

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 9 May 2011

Public Authority: Her Majesty's Court Service
(an executive agency of the Ministry of Justice)

Address: 102 Petty France
London
SW1H 9AJ

Summary

The complainant requested information relating to successful and unsuccessful judicial review applications from Her Majesty's Court Service (HMCS), an executive agency of the Ministry of Justice. HMCS refused to comply with the request on grounds of cost. The Commissioner has investigated and finds that compliance with the request would have exceeded the appropriate costs limit and therefore HMCS was correct to apply section 12(1) of the Freedom of Information Act 2000 to the request. He requires no further steps to be taken by the public authority.

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. The Commissioner notes that under the Act HMCS is not a public authority itself, but is actually an executive agency of the MOJ. The MOJ is responsible for HMCS and, therefore, the public authority in this case is actually the MOJ not HMCS. However, for the sake of clarity, this Decision Notice refers to the HMCS as if it were the public authority.
3. On 11 July 2010 the complainant requested the following information:

"For the period of 2009 and between 1 January 2010 and 30 June 2010

- 1. Number of applications for judicial review*
 - 2. The number of successful and unsuccessful applications*
 - 3. The average time for the Administrative Court to make the first decision on an application*
 - 4. The shortest and longest time for a first decision to be made*
 - 5. In the case of unsuccessful application the number of cases where costs were ordered*
 - 6. The average amount of cost ordered to be paid in the case of unsuccessful applications*
 - 7. Number of cases at which the Court issued warnings to the applicant of seeking a civil restraint order because in its view the case was without merit*
 - 8. Number of cases where the case was transfer to other region*
 - 9. Number of cases where such transfer was made against the objection of the applicant*
 - 10. Number of cases where the case was transferred out against objections to a region where neither the applicant nor the respondent reside in that region on working days and it is clear from the papers that any such transfer would case [sic] gross inconvenience and considerable additional costs for the parties".*
4. On 6 August 2010 HMCS replied to the complainant refusing to comply with the request on the grounds that the appropriate costs limit would be exceeded.
 5. On 15 August 2010 the complainant requested an internal review.
 6. On 2 September 2010 HMCS completed the internal review. HMCS upheld its original decision that compliance with the request would exceed the costs limit.

The Investigation

Scope of the case

7. On 26 September 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the fact that HMCS had refused to comply with the request on grounds of cost.

Chronology

8. On 21 January 2011 the Commissioner wrote to HMCS seeking further evidence as to why it believed section 12(1) applied to the requested information. He also made enquiries regarding whether HMCS's duties under section 16(1) had been fully discharged.
9. On 2 February 2011 HMCS responded to the Commissioner providing details of the costs that would be incurred by compliance with the request. HMCS stated that information relating to four parts of the request could be provided under the costs limit; however, five parts of the request engaged the costs limit and information pertaining to one part of the request could not be provided as it was incalculable and therefore not held.
10. On 3 February 2011 the Commissioner sought further clarification from HMCS regarding whether it intended to aggregate all parts of the request, and further details relating to the 'information not held' aspect. The Commissioner also acknowledged that advice and assistance under section 16(1) had previously been provided to the complainant and not acted upon.
11. On 25 February 2011 HMCS responded to the Commissioner confirming that it wished to aggregate all ten parts of the request and clarified why information pertaining to one part of the request was not held.

Analysis

Substantive Procedural Matters

12. Section 12(1) of the Act (full wording in the Legal Annex) states that a public authority is not obliged to comply with a request if the authority estimates that to do so would exceed the appropriate costs limit.
13. The 'appropriate limit' in relation to this case as set out by the Freedom of Information and Data Protection (Appropriate Limit and Fees)

Regulations 2004 (“the Fees Regulations”) is £600, or one person working for 3.5 days. The Fees Regulations further specify the tasks that can be taken into account when reaching a cost estimate. They are:

