

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 3 July 2008

Public Authority: Ministry of Justice
Address: Selborne House
54 Victoria Street
London
SW1E 6QW

Summary

The complainant requested information about cases held on the Clearing House Case Management System. Some of the information requested by the complainant was disclosed, but other information was withheld on the basis that an automated search for this information was not within the capabilities of the Clearing House Case Management System and a manual search for this information would exceed the cost limit. The Commissioner finds that the cost estimate made by the public authority was accurate and that the public authority complied with the duty to provide advice and assistance.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 5 May 2005, the complainant made the following information request:

"I wish to make a request under the Freedom of Information Act for the following fields of data held within the DCA Clearing House CMS, for all cases received by DCA Clearing House up to the date of processing this request. I wish to receive the information in electronic form, as a tab-delimited text file, or as an Excel file.

Fields

Clearing House reference number

Department reference number
Date request received by department
Date case referred to Clearing House
Regime under which referral is made
Information requested
Summary of case
Reason for making referral
Whether other Government departments are involved
Date advice provided by Clearing House
Advice provided
Date dispute notice received
Nature of dispute
Date dispute closed"

3. The public authority responded to this on 6 June 2005. With this response the public authority disclosed "*much of the information*" requested. However, the public authority stated that not all the headings in the request were searchable on the Clearing House Case Management System (the "CMS").
4. Searching for information under the headings that were not searchable on the CMS would, according to the public authority exceed the cost limit of £600. The public authority explained that searching for the information not automatically searchable under the headings given by the complainant in his request would involve manually searching through each case on the CMS. The public authority estimated that to do this would exceed the effective time limit of 24 hours.
5. The complainant requested an internal review of the handling of his request on 20 June 2005. The public authority responded with the outcome to the internal review on 7 September 2005. This upheld the initial refusal of some parts of the request and provided further detail about the calculation of the cost limit.
6. The public authority specified that, at that time, the CMS contained approximately 500 cases. To search manually each of these cases to identify information relevant to the case would take an approximate average of 5 minutes per case. The total time carrying out manual searches of each case on the CMS would be approximately 41 hours.
7. The public authority also stated that retaining an IT specialist would not reduce the amount of time that this task would take to within the appropriate limit. This was because it would still be necessary for a search of all the documents on each case to be carried out.

The Investigation

Scope of the case

8. The complainant initially contacted the Commissioner on 25 July 2005. The complainant specified the failure of the public authority to provide information under all of the headings cited in his request.
9. The headings within the request that the public authority stated were not searchable on the CMS and in connection with which section 12 had been cited are the following:

- Department reference number
- Date request received by department
- Date case referred to Clearing House
- Whether other Government departments are involved
- Date advice provided by Clearing House
- Date dispute notice received
- Date dispute closed

Chronology

10. The handling of this case within the Commissioner's office was long running and ran to many individual pieces of correspondence. This section of the notice does not rehearse the detail of each individual piece of correspondence, but the correspondence most pertinent to the outcome of this notice is covered here.
11. The public authority initially provided an explanation of its reasoning for refusing the request on cost grounds on 25 October 2005. In this correspondence, the public authority stated that to identify information falling within the refused parts of the request would entail viewing each case file on the CMS and viewing the information held on these case files. The public authority estimated that approximately 5 minutes would need to be spent searching each case file. It also stated that there were approximately 500 cases held on the CMS at the time that the request was made, giving a total of approximately 41 hours to search the entire system.
12. The Commissioner contacted the public authority again on 13 July 2006. It was noted that the explanation of costs given previously covered the costs of manually searching the CMS for the requested information. The public authority was now asked to respond, addressing the issue of the possibility of conducting an automated search for the information. This response was also to address the issue of whether the information could be extracted from the CMS, even where the CMS did not have an existing capability to carry out an automated search for this information. Suggested possible ways that the information could be extracted included a reporting program being written by an IT expert.

