

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 10 March 2011

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

Summary

The complainant requested information about the case of an individual executed for murder in the 1950s whose conviction was later quashed, and about the handling of previous requests for information about this case. The public authority refused the requests under section 12(1) as it believed that the cost of compliance with these requests would be in excess of the appropriate limit. The Commissioner finds that the public authority was correct to refuse the majority of the requests under section 12(1), but that this did not apply in relation to two of the requests. In relation to these two requests, the public authority is required to either disclose the information specified, or provide valid reasoning as to why this information will not be disclosed. The public authority also breached the Act in that it did not respond to some of the requests within 20 working days of receipt.

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 complainant made the following information requests on 1 February 2010:
 - (i) *"[all information relating to] Freedom of Information requests that have been made relating to the George*

Kelly case (George Kelly having been wrongfully executed in 1950 and his conviction quashed in 2003). I understand that there has been one request that the Ministry of Justice have interpreted as meaning basically everything held by the Ministry of Justice regarding the case (TRIM File OPR/042/005/3101)."

- (ii) *"[all information relating to] the seeking of material held by the Ministry of Justice relating to the George Kelly case by the Data Access and Compliance Unit (identifying the names and designations of those involved) of the Ministry of Justice in late 2008 and in 2009 to comply with such requests (identifying the names and designations of those from whom material was sought). I understand that the Data Access and Compliance Unit sought the requisite information from others in the Ministry of Justice earlier this year and pointers were given to identify all information by Kate (telephone number 0203 334 5151)."*
 - (iii) *"The material provided to the Data Access and Compliance Unit following it being sought by it in or about April 2009 – this should be basically everything held by the Ministry of Justice regarding the George Kelly case."*
 - (iv) *"The information regarding releasing (or blocking the release) of material in response to the earlier Freedom of Information requests relating to the George Kelly case including any advice sought and provided regarding the release of such material (identifying the names and designations of those involved) in the decisions taken."*
 - (v) *"The intention of my request is to obtain everything that is held by the Ministry of Justice relating to the George Kelly case".*
3. The public authority responded to these requests on 17 March 2010, outside 20 working days from receipt of the requests. The requests were refused under section 12(1) as the public authority believed that the cost of compliance would exceed the limit. This response included no estimate as to the cost of compliance with the request, nor any breakdown as to how this estimate had been formed. The complainant was provided with brief advice as to how his requests could be refined in order to bring the cost of them within the appropriate limit.
4. The complainant responded on 19 March 2010 and requested an internal review. At this stage the complainant also made the following further information requests:

- (vi) *"Please provide to me the complete recorded information regarding the handling of my original request and my communication with Rowena Collins-Rice."*
 - (vii) *"Please provide a detailed breakdown as to the calculation of the cost – when, how and who undertook such a calculation?"*
 - (viii) *"Please will you now provide as much information as you are able to within 3.5 working days ensuring that all material passing to and from Ministers is dealt with first of all and then work through the rest of the material already obtained by your Unit."*
5. The public authority responded initially on 20 April 2010 and refused requests (vi) to (viii) under section 12(1). The public authority stated at this stage that it estimated that it would take '7.5 days' to comply with these requests.
6. The public authority responded with the outcome of the internal review on 12 July 2010. Whilst this response referred only to requests (i) to (v), it also stated that these requests had been responded to in the 20 April 2010 correspondence, rather than, as had actually been the case, the 17 March 2010 correspondence. The Commissioner has taken this reference to requests (i) to (v) and also to the 20 April 2010 correspondence (which addressed requests (vi) to (viii)) as an indication that the internal review in fact covered all of requests (i) to (viii).
7. The outcome of the internal review was that the refusal under section 12(1) was upheld. The public authority now stated that it estimated that it would take '45 days' to comply with the complainant's requests and gave a breakdown of how this estimate had been formed. The public authority again provided brief advice as to how the requests could be refined in order that it may have been possible to comply with them without exceeding the cost limit, and offered further advice if the complainant wished to contact the public authority to discuss his requests.

The Investigation

Scope of the case

8. The complainant contacted the Commissioner's office on 11 August 2010 in connection with these requests. The complainant stated that he did not agree that it would exceed the cost limit to comply with his requests as he believed that the information that he had requested had been

collated previously in response to earlier, similar requests made by others.

Chronology

9. The Commissioner contacted the public authority in connection with this case initially on 5 October 2010. The public authority was asked to respond clarifying which of the requests it had aggregated when forming its cost estimate and to provide a detailed breakdown of the cost estimate. It was also asked to address the suggestion made by the complainant that the information requested had been collated for the purpose of responding to previous requests.
10. The public authority responded to this on 3 November 2010. The public authority clarified how the requests had been aggregated and provided some further explanation about the calculation of the cost of the complainant's requests. Further correspondence ensued between the Commissioner's office and the public authority during which issues concerning the handling of the requests were clarified.

Analysis

Substantive Procedural Matters

Section 12

11. The public authority has cited section 12(1), which provides that a public authority is not obliged to comply with an information request where the cost of doing so would exceed the appropriate limit. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations) provide that the appropriate limit is £600 for central government public authorities and that the cost of compliance with a request must be calculated at the rate of £25 per hour. This means that section 12(1) effectively provides a time limit of 24 hours.
12. The fees regulations also specify the tasks that may be taken into account when forming a cost estimate as follows:
 - determining whether the information is held;
 - locating the information;
 - retrieving the information;
 - extracting the information.
13. Section 12(2) provides that the cost limit can be cited in relation to the duty imposed by section 1(1)(a) to confirm or deny whether information

14. Section 12(1) is specific that a public authority is required to *estimate* the cost of compliance with a request, rather than give a precise calculation. The task for the Commissioner here is to reach a decision as to whether the cost estimate made by the public authority is reasonable.
15. The complainant has made eight requests. Regulation 5 of the fees regulations provides that the cost of complying with multiple requests can be aggregated where two or more requests are received within the same 60 working day period and relate to any extent to the same, or similar, information. This provides a wide definition of related requests.
16. When in correspondence with the Commissioner, the public authority stated that it had aggregated requests (i) to (v), and separately aggregated requests (vi) to (viii). However, as covered further below, the estimate of the cost of compliance with all of the requests is primarily based upon the time that would be taken in reviewing information collated for the purposes of an earlier subject access request. Based on this explanation of how the cost estimate was formed, it appears that the public authority has, in fact, aggregated the cost of all eight requests when forming its cost estimate.
17. The view of the Commissioner on which requests it was reasonable for the public authority to aggregate is that requests (i) to (v) and (viii) are sufficiently closely linked that the cost of compliance with these can be aggregated. The primary reason for this is that it is clear why it would be necessary for the public authority to search the same information in order to comply with these requests.
18. The Commissioner does not, however, agree that it was reasonable for the public authority to aggregate the cost of compliance with requests (vi) and (vii). These requests relate to the handling of requests (i) to (v) and it is not clear why it would be necessary for the public authority to search the information store within which information relevant to requests (i) to (v) and (viii) is held in order to comply with these requests. The Commissioner has, therefore, considered whether it was reasonable for the public authority to estimate that the cost of compliance with requests (i) to (v) and (viii) was in excess of the appropriate limit and, separately, the same in relation to requests (vi) and (vii).

19. Covering requests (i) to (v) and (viii) first, request (v) makes clear that the complainant requests everything held by the public authority that relates to the George Kelly case. Elsewhere in these requests, the complainant makes reference to previous requests having been made for information relevant to the George Kelly case and believes that information has been previously collated for the purpose of responding to these requests.
20. The Commissioner asked the public authority to comment on the issue raised by the complainant of whether the information requested had been previously collated for the purposes of responding to other requests. The response of the public authority on this point was that a third party had previously made a subject access request and that information relevant to the George Kelly case had been amongst that collated for the purpose of responding to that subject access request. The public authority stated that this information was held in paper form and that it would be necessary to search this information in order to separate out any information relevant to the complainant's requests.
21. The public authority has stated that the information collated for the purpose of responding to a previous subject access request consists of '*four large drawers of paper files*' in which it estimates that there are 18,000 pages of information. The public authority estimates that it would take '45 days' to search these paper files for information relevant to the complainant's requests. The Commissioner accepts that the time spent searching such voluminous paper records would be in excess of the limit. He also accepts that this task would fall within those specified in the fees regulations as this would be the retrieval and extraction of information and so is a task that can be taken into account when forming a cost estimate.
22. Less clear, however, is why it would be necessary for the public authority to search the information collated for the purposes of a subject access request made by a third party in order to comply with the complainant's requests. This would appear to only be necessary if these paper files were the only place within the public authority in which that information is held. If these paper files consisted of copies that had been made for the purposes of responding to the subject access request and the originals were held elsewhere within the public authority, possibly in a more organised format, it would have been appropriate for the public authority to have considered if the requests could have been complied with via these alternative locations of this information.
23. On this point, the public authority has stated that the information collated for the purposes of the subject access request includes within it information that relates to the handling of information requests made under the Freedom of Information Act by the same individual who made

