

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 August 2013

**Public Authority:** Ministry of Justice  
**Address:** 102 Petty France  
London  
SW1H 9AJ

#### Decision (including any steps ordered)

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1. The complainant requested information in relation to policy for the allocation of sittings to fee-paid Judges of the Immigration & Asylum Chamber of the First Tier Tribunal.
2. The Commissioner's decision is that the public authority was entitled to refuse to comply with the request on the basis of section 12(1) FOIA.
3. The Commissioner does not require the public authority to take any steps.

#### Request and response

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4. On 28 May 2012, the complainant wrote to the public authority and requested three different items of information. However, the complaint is specifically about item 3 of the request which was made in the following terms:

*'...please supply....any document setting out any principles or policy adopted by HMC&TS in the allocation of sittings to fee-paid Judges of the Immigration & Asylum Chamber of the First Tier Tribunal. Without prejudice to the generality of the foregoing, this should include any minutes or notes of meetings discussing same.'*

5. The public authority responded on 6 July 2012 2012. It supplied information in relation to the first two items of the requests. However, in relation to the request above (i.e. item 3), the public authority responded as follows:

*'With regard to point 3 of your request, we are unclear concerning the parameter of your question. You do not state how far back you wish us to consider nor the business areas you would want us to request information from. You will be aware that this issue may have been subject to discussion by both the Administration and the Judiciary within the First-tier Tribunal (Immigration and Asylum Chamber). I would be grateful if you could clarify your request and provide us with further information.'*

6. On 12 July 2012 the complainant responded as follows:

*'With respect.....my request seems quite clear. It is not limited to either judicial or administrative matters, but to both. However, if it helps I am prepared to limit matters to those created after 1st April 2008.'*

7. On 1 October 2012 the public authority responded. It explained that it could not confirm or deny if it held information relevant to the above request of 28 May 2012 (as clarified on 12 July 2012) because to do so would exceed the appropriate limit. The public authority consequently informed the complainant that it was excluded from complying with the request by virtue of section 12(2) FOIA.
8. Following an internal review the public authority wrote to the complainant on 30 October 2012. It upheld the decision to rely on section 12(2).

### **Scope of the case**

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9. On 13 November 2012 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. On 27 March 2013, the public authority in response to the Commissioner's letter of 12 February 2012 mentioned that it had, subsequent to the complaint, provided the complainant with information within the scope of the request following a refined request made on 19 November 2012.
11. The Commissioner informed the public authority on 22 April 2013 that he considered the response to the refined request had undermined the application of section 12(2) to the request above of 28 May 2012 (as clarified on 12 July 2012). The Commissioner considers the public authority could no longer claim that it could neither confirm nor deny whether it held *any* information within the scope of the original request of 28 May 2012 (as clarified on 12 July 2012) after it had effectively confirmed by virtue of its response to the refined request of 19 November that it did hold information.

12. On 22 May 2013 the public authority withdrew its reliance on section 12(2) and sought to rely instead on section 12(1) FOIA.
13. The scope of the investigation therefore was to determine whether the public authority was entitled to deny the request of 28 May 2012 (as clarified on 12 July 2012) on the basis of section 12(1).

## Reasons for decision

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### Section 12(1)

14. Section 12(1) FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
15. The appropriate limit is laid down in the Fees Regulations.<sup>1</sup> It is set at £600 for central government bodies, calculated at £25 per hour, which equates to 3½ working days.
16. The public authority explained that it was relying on the provisions of section 12(1) in respect of the remaining part of the request of 28 May 2012 (as clarified on 12 July 2012) not covered by the refined request of 19 November 2012.
17. The request of 19 November was made in the following terms: *'Thank you for your letter of 30<sup>th</sup> October.....Whilst I do not agree with your conclusion, and have referred the matter to the Information Commissioner, **without prejudice to that** [Commissioner's emphasis], I am prepared to limit my request.....to anything that is within the custody of the President of the Immigration Chamber of the First Tier Tribunal and the Tribunals Support Centre, created within the three years before the date thereof.'*
18. The public authority therefore considered that the remaining parts of the request covered the following areas and search period:
  - Members of the Judiciary – April 2008 to May 2012 i.e. 48 months
  - The President's office – April 2008 to October 2009 i.e. 18 months
  - Judicial support office – April 2008 to October 2009 i.e. 18 months.

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<sup>1</sup> Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

19. In terms of members of the judiciary, the public authority explained that it was referring to the Tribunal President, two Deputies and the Resident Judges in the nine hearing centres. It also explained that although the allocation of sittings is part of the case listing process which in terms of policy is a judicial function, the administration of this process is set up and administered by the public authority through Her Majesty's Courts and Tribunals Service in conjunction with members of the judiciary. Therefore, the relevant information to be searched is held jointly by the public authority and the judiciary.
20. Each would have received approximately 13 emails relevant to the request every two months. Therefore, the estimated number of emails for the 12 members would be 156, and multiplied by 24 months (the estimated number of months they would have received emails for the relevant period), would result in an estimated total of 3744 documents that would need to be searched. It estimated that it would take 5 minutes to search each email and therefore 312 hours in total to go through 3744 emails. At £25 an hour, it would cost approximately £7800.00 to search all of the relevant emails for the 12 members of the judiciary.
21. The public authority further explained that the President's office would have received approximately 10 emails relevant to the request every two months. The estimated number of emails would be 90 (i.e. 10 x 9 months). At the estimated 5 minutes to search each document, it would take 7.5 hours in total to go through 90 emails. At £25 an hour, it would cost approximately £187.50 to search all of the relevant emails in the President's office.
22. In terms of the judicial support office, the public authority estimated it would have received approximately 9 relevant emails every two months. The estimated number of emails would be 81. At the estimated 5 minutes, it would take 6.7 hours and consequently cost an estimated £168.75 to search all of the relevant emails in the judicial support office.
23. Therefore, the estimated total cost of complying with the request in respect of the areas and search periods set out in paragraph 18 would have been £8156.25 (and therefore the cost of complying with the full scope of the request would have been even higher).
24. In view of the explanation provided by the public authority which the Commissioner considers reasonable, he finds that it would have exceeded the appropriate limit to comply with the request of 28 May 2012 (as clarified on 12 July 2012). Although 5 minutes to go through each email might seem slightly excessive, the Commissioner is satisfied that it would make little difference to the overall estimate (vis-à-vis the appropriate limit) given the volume of emails in question.

25. The Commissioner therefore finds that the public authority was entitled to rely on section 12(1) FOIA to deny the request.

### **Procedural Breaches**

26. By virtue of section 10(1) FOIA, a public authority is required to respond to a request for information within 20 working days. As mentioned, the request was made on 28 May 2012. The public authority first responded on 12 September 2012 and then issued a substantive response on 1 October 2012.
27. The Commissioner therefore finds the public authority in breach of section 10(1).
28. By virtue of section 17(5) FOIA, a public authority is required to issue a complainant with a refusal notice stating that section 12(1) applies to a request within 20 working days.
29. The Commissioner additionally finds the public authority in breach of section 17(5) for informing the complainant outside of the statutory time period that it could not comply with his request on the basis of section 12(1).

## Right of appeal

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30. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**