

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

### **Decision notice**

**Date:** 24 January 2023

**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 to specified court case types from Her (now His) Majesty's Courts and Tribunals Service ('HMCTS') which falls under the remit of the Ministry of Justice (the 'MOJ'). The request was initially refused by the MOJ citing section 12 (cost of compliance exceeds appropriate limit) of FOIA. At the internal review stage, this decision was overturned and the complainant was asked to clarify part 1 of his request which, to the Commissioner's knowledge, was not provided.
2. The Commissioner's decision is that the MOJ was entitled to seek a correct objective reading and interpretation of part 1 of the request in accordance with section 16 of FOIA. He has also concluded that the MOJ was entitled to refuse to comply with the request based on its original interpretation in accordance with section 12(1) of FOIA. The Commissioner also finds that the MOJ has complied with its obligations under section 16 of FOIA to offer advice and assistance where section 12 has been relied on. However, he finds that the request was not responded to within the statutory 20 working days' time limit which is a breach of section 10(1) of FOIA.
3. No steps are required as a result of this notice.

#### **Request and response**

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4. On 13 May 2022, the complainant wrote to the MOJ and requested information in the following terms:

- “1. Please could HMCTS confirm how many cases at Slough County and Family Court are listed via CVP [Cloud Video Platform], Vs in person as of today? With your reply, please specify the last date for which cases are listed. I.e. X number of cases are listed by CVP to Y month, and A number are to be attended to B month.
2. I request the same information pertaining to Reading and Aylesbury County & Family court, please.
3. Please confirm any power HMCTS (or Judiciary) may have to list a matter in person, where a user has requested CVP, and any fee specific to such request by a user who has covid concerns?
4. What measures remain in place to protect Judiciary & Court staff, Vs Court Users, viz a viz Covid?
5. Please could you provide any provision or policy regards service users who are disabled specifically by reason of cognitive impairment/s? I see online HMCTS has information regards physical impairments only.
6. I ask the same question as 5, above, in relation to the Employment Tribunal Service specifically, separate from HMCTS as a whole?”

## **Scope of the case**

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5. The complainant initially contacted the Commissioner on 16 June 2022 to complain to complain that the MOJ had not responded to his request.
6. Following the Commissioner’s intervention, the MOJ responded on 24 June 2022. It said that to provide the requested information for part 1 of the request alone would exceed the cost limit in section 12 of FOIA (the cost of compliance).
7. In addition, the MOJ explained that if any part of the request exceeds the appropriate cost limit, then a public authority is not obliged to respond to the remaining parts. However, it provided some information outside FOIA for parts 2-6 of the request.
8. The complainant requested an internal review on 24 June 2022 in relation to some parts of the response to parts 2-6 of the request provided outside FOIA process.
9. The MOJ provided its internal review outcome on 8 July 2022. It now said that it should have asked the complainant to clarify the period of time intended for part 1 of his request. The complainant was advised to

provide that clarification for part 1 of his request which the MOJ said it would treat as a new request. Specifically, the MOJ said:

"I have reviewed the records of the handling of your FOI request. When the FOI was received, the correct enquiries were made of courts in an attempt to locate the information sought. On reviewing the handling of the case however, I am of the view that the wording of your first question was sufficiently unclear to have justified the region's FOI officer in asking you to clarify the time period in the scope of the question. Because that was not done, I am of the view that the subsequent handling of your request was based on the FOI officer placing a particular interpretation on your first question. Please therefore consider making a new FOI request (this is necessary because the request that is the subject of this Internal Review is closed), refining the period of time which your request applies to. If you are minded to issue a new FOI request, you may wish to consider seeking data covering a lesser period of time than your first request was seen to cover. Please note however that we cannot guarantee that we will be able to deal with any new FOI request within the time/costs limits that apply, or that any other exemptions to the release of data will not apply...

...In conclusion I believe the original response was incorrect and I have therefore overturned the decision. Please accept my apologies. Because, in my view, the correct response to your FOI should have been to ask you to clarify the period of time covered by your first question, at this stage it will be necessary for you to provide that clarification – which will be treated as a new FOI request - to allow your original request to be reconsidered. Thank you."

10. The complainant remained dissatisfied following the internal review and did not, to the Commissioner's knowledge, provide the requested clarification.
11. The Commissioner has considered whether the MOJ's interpretation of the request was a reasonable one. He has also examined whether the MOJ was entitled to rely on section 12(1) of FOIA to refuse this request based on its original interpretation of the request and whether the MOJ met its associated obligation to offer advice and assistance, under section 16 of FOIA. Finally, the Commissioner has considered the delay in the MOJ providing the response to the request.

## Reasons for decision

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12. The Commissioner has first considered the MOJ's original interpretation of the request where it relied on section 12 of FOIA.

### Section 12 – cost of compliance

13. Section 12(1) of 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" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").

14. The appropriate limit for the MOJ a central government body is £600.

15. 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.

16. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:

- determining whether the information is held;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

17. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate which is "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12 matter is to determine whether the MOJ made a reasonable estimate of the cost of complying with the request.

18. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.

### Would the cost of compliance exceed the appropriate limit?

19. For part 1 of the request, the MOJ explained in its response that a manual search would have to be undertaken checking every case. In

correspondence with the Commissioner, the MOJ estimated that there are 6450 electronic files in scope of part 1 of the request and that it would take an estimated three minutes to check each file for the CVP information requested. This would equate to a total of 322.5 hours (ie  $6450 \times 3 = 19,350$  minutes then converted to hours) which exceeds the 24 hour limit set out in section 12 of FOIA.

20. Based on the estimate provided, the Commissioner is satisfied that a decision could be reached without seeking further detailed submissions from the MOJ.
21. The Commissioner considers that the MOJ estimated reasonably that it would take more than the 24 hours / £600 limit to respond to the request. The MOJ was therefore correct to apply section 12(1) of FOIA to the complainant's request.

### **Section 16(1) – The duty to provide advice and assistance**

22. Section 16 of FOIA requires a public authority to provide advice and assistance to those making, or wishing to make, requests for information.
23. In the Commissioner's view, this duty includes an obligation, on the public authority, to ensure that, before it begins to process a request, it has obtained the correct objective reading of the request. Where a request is capable of being interpreted in more than one way, the public authority should contact the requester to ensure that it has identified the correct reading.
24. The Commissioner acknowledges that the MOJ wrote to the complainant as part of its internal review outcome on 8 July 2023 to ask him to provide clarification for part 1 of his request ("Please could HMCTS confirm how many cases at Slough County and Family Court are listed via CVP [Cloud Video Platform], Vs in person as of today? With your reply, please specify the last date for which cases are listed. I.e. X number of cases are listed by CVP to Y month, and A number are to be attended to B month").
25. To the Commissioner's knowledge, the complainant has not provided the requested clarification but has instead asked the Commissioner to consider his complaint about the MOJ.
26. The Commissioner considers that it was reasonable for the MOJ to seek clarification of part 1 of the request given the differing interpretations when responding to the request and to the internal review. The Commissioner's view is that the MOJ's original reading of part 1 of the request was that the complainant was seeking the CVP related information for all CVP cases that had ever taken place (approximately

6450 cases). At internal review, this interpretation was overturned and the reviewing officer asked the complainant to specify a time period for the information he requires. Another possible reading is that the complainant only wanted the CVP information for the date of his request.

27. The Commissioner, therefore, concludes that the MOJ has complied with section 16 of FOIA in this regard.

28. In relation to section 12 of FOIA, section 16(1) also places an obligation on a public authority to consider whether it is possible to advise and assist the applicant to refine their request so that the authority can comply with it within the cost limit.

29. The Commissioner notes that the MOJ advised the complainant as follows:

“Although we cannot answer your request at the moment, we may be able to answer a refined request within the cost limit. You may wish to consider, for example, asking for information relating to a shorter time period, or for less information. Please be aware that we cannot guarantee at this stage that a refined request will fall within the FOIA cost limit, or that other exemptions will not apply”

30. The MOJ also provided a weblink to guidance<sup>1</sup> on how the complainant might successfully structure his request to bring it within the cost limit. (The Commissioner notes that another link<sup>2</sup> was also provided by the MOJ but he has not been able to access it).

31. The Commissioner's view is that the request could be refined by, for example, asking for the CVP information within specified dates such as 1 January 2022 to the date of his request. The Commissioner is therefore satisfied that the MOJ met its obligations under section 16 of FOIA.

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<sup>1</sup> <https://ico.org.uk/your-data-matters/official-information/>

<sup>2</sup> [http://www.legislation.gov.uk/ukxi/2004/3244/pdfs/ukxi\\_20043244\\_en.pdf](http://www.legislation.gov.uk/ukxi/2004/3244/pdfs/ukxi_20043244_en.pdf)

**Section 10 – Time for compliance**

32. Section 10(1) of FOIA requires the public authority to respond to the request within 20 working days following the date of receipt.
33. In this case, the complainant made his request on 13 May 2022 and did not receive the MOJ's response until 24 June 2022, following the Commissioner's intervention.
34. By failing to respond to the request within the statutory time period, the MOJ has breached section 10(1) of FOIA. The Commissioner has made a record of this delay.

## Right of appeal

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35. 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)

36. 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.
37. 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 .....**

**Laura Tomkinson**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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**Cheshire**  
**SK9 5AF**