the subject access request. This means that it would be necessary to search this information in order to comply with requests (i) to (iv), as the information relating to the previous information requests made by the third party would be within the scope of the wording of requests (i) to (iv).

24. The public authority has also stated that if request (v) were considered in isolation, it would be necessary to search the information collated for the purpose of the subject access request in order to retrieve and extract all information held by the public authority relating to the George Kelly case. This explanation from the public authority effectively confirms that the information collated for the purpose of responding to the third party's subject access request includes information that is not also held in any other location within the public authority.
25. On the basis of these explanations, the Commissioner accepts that it would be necessary for the public authority to search the paper files referred to above in order to retrieve and extract the information specified by the complainant in requests (i) to (iv) and (viii). Having already accepted that the time and cost of searching this information would exceed the appropriate limit, the conclusion of the Commissioner is that section 12(1) does apply and so the public authority was not obliged to comply with these requests.
26. However, the Commissioner remains concerned that the public authority focussed excessively on the wording within the complainant's requests that referred to previous requests made by others. The Commissioner considers that it would have been more productive, and in line with the obligation to provide advice and assistance imposed by section 16(1), if the public authority had given greater consideration to the request for all information relating to the George Kelly case and what information, not amongst that collated in relation to the earlier information request, it held that fell within the scope of this request. The Commissioner comments further on this point at paragraph 35 below.
27. Turning to requests (vi) and (vii), as noted above the Commissioner does not believe that it is reasonable to collate the time and cost of compliance with these requests with the remainder of the complainant's requests. This means that it is necessary to consider if the time and cost of these two requests combined would be in excess of the appropriate limit.
28. The public authority has provided no separate cost estimate in relation to these two requests. In the absence of a cost estimate, the Commissioner has considered what an objective view about the burden imposed by these requests would be, based upon the wording of these requests. The view of the Commissioner on this point is that it is unlikely

that an objective view would be that these requests would impose a burden in excess of the appropriate limit. The conclusion in relation to requests (vi) and (vii) is, therefore, that section 12(1) does not apply in relation to these requests. The public authority is required to comply with the step specified in relation to requests (vi) and (vii) at paragraph 32 below.

Procedural Requirements

Sections 1 and 10

29. In failing to disclose the information specified in requests (vi) and (vii), in relation to which the Commissioner now finds that section 12(1) does not apply, within 20 working days of receipt of the requests, the public authority did not comply with the requirements of sections 1(1)(b) and 10(1).

Section 17

30. In failing to respond within 20 working days of receipt of requests (i) to (v) with a refusal notice stating that the requests were refused under section 12(1), the public authority did not comply with the requirement of section 17(5).

The Decision

31. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that it applied section 12(1) correctly in relation to requests (i) to (v) and (viii). However, the Commissioner also finds that the public authority breached sections 1(1)(b) and 10(1) in relation to requests (vi) and (vii) in applying section 12(1) incorrectly. The Commissioner further finds that the public authority breached section 17(5) in responding to requests (i) to (v) outside 20 working days.

Steps Required

32. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- disclose the information specified in requests (vi) and (vii), or issue a refusal notice valid for the purposes of section 17 setting out why this information will not be disclosed.

33. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

34. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

35. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. As noted above at paragraph 26, it appears that the public authority focussed on the wording within the complainant's requests that concerned previous requests and that this appears to have been at the expense of considering what information, other than that collated for the purpose of the earlier subject access request, was held. The Commissioner considers that it may be appropriate at this stage for the public authority to discuss with the complainant how his requests could be refined to exclude the paper files that were the focus of the cost estimate.

Right of appeal

36. 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: 0845 600 0877

Fax: 0116 249 4253

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

Website: www.informationtribunal.gov.uk

37. 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.
38. 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 10th day of March 2011

Signed

**Gerrard Tracey
Principal Policy Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

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."

Section 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

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 17(5) provides that –

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."