- determining whether the information is held;
 - locating the information;
 - retrieving the information;
 - extracting the information.
14. Section 12(1) explicitly states that public authorities are only required to estimate the cost of compliance with a request, not give a precise calculation. Therefore, it is the Commissioner’s task (in this situation) to decide whether or not the estimate provided by HMCS is reasonable in the circumstances.
 15. The Commissioner notes that in this case the complainant has made more than one request within a single item of correspondence. Section 12(4) provides that requests can be aggregated so that the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them. Regulation 5 of the Fees Regulations sets out the relevant condition in this case and provides that multiple requests can be aggregated in circumstances where two or more requests relate to any extent, to the same or similar information. Although this test is very broad, it is possible that one or more requests may not meet this test and the Commissioner has therefore considered whether he is satisfied that the requests relate to the same or similar information.
 16. The Commissioner has born in mind that the requests need only relate to *any extent* to the same or *similar* information. Requests will be considered similar by the Commissioner where there is an overarching theme or common thread running between them in terms of the nature of the information that has been requested. The Commissioner has decided in this case that the requests all relate to similar information concerning applications for judicial review and therefore can be aggregated for the purposes of the costs estimate.
 17. In correspondence with the Commissioner, HMCS explained its reasoning behind the costs estimate and why it considered that compliance with the request would exceed the appropriate limit. In relation to part two of the request – “*the number of successful and unsuccessful applications*” – HMCS stated that while it could access information concerning the number of cases where permission for judicial review had been granted or refused this would not give a true reflection of the number of successful cases. HMCS informed the Commissioner that it would be necessary to read through each

individual file locating the terms of consent to establish reasons for each withdrawal. This would enable an accurate picture of how many cases were actually successful.

18. HMCS stated that for the period specified in the request 6,859 cases were settled or withdrawn by consent. To ascertain the number of successful cases it would be necessary to read the terms of the orders for each individual case file, and in some cases studying documentation accompanying the consent order would also be necessary. HMCS explained:

"Where the consent order sets out the terms of settlement, it would take approximately 2 minutes a case to ascertain the terms of the order, which equates to approximately 32 days work based on a standard working day of 7.2 hours. Where the terms are not set out in the order, it will be necessary to obtain the court file and read through the documents. It would take approximately 8 minutes per file, including retrieving the file from dead filing, based on a sample test of 5 cases, which would equate to approximately 127 days work. I would anticipate having to obtain the file in approximately 40% of the cases..."

19. With regard to parts five and seven of the request HMCS explained that to determine the number of unsuccessful cases in which costs were ordered (part five) and the number of cases where the court considered the case to be without merit (part seven) would involve a check of the final orders in each case. HMCS identified 9,385 cases in the relevant time period, comprising 8,846 cases where permission was refused and 539 cases that were dismissed following a substantive hearing. Based on an estimate of two minutes per case file HMCS calculated that locating, retrieving and extracting this information would equate to approximately 43.5 days work.
20. HMCS identified 383 cases relevant to parts nine and ten of the request (which related to cases which had been transferred to another region). It asserted that each individual court file would need to be read in order to locate, retrieve and extract the requested information. HMCS estimated that this would take eight minutes per file and confirmed that the estimate included retrieving the file from the venue to which it had been transferred. This equated to approximately 14.2 days work.
21. The Commissioner's view is that the estimate provided by HMCS in this case is a reasonable one and that compliance with the request would exceed the appropriate costs limit by some considerable margin. He has not, therefore, investigated any further whether information in relation to part six of the request is held as the cost of compliance with

all parts of the request has been aggregated. The Commissioner is satisfied that HMCS offered adequate advice and assistance under section 16(1) of the Act, but that this offer was not taken up by the complainant.

The Decision

22. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

23. The Commissioner requires no steps to be taken.

Right of Appeal

24. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

25. 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.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 9th day of May 2011

Signed

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

Section 12(2) provides that –

"Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit."

Section 12(3) provides that –

"In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases."

Section 12(4) provides that –

"The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (c) by one person, or
- (d) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Duty to provide Advice and Assistance

Section 16(1) provides that -

“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.”