context about how the department operates. GLD provides legal services to its clients which are other government departments. In delivering these services, other government departments share information with GLD to support legal advice and assist litigation. This information remains the physical and intellectual property of other government departments and is returned or disposed after the case is concluded.

The questions presented by the complainant largely constitute a request for unrecorded opinions (in questions C & N), and misconceptions about GLD function (in questions E & G). No information relevant to these questions were found in our searches and no information in scope of the complainant's request were deleted or destroyed."

27. GLD explained that there is no business purpose for which the requested information must be held. In terms of any statutory purpose, it said GLD is required under the Government Resources and Accounts Act 2000 to produce an annual financial statement for His Majesties Treasury (HMT) to approve. It provided the Commissioner with a copy of its records management policy which applies at all GLD's physical sites and digital real-estate.

## **Conclusion**

28. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed the information that a complainant believes it must hold, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in the paragraphs above, the Commissioner is required to make a finding on the balance of probabilities.
29. Having considered the explanation provided by GLD, whilst taking account of the points raised by the complainant, the Commissioner is satisfied that GLD undertook appropriate searches in order to ascertain whether or not it held any relevant recorded information. In conclusion, on the civil standard of the balance of probabilities, the Commissioner finds that no recorded information within the scope of the request is held for parts C), D), E), F), G), J), K), L), M) and N).



30. The Commissioner will next consider whether GLD was entitled to rely on section 21 for part I) of the request.

**Section 21 – reasonably accessible to applicant by other means (part I))**

31. Section 21 of FOIA provides that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

32. When relying on section 21(1) to refuse a request on the basis that the information is publicly available, a public authority must show that:

- the information in the public domain matches what the applicant asked for;
- precise directions have been given to the applicant to enable them to find it without difficulty and without a great deal of searching necessary to locate it; and
- the particular circumstances of the applicant and whether they can reasonably access the information are satisfied.

33. GLD provided the complainant with three URLs<sup>1</sup> to source the information about 'ownerless properties'. The Commissioner spoke to GLD on 5 March 2024 to clarify its explanation and it advised that properties without a clearly identified owner (which it had interpreted the phrase 'ownerless properties' to mean), revert to state ownership. In this circumstance, as set out in paragraph 14 for part I), GLD's Bona Vacantia division holds a list of assets and estates which are held by the Crown awaiting probate. GLD provided the URLs to the complainant so that they can access detailed advice and guidance on how to engage with Bona Vacantia services to support the exercise rights over a property. Ultimately, it is the Inland Revenue's probate courts who are responsible for the issue of probate and following dispersal of assets.

34. The question posed by the complainant was "the procedures and methods adopted by your department for dealing with ownerless properties". As above, there is no term 'ownerless properties'. The Commissioner has reviewed the information available at the URLs and is satisfied that this contains the procedures requested by the complainant. He recognises that the complainant is able to use the

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<sup>1</sup> <https://www.gov.uk/government/collections/bona-vacantia-companies-guidelines>  
<https://www.gov.uk/guidance/make-a-claim-to-a-deceased-persons-estate> and  
<https://www.gov.uk/guidance/refer-a-deceased-persons-estate-to-the-treasury-solicitor>

internet and email as they made their request electronically and have not raised any reasonable adjustment requirements.

## **Conclusion**

35. The Commissioner is therefore satisfied that section 21 is engaged regarding part I) of the request. As this is an absolute exemption there is no requirement to consider the public interest in this matter.

## **Section 16 – the duty to provide advice and assistance**

36. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice<sup>2</sup> in providing advice and assistance, it will have complied with section 16(1).
37. In this case, the Commissioner notes that GLD provided advice and assistance to the complainant as to where they might locate some of the requested information (see parts C), E) and G) of its substantive response). During the course of the Commissioner's investigation, the URLs provided in some of the previous section 21 responses (cited originally but for which GLD has since explained that section 21 is not applicable) could also now be deemed as section 16 advice and assistance (that is for parts D), F), I), J), K), L) and M) of the request).
38. The Commissioner is satisfied that GLD has tried to both advise and assist the complainant and has therefore met its obligations under section 16 of FOIA.

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<sup>2</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

## **Right of appeal**

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39. 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)

40. 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.
41. 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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