13. The public authority was also asked to comment on the issue of advice and assistance and specifically whether this could have facilitated a response to any of the refused parts of the request. An example given was that there may have been existing standard reports that may, at least in part, have provided information relevant to the request.
14. The public authority responded on 12 October 2006, stating firstly that it did not believe that it was required to consider the writing of a specific search program in order to facilitate the response to an individual information request. Instead, the public authority believed that a cost estimate should be made in the context of the capabilities of its existing IT systems. It also believed that it was required to make a *reasonable* estimate of cost; including within this the potential cost of retaining an IT expert to write a search program would go beyond what was reasonable. In any event, the public authority stated that the cost of retaining an IT expert and other costs involved with making amendments to the CMS to enable an automated search for the requested information would be well in excess of the appropriate limit. For example, bringing in an external IT consultant would cost, according to the public authority, a minimum of £700 per day.
15. Further to this, the public authority also addressed the issue of the CMS being structured in such a way that it was unable to facilitate a response to an information request within the cost limit, at least in this case. The public authority stated that the priority of its systems was that they should be fit for the purposes of the public authority; the ease with which these systems could facilitate the response to an information request was a secondary issue.
16. On the issue of advice and assistance, the public authority stated that there were no standard reports of relevance to the request available. The public authority also described the attempts it had made to provide advice and assistance to the complainant at the time of his request, which included telephoning the complainant to discuss the issues surrounding his request, and confirmed that it believed that it had fulfilled its obligation here.
17. The Commissioner contacted the public authority again on 12 December 2006. The public authority was asked firstly if in house IT expertise had been consulted as to the possibility of retrieving the requested information, the presumption being that using in house IT expertise would be less costly than using external expertise. Secondly, the public authority was asked to confirm whether there were no existing standard reports that contained any information falling within the scope of the refused parts of the request, or whether there were reports that may contain some information falling within the scope of the request.
18. The public authority responded to this on 2 February 2007. Firstly, the public authority stated that consultation of in house IT expertise had not been necessary as the individuals within the public authority with responsibility for dealing with the request had sufficient knowledge of the public authority's IT service provision to enable them to make an accurate cost estimate. Secondly, the public authority confirmed that the existing reports within the CMS did not contain any information falling within the scope of the refused parts of the request.

19. The Commissioner contacted the public authority further on 26 July 2007. This letter noted that, whilst an estimate of the cost of dealing with the request manually had been provided previously, no estimate of the cost of electronically searching for this information had been provided.
20. At this stage, the Commissioner was also able to give his stance in relation to the retrieval of information held within databases. This stance is that information within a database is considered to be recorded information that is 'held' for the purposes of the Act, even if the database is not constructed in such a way as to allow an automated search for this information. It was stressed to the public authority that the cost of compliance with an information request must be calculated at the rate of £25 per hour, regardless of the actual cost. Further information about the Commissioner's stance in this regard is given in the 'Other matters' section of this notice.
21. The public authority was asked to respond with a detailed description as to why it would exceed the cost limit to retrieve the requested information from the CMS, taking into account the Commissioner's stance on this issue. It was also noted that the public authority did not appear to dispute that information falling within the scope of each of the refused parts of the request was held on the CMS; rather the debate here was focussed solely on issues of location and retrieval of this information.
22. The public authority responded on 24 September 2007. The public authority clarified that the requested information is held within individual documents related to cases on the CMS and that an electronic search of these documents was not possible. In a subsequent telephone conversation, it was confirmed that the documents in question are paper documents that are scanned in order that they can be stored on the CMS in an electronic format.
23. On the basis of conducting a manual search of the scanned documents within which the information falling within the scope of the refused parts of the request is held, the public authority provided the following estimate of the cost of complying with the request:
 - Approximately 4 minutes to view the documents held in relation to each CMS case.
 - Total time of approximately 96 hours.
 - On the basis of £25 per hour, a total cost of £2400.
24. The public authority also provided an excel spreadsheet showing reference numbers for the 1448 cases on the CMS at the time of the request.

Findings of fact

25. Information under the following headings was disclosed to the complainant:

Clearing House reference number
Regime under which referral made
Information Requested

Summary of case
Reason for making referral
Advice provided
Nature of dispute

26. Information under the following headings was withheld:

Department reference number
Date request received by department
Date case referred to Clearing House
Whether other Government departments are involved
Date advice provided by Clearing House
Date dispute notice received
Date dispute closed

Analysis

Section 12

27. This provision provides that a public authority is not obliged to comply with a request where to do so would exceed the appropriate limit. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 sets the appropriate limit at £600 for central government departments.
28. The public authority has confirmed that the information requested is held, but has stated that the cost of locating this information within the CMS would exceed the cost limit. It is necessary for the Commissioner to consider whether the cost estimate made by the public authority is appropriate.
29. The details of the public authority's cost estimate are given above at paragraph 23. The Commissioner notes that the public authority has based its cost estimate on the time taken to read the documents related to each case on the CMS in order to locate information falling within the scope of the request. Locating information falling within the scope of a request is listed within the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 amongst those activities that can be taken into account when formulating a cost estimate.
30. Turning to the detail of the cost estimate, the public authority has stated that it would be necessary to read each document that may contain information falling within the scope of the request as an automated search for this information is not possible, whether on the basis of the capabilities of the CMS as it stands, or through amendments made to the CMS. The public authority has stated that the information is held in scanned documents; originally paper records that are scanned in order that they can be held in an electronic form.
31. The Commissioner accepts the representations of the public authority that the information falling within the scope of the request is held within scanned

