

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)

1. The complainant requested information concerning the total expenditure over a specified period for an Interpretation Project.
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. However, the Commissioner does not consider the public authority to have provided the complainant with the appropriate advice and assistance so as to comply with section 16 FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - provide advice and assistance to enable the complainant to submit a refined request within the cost limit, or
 - if the request cannot be refined so as to enable it to be complied with within the cost limit, inform the complainant accordingly.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 27 October 2012, the complainant wrote to the public authority and requested information in the following terms:

'Please confirm the total expenditure of the Interpretation Project within the Ministry of Justice, i.e. salaries, other employment costs and any bonus payments as well as running and other associated costs, for the period from 6th April to 6th July 2011.'

6. The public authority responded on 16 November 2012. It explained that it could not comply with the request because to do so would exceed the appropriate limit and consequently cited section 12(1) FOIA.

7. In her request for an internal review, the complainant queried the public authority's refusal on the following grounds:

'The ICO ordered the Ministry of Justice to advise me on how to refine my FOI request so that it falls within the cost limit (case reference: FS50448576). You did respond to me and I followed your instruction and refined my request, specifically choosing a shorter period of time from your suggestions. The whole purpose of the repeated FOI request was to follow your advice on how to avoid such a refusal.'

8. The public authority issued its internal review on 4 February 2013. It upheld the decision to rely on section 12(1). It also mentioned that it had informed the complainant there was no guarantee that a refined request would still not exceed the appropriate limit.

Scope of the case

9. The complainant had initially contacted the Commissioner on 16 November 2012 (prior to requesting an internal review) to complain about the way her request for information had been handled. The complaint was not however accepted until 15 February 2013 after the completion of the internal review.

10. She maintained that the public authority should be able to comply with the refined request she submitted given the fact that she had followed the public authority's advice and narrowed the time period.

11. The scope of the investigation therefore was to determine whether the public authority was entitled to deny the request on the basis of section 12(1).

Reasons for decision

Section 12(1)

12. 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.
13. The appropriate limit is laid down in the Fees Regulations.¹ It is set at £600 for central government bodies, calculated at £25 per hour, which equates to 3½ working days.
14. The task for the Commissioner is to consider whether the public authority has made a reasonable estimate of the cost of complying with the complainant's request. If it was reasonable for the public authority to estimate the time spent on the complainant's request would exceed the appropriate limit, section 12(1) will apply and the public authority was not obliged to comply with this request.
15. The public authority provided a similar explanation to the one it gave during the investigation by the Commissioner of the previous complaint made by the same complainant (FS50448576). According to the public authority, the costs of the interpretation project were not held in a ready collated form for accounting purposes. The Project Team did not have its own discrete central budget. Instead, the project was funded from a number of different budgets. It would be necessary to separate information about the costs of the interpretation project from other information in order to be able to comply with the request. Therefore, although the complainant had refined her request, this did not change the fact that the information requested was part of a number of different other budgets.
16. Turning to the refined request above, the public authority explained that majority of the personnel involved in working on the project did so for a short period of time as well as continuously working in other roles alongside their participation in the project. As a result, complying with the request would require a search of an estimated 18,000 records of 15 members of staff who are thought to have worked on the project during the refined period – i.e. 3 months.

¹ Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

17. In the broader request – i.e. case FS50448576, the public authority had explained that it would have to search an estimated 300 records plus 200 central finance records. Therefore, the Commissioner queried why it now claimed that it would have to search an estimated 18,000 records in order to comply with the narrower request in this case.
18. The public authority explained that the estimate provided in relation to the broader request was based only on a search of hardcopy of files in respect of approximately 300 members of staff, central finance files and the Project Team records totalling 1000 files. They did not include electronic records and regrettably took a simplistic view of determining staff time spent on the project, identifying this could be determined only through looking at manual files of the dates staff worked on the project. However, following a more detailed investigation it had determined that it would be necessary to investigate electronic records of staff to establish staff time spent on project work over the period requested in FS50448576 – i.e. 2 years, because staff also worked simultaneously in other roles. It estimated that it would have had to search an estimated 100,000 electronic files over the 2 year period requested, far exceeding the 18,000 estimate for this refined request.
19. An estimated 18,000 records would have to be searched because each of the estimated 15 members of staff who worked on the project for that period would have handled an estimated 100 emails and other electronic files per week. Each of them would have undertaken other work at the same time as working on the project. All their records would have to be searched to determine what work relates to the interpretation project.
20. The public authority estimated that it would take 3 minutes to search a record in order to identify, locate, retrieve and extract the information requested. This would take an estimated 900 hours at a total cost of £22,500.
21. The Commissioner is satisfied with the public authority's explanation and finds that it was entitled to rely on section 12(1) FOIA to deny the request.

Section 16(1)

22. Section 16(1) FOIA states that a public authority has a duty to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who have made request for information to it.
23. The Commissioner is satisfied that the public authority complied with the requirements of his decision in FS50448576 regarding the advice it subsequently provided to the complainant. However, the Commissioner

does not consider it to follow that the public authority complied with its obligation under section 16 FOIA in its response to the revised request.

24. This complaint was made because although the complainant had refined her request within the terms suggested her new (refined) request was still refused on the basis of section 12(1). The Commissioner put this point to the public authority, and queried whether it was in a position to provide advice and assistance to the complainant so that she is aware of what can actually be provided within the cost limit. The public authority responded as follows:

"Given our explanations on how the information within the scope of this request is held, you will find a caveat at the last paragraph of this letter of 25 October [in response to the Commissioner's decision in FS50448576] stating that either the cost limit or an exemption/s may still apply to a refined request despite our advice on how to refine the request. Also, I have attached a copy of our response dated the 16 November 2012 which led to FS50485969 complaint. You will find that Section 16 advice was also given with a caveat. Our position remains the same and we shall consider every request on its own merits.

"Given the findings and outcome of the last refined request we however wish to make clear that costs limits is still likely to be engaged to further refined request as information within the scope of this request is almost certain to involve searches that will take cost of search above MoJ's statutory limits.

"Whilst we strive at all times to provide help and assistance, it is our view that it remains the requester's decision what scope they wish their request to cover."

25. It is of course the requestor's decision as to what scope they wish their request to cover. However, in the circumstances of this particular case - particularly taking into account the public authority's explanations regarding the way in which relevant information is held - the Commissioner is of the view that, given the revised request was also rejected under section 12, it was incumbent upon the public authority at that stage to be clear with the complainant as to whether any refinement of the request could be complied with within the cost limit. In reaching this view, the Commissioner was particularly cognisant of the public authority's submission to him that "costs limits is still likely to be engaged to further refined request as information within the scope of this request is almost certain to involve searches that will take cost of search above MoJ's statutory limits".
26. Consequently the Commissioner is of the view that, with regard to the public authority's response to the revised request, matters had reached

a stage at which it was reasonable for the public authority to be clear with the complainant as to what can be provided within the costs limit. The Commissioner therefore believes that the public authority should have provided more advice and assistance to the complainant so that she is aware of what can actually be provided within the cost limit.

Right of appeal

27. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

28. 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.
29. 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
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