

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 July 2016

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

Decision (including any steps ordered)

1. The complainant requested a list of all transaction reports available to Her Majesty's Courts and Tribunals Service ('HMCTS') Finance from the Ministry of Justice (the 'MOJ'). The request was refused on cost grounds in accordance with section 12 of FOIA.
2. The Commissioner's decision is that the MOJ was correct to rely on section 12 of FOIA. She does not require the MOJ to take any remedial steps to ensure compliance with the legislation.

Request and response

3. On 29 March 2015 the complainant wrote to the MOJ and requested information in the following terms:
"List of transaction reports available to HMCTS Finance."
4. The MOJ wrote to the complainant on 1 April 2015 asking her to clarify her request by providing the business area(s) or directorate(s) for which she would like the financial transaction reports.
5. On 2 April 2015 the complainant asked for her request to be referred to a named officer. The Commissioner understands that this individual works on the appeal stage HMCTS Complaints Team. The complainant chased the response to her request on 1 June 2015; in reply the MOJ reiterated the clarification needed.

6. On 6 August 2015 the complainant wrote to the MOJ and provided the following clarification:

"The business area is the same as my 2 April 2015 reply – HMCTS, Complaints Correspondence and Litigation Team, London.

7. The MOJ (HMCTS) sent a further clarification letter on 25 August 2015 explaining that there are many varying reports that can be run on transactions and that they are all bespoke. It also explained that the named officer does not have access to the transaction reports and the data he has provided in response to other FOIA requests has been supplied by the Finance, Governance and Performance Directorate within HMCTS.

8. On 23 November 2015, the complainant sent the MOJ the following message:

"I am not pleased about your deliberate dishonesty. The existence of FOI 100085 and FOI 90969 from [named officer] of HMCTS CST shows the utter contempt for requestors."

9. On 24 November 2015 the MOJ asked the complainant to confirm the following:

"I have looked into the requests which you have quoted below and note that these were for transaction reports relating to HMCTS's ex-gratia and compensation payments. Is this the information you require?"

10. In reply the complainant said on 8 December 2015 *"List of all HMCTS transaction reports available."* The MOJ told the Commissioner that as the complainant had not provided any further clarification, the request was taken literally to mean 'all' finance reports available.

11. Therefore, on 8 January 2016 the MOJ responded to the request and refused to proceed under section 12(1) of FOIA as the cost of complying would exceed the cost limit. Refinement advice was provided within the response.

12. On 5 February 2016 the complainant sent the MOJ an email stating she had requested an internal review on 8 December 2015, referring to her email which stated *"List of all HMCTS transaction reports available."*

13. The MOJ said that the email of 8 December 2015 could not be regarded as a request for an internal review as it was exactly the same request as the complainant had made in April 2015, and provide no indication of why she was unhappy with the response or what she wanted to be internally reviewed.

Scope of the case

14. The complainant initially contacted the Commissioner on 21 February 2016 to complain about the way her request for information had been handled.
15. Following the Commissioner's intervention the MOJ provide an internal review result on 3 May 2016 which upheld the original position of refusing the request under section 12(1) of FOIA.
16. The Commissioner contacted the complainant following completion of the internal review; she confirmed she wished to proceed with her complaint and submitted the following, which the Commissioner asked the MOJ to consider as part of its investigation response:

*"I clearly referred to the range of reports available to [named officer] as the location of the information sought
(https://www.whatdotheyknow.com/request/hmcts_finance_reports#outgoing-434114).*

This could have been achieved by screen shot of all the reports available to [named officer] or a typed list.

My response

https://www.whatdotheyknow.com/request/hmcts_finance_reports#outgoing-496777

directs where [named officer] can start to look for this information as it would occur when recreating FOI 100085 and FOI 90969 (or whoever actually authored these FOI's)

(FOI 100085: <http://www.whatdotheyknow.com/request/290561>

FOI 90969: <http://www.whatdotheyknow.com/request/202220>).

MOJ can't reasonably expect the commissioner to believe in takes 3 and a half days to choose and run a report."

17. The MOJ commented as follows:

"[The complainant] has specified in more detail which information she requires in her complaint post IR. This information was not available to HMCTS, when responding to the original FOI and IR, even after numerous requests for clarification. It is therefore unfair to assume HMCTS should have known the exact scope of information [the complainant] was referring to."

18. The Commissioner has considered whether the MOJ has properly relied on section 12 in relation to this request.

Reasons for decision

Section 12 – cost of compliance

19. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
20. The appropriate limit in this case is £600, as laid out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”). This must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours’ work.
21. When estimating whether disclosing the requested information would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in disclosing the information. The estimate must be reasonable in the circumstances of the case. It is not necessary to provide a precise calculation.
22. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
 - determining whether the information is held;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
23. The MOJ told the Commissioner that the named officer does not have access to any transaction reports. It explained that the reports used to respond to the FOI 100085 and FOI 90969 (made by other requesters and cited by the complainant) were transactional reports relating to HMCTS’s ex-gratia and compensation payments with specified parameters provided by the requesters. Therefore, it said, the reports were not a standing report but were run ‘on request’ by the HMCTS Customer Investigations Team and were bespoke to those particular requests.
24. The MOJ highlighted in the internal review outcome that the use of the word ‘all’ in the clarified request would include all locally held and personally created reports across the finance function. It estimated that it would cost £946 for it to comply with the request under consideration here. This was on the basis of 227 full time finance staff within HMCTS

taking approximately 10 minutes each to check their records and respond. It explained that this estimation is an average time, and is more likely an underestimate, of the time required as some staff may have more records to check and others less.

25. The MOJ said providing an exact figure is difficult to calculate as HMCTS has an electronic accounting system which allows for the running of reports at various levels (such as cost centre, natural account code, supplier, etcetera) and dates as specified by the user on each occasion. There are also numerous reports within other systems that generate financial information (such as its fees system), as well as bespoke reports held within individual teams and financial reports that are produced and used for management decision making as required. As a result there is no definitive list of finance reports held by HMCTS and all staff would be required to check their records to ascertain which reports they had personally run. Due to the complexity and unique nature of producing the various finance reports the MOJ advised it does not maintain a list of each report available on each system to each user.

Conclusion

26. From the information provided, the Commissioner has concluded that the MOJ was correct to rely on section 12 in relation to this request.

Section 16 - advice and assistance

27. If a public authority estimates that the cost of determining whether or not information is held would be above the appropriate limit, it is not required to conduct searches but should consider providing advice and assistance.
28. In this case, the MOJ said that it had given the complainant sufficient opportunity to provide further clarification of her request and had offered advice and assistance as to how the request could be refined to bring it within the cost limit. It was suggested that the complainant may wish to narrow her request by asking about the types or amounts of finance reports available for a particular process or business area (as set out in paragraphs 11 and 12 of this notice).
29. In the internal review outcome, the MOJ explained that as the complainant wanted 'all' reports across the finance function, it would be easier to provide the key finance reports in certain areas and refine the specific data she required. It provided a link to the publication page

which includes the Annual Reports and Accounts¹ which the MOJ thought may have been of interest to the complainant.

30. The Commissioner is satisfied that the MOJ provided advice and assistance to the complainant in this case.

Other matters

31. The Commissioner notes that the clarification provided by the complainant thus far has not been sufficiently specific to enable the MOJ to respond to the request. She would suggest that any subsequent request for this information is very clear in terms of the specific type of reports required, and, in order to elicit a response, the wording takes into account how the previous requests she referred to have been phrased.

¹ <https://www.gov.uk/government/publications/ministry-of-justice-annual-report-andaccounts-2014-to-2015>

Right of appeal

32. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF