

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 February 2018

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

Decision (including any steps ordered)

1. The complainant has requested data relating to 'lessons learned' within the Ministry of Justice ("the MOJ").
2. The Commissioner's decision is that the MOJ has correctly applied section 12 of the FOIA to the request, and has also provided the complainant with advice and assistance in accordance with section 16 of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 26 April 2017, the complainant wrote to the MOJ and requested information in the following terms:
"all of your lessons identified or lessons learned data within your organisation, relating to all your change portfolio, including projects, change programmes and transformation, in accordance with the Association for Project Management good practice... I would be grateful if you could forward the data in excel format via email please."
5. Subsequently on 8 May 2017, the complainant requested:

"all of your lessons identified or lessons learned data within your organisation, in accordance with the Association for Project Management good practice. It would be helpful if you could please constrain the scope of lessons relating to all projects/programmes, change programmes, portfolio management and transformation, rather than day to day management (business as usual activities). If you do not hold this information centrally then I am happy to constrain it to projects where the information is readily discoverable... I would be grateful if you could forward the data in excel format via email please."

6. The MOJ, taking the request of 8 May 2017 to be a clarification of the request of 26 April 2017, responded on 24 May 2017 and refused to provide the requested information. It cited the following exemption as its basis for doing so: section 12(1) of the FOIA - Cost of compliance exceeds appropriate limit.
7. Following an internal review, the MOJ wrote to the complainant on 12 July 2017. It maintained its position that section 12(1) was engaged due to the broad scope of the request. The complainant had expressed dissatisfaction with the advice and assistance provided to him with regard to narrowing down his request, and the MOJ explained that, in its view, it had complied with section 16 in its response and in subsequent correspondence.

Scope of the case

8. The complainant contacted the Commissioner on 24 July 2017 to complain about the way his request for information had been handled.
9. The Commissioner considers that the scope of the case has been to consider whether the MOJ has correctly refused the request under section 12(1) of the FOIA - Cost of compliance exceeds appropriate limit - and whether it has complied with section 16 of the FOIA – Duty to provide advice and assistance.

Reasons for decision

Section 12 – Cost of compliance exceeds appropriate limit

10. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations.")

11. This limit is set in the Fees Regulations at £600 for central government departments and £450 for all other public authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours for the MOJ.
12. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating a document containing the information;
 - retrieving a document containing the information; and
 - extracting the information from a document containing it.
13. The four activities are sequential, covering the retrieval process of the information by the public authority.

The MOJ's position

14. The MOJ has confirmed that it does hold information which would fall within the scope of the request, as do its agencies and arm's length bodies.
15. It has explained that the information it holds is not held in a central repository, and has presented arguments which focus on the length of time it would take to contact all relevant teams and departments in order to locate all of the information captured by the scope of the request.
16. In correspondence with the Commissioner, the MOJ has added the further explanation that significant transformation has occurred within the organisation within the last few years. The request did not specify a time period; however, it has assessed that in the last five years, there would have been in the region of 260 projects, and that in each case the relevant business unit would need to be contacted.
17. The MOJ explained therefore that it would need to contact at least 260 business units to locate files and ask them to collate information, and that this would take over the appropriate time limit.
18. The MOJ has estimated to the Commissioner that it would take in the region of 40 minutes per project to contact the relevant unit to identify who owns the information, discuss what information may be required

from the project, and retrieve the information. This would take in excess of 170 hours.

19. In addition, the MOJ has explained that the complainant's request to be provided with the data in Excel format would be problematic since it primarily exists in Word or Powerpoint. The MOJ considers that it would add a considerable time to collate the information in the requested format.
20. The Commissioner has asked the MOJ to carry out a sampling exercise to confirm that its estimates are reasonable. This has been done and a sample of the extracted data has been provided to the Commissioner.
21. For the sampling exercise, a deputy director sought information relating to three recent projects of which he was aware. He contacted the relevant three teams, discussed what was required and requested the documents, which took around 25 minutes per team (10 minutes to draft emails or make telephone calls, and 15 minutes to discuss the requirements); the documents were then located in the archives and provided, which took each team around 15 minutes.

The Commissioner's decision

22. The Commissioner is satisfied that the request under consideration in this notice potentially captures information from a very large number of projects.
23. By focusing on projects from the last five years, the MOJ has identified in the region of 260 projects, all of which may contain information relevant to the scope of the request.
24. In the Commissioner's view, while relevant information may not be located in each of the projects, it would not be realistic to expect the MOJ to consider 260 projects - whether or not extracting and retrieving any relevant information therein - within the appropriate time limit of 24 hours, since this would only allow ten minutes per project.
25. A sampling exercise has been carried out, which confirmed that locating, retrieving and extracting information from any specific project took in the region of 40 minutes per project.
26. While the Commissioner considers that each business unit could potentially be informed of the request reasonably quickly, she accepts that further discussion and explanation of the requirements would be likely to be necessary with each of them.

27. She also considers that the MOJ's finding - that extracting the information from each project took in the region of 15 minutes - is reasonable.
28. She therefore notes that, even by focusing on projects from the last five years, the MOJ has been unable to address the request within the appropriate costs limit.
29. The Commissioner has therefore determined that the request was correctly refused under section 12(1).
30. The Commissioner would therefore expect the MOJ to focus its efforts in responding to the request on providing advice and assistance to the requester in accordance with section 16 of the FOIA.

Section 16 – duty to provide advice and assistance

31. Section 16 of the FOIA states that:

- (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
- (2) Any authority which, in relation to the provision of advice or assistance in any case, conforms to the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

32. Section 16 refers to the 'code of practice'; that is, *The Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of the Freedom of Information Act 2000*, issued under section 45 of the Act ("the Code").

33. As stated in the Code, one of its aims is to *"protect the interests of applicants by setting out standards for the provision of advice which it would be good practice to make available to them."*

34. Paragraph 14 of the Code states:

"Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold) the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling."

35. In this case, the Commissioner has been asked to consider whether the MOJ has conformed with the requirements of the Code; that is, has complied with its duty under section 16(1) of the FOIA.
36. The Commissioner has therefore considered the MOJ's responses to the complainant.

The MOJ's responses

37. In its initial response to the complainant of 24 May 2017, the MOJ explained that it may be able to answer a refined request within the cost limit, for example if the complainant considered requesting a specific time period, or a specific project or lesson learned.
38. After the complainant stated in email correspondence that he would require more help in narrowing down the request, the MOJ suggested that he contact the Infrastructure and Projects Authority.
39. Subsequently, in its internal review response, the MOJ stated that, given such a broad-ranging original request, it considered that its advice on how to refine it was correct. It also referred him to online information about the work of the MOJ.

The Commissioner's decision

40. ICO guidance¹ in this area states as follows, on page 18-19:

"A public authority should inform the requestor of what information can be provided within the appropriate limit. This is important for two reasons: firstly, because a failure to do so may result in a breach of section 16. Secondly, because doing so is more useful than just advising the requestor to 'narrow' the request or be more specific in focus. Advising requestors to narrow their requests without indicating what information a public authority is able to provide within the limit, will often just result in requestors making new requests that still exceed the appropriate limit".

41. It is evident in this case that the complainant was unsure, following the initial response, how to narrow down his request in order to be provided with information. It is also evident that the complainant had expected a broad range of lessons learned data to be readily available.

¹ https://ico.org.uk/media/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

42. Referring to the wording of the Code, however, the Commissioner considers that the MOJ's responses demonstrate that it "*consider[ed] providing an indication*" of what could be provided within the costs ceiling. While not indicating exactly what could be provided within the appropriate limit, the complainant was encouraged to narrow down his request in a focused manner and suggestions were made as to how he could do so. Indeed the Commissioner understands that he has subsequently made further requests, resulting in some information being provided to him.
43. In view of the broad initial request which is under consideration in this notice, the Commissioner considers that the advice and assistance in this case was reasonable.
44. The Commissioner is satisfied that the MOJ provided the complainant with sufficient advice and assistance to have complied with section 16 of the FOIA in this case. She therefore does not require the MOJ to take any steps.

Right of appeal

45. 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

46. 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.
47. 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

Alun Johnson
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