- documents. No evidence is available to the Commissioner that suggests that this is not the case, either through representations made by the complainant or from any other source. The Commissioner also recognises that it is common practice to electronically hold scanned copies of paper documents and that an automated search of these documents that would produce results of the accuracy necessary to ensure that all information falling within the scope of the request is located is not possible.
32. The public authority has made an estimate of approximately 4 minutes to search the documents held on each case for information falling within the scope of the request. The Commissioner accepts that 4 minutes to locate information falling within the scope of the request in each case is a reasonable estimate.
 33. In recent correspondence, the public authority has stated that there were 1448 cases on the CMS at the time of the request. Previously, the public authority had stated that there were approximately 500 cases on the CMS at the time of the request.
 34. If there were 500 cases on the CMS at the time of the request, this gives a total of approximately 33 hours search time, or £825. If there were 1448 cases on the CMS at the time of the request, the total search time would be 97 hours, £2425. Whilst there is an obvious discrepancy here in the representations of the public authority about the number of cases held on the CMS at the time of the request, as the Commissioner has accepted that the estimate of 4 minutes to locate information relevant to the request is reasonable, the cost limit would be significantly exceeded whether there were 500, or 1448 cases on the CMS at the time of the request.
 35. The conclusion of the Commissioner is that the cost estimate of the public authority showing that to locate information falling within the refused parts of the complainant's request would exceed the cost limit is accurate. Section 12(1) provides, therefore, that the public authority is not obliged to comply with these parts of the request.

Section 16

36. In a case where a request is refused on cost grounds, the Commissioner believes that the public authority should communicate with the applicant so that it may be possible to provide to the applicant some information falling within the scope of their request where it has not been possible to provide this information in its entirety as to do so would exceed the cost limit.
37. In this case, the public authority has stated that it did attempt to provide to the complainant advice and assistance. Specifically, the public authority has stated that the complainant was contacted by telephone by an official from the public authority, who described the limitations of the CMS. The public authority has also stated that the complainant was offered the opportunity to "*refine or recast*" his request in order that it may have been possible to comply with it without exceeding the cost limit.

38. The complainant has previously raised the specific issue of existing standard reports containing information falling within the scope of the refused parts of the request that he believes may be readily available. The Commissioner, agreeing that this was an issue worth raising with the public authority, did so. In response to this, the public authority stated that no such reports existed. In the absence of any compelling argument from the complainant that relevant information would be held in standard reports, the Commissioner accepts the stance of the public authority on this point.
39. On the wider issue of advice and assistance, the Commissioner notes that the public authority did make efforts to comply with the duty imposed by section 16 at the time of refusing this request. As well as the telephone call referred to above, when responding to the complainant with the outcome to the internal review, the public authority provided to the complainant a breakdown of its cost estimate. The Commissioner considers that by providing a breakdown of its costs estimate the public authority has given an indication of what information could be provided within the cost ceiling. It is also noted that the public authority disclosed a significant amount of information to the complainant in response to his request; section 12 was only cited in response to specific parts of the request.
40. The conclusion of the Commissioner here is that the public authority did comply with its duty under section 16 to provide advice and assistance to the complainant. In reaching this conclusion, the Commissioner has noted that the public authority cited section 12 only in respect to specific parts of the request, that the complainant was provided with a breakdown of the cost estimate and that the public authority discussed with the complainant the issues arising from his request.

The Decision

41. The Commissioner's decision is that the public authority dealt with the request in accordance with the Act in that section 12 was cited correctly and it complied with the duty to provide advice and assistance imposed by section 16.

Other matters

42. Although this does not form part of this Decision Notice, the Commissioner wishes to highlight his policy with regard to information held within a database.
43. Following considerations of issues surrounding the retrieval of information held within databases, the policy of the Commissioner is that a public authority should disclose information held within a database in response to an information request, even where the system is not configured specifically to return searches for the information requested. The view of the Commissioner is that where a database contains recorded information identified in the request, that information is 'held' for the purposes of the Act and the public authority is under an obligation to

provide it, unless it is considered to be exempt. It may be that in such circumstances section 12 of the Act becomes a relevant consideration.

44. In considering whether information can be located within and retrieved from a database within the cost limit, public authorities should be aware that the cost limit must be calculated on the basis of £25 per person, per hour, regardless of the actual cost. This means that, for instance, if an IT consultant could retrieve the requested information within 24 hours, or 18 hours for a non central government public authority, the cost limit would not be exceeded, even where the actual cost of retaining the IT consultant would be well in excess of £600, or £450 for non central government public authorities.

Right of Appeal

45. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk

46. Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 3rd day of July 2008

Signed

**Gerrard Tracey
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**