

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 17 August 2011

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

Summary

The complainant asked the Ministry of Justice (the "public authority") to provide background information relating to some reoffending statistics it had published. The public authority confirmed that it held the requested information but refused to comply with the request on the grounds that the cost of compliance would exceed the appropriate limit under section 12 of the Freedom of Information Act (the "Act").

The Commissioner has investigated and finds that the public authority correctly cited section 12(1) of the Freedom of Information Act 2000. He requires no further steps to be taken.

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.

Background

2. The complainant's request is based upon some statistics on reoffending rates published by the public authority. These are now archived online and can be found via the following link to the National Archives:

<http://webarchive.nationalarchives.gov.uk/+http://www.justice.gov.uk/publications/reoffendingofadults.htm>

3. The publication which is the centre of this request is one using results from the 2008 cohort. This explains at the beginning that:

"This report contains reoffending data that cover adults released from custody or commencing a court order under probation supervision in the first quarter of the cohort year. A reoffence is defined as any offence committed in the one-year follow up period proven by a court conviction".

4. Statistics are measured in 'cohorts'. These are classified as follows¹:

"The measure does not track all the offenders in a given year, but instead looks at a 'cohort'. The cohort is made up of all offenders discharged from a custodial sentence or starting a community sentence in the first three months of each calendar year (January to March) – for juveniles the cohort also includes those receiving an out-of-court disposal (reprimand or final warning) and other court convictions. This cohort usually consists of between 40,000 and 60,000 offenders".

5. The request also refers to indeterminate sentences. The public authority has provided the Commissioner with the following information about this terminology:

"Unlike a prisoner with a determinate sentence who must be released at the end of that sentence, those sentenced to life imprisonment or an indeterminate sentence of Imprisonment for Public Protection (IPP) have no automatic right to be released. Instead, such prisoners must serve a minimum period of imprisonment to meet the needs of retribution and deterrence. This punitive period is announced by the trial judge in open court and is known commonly as the 'tariff' period. No indeterminate sentence prisoner can expect to be released before they have served the tariff period in full. However, release on expiry of the tariff period is not automatic. Release will only take place once this period has been served and the Parole Board is satisfied that the risk of harm the prisoner poses to the public is acceptable.

The indeterminate group [the complainant] is referring to would be a subset of those released from prison having been awarded sentences of more than 4 years. Since he refers to the re-offending publication and table A5 I believe [the complainant] is

¹ <http://www.justice.gov.uk/publications/docs/national-reoffending-measures-guide-210509.pdf>

interested in a further breakdown of this particular group of offenders”.

The request

6. On 4 December 2010 the complainant made the following information request:

“I wish to obtain more indepth information from the data that you publish in the ‘Reoffending of adults: results from the 2008 cohort’ statistics bulletin.

Appendix A of this document provides a number of tables in which various figures of reoffending are given for different criteria, such as gender or age. Table A5 provides reoffending figures for the criteria of index disposal, and gives those who have served 4+ years in custody. It does not, however, provide a figure for those who have served an indeterminate sentence.

This is the data I wish to obtain for the 2008, and preferably back to 2002, for the cohorts chosen in these statistics bulletins. Please include all the various numbers, rates and frequencies for the I.S.P’s identical to those in table 5”.

7. On 21 December 2010 the public authority responded. It advised the complainant that it did hold information within the scope of his request but further explained:

“... the Department does not hold centrally the information required to identify those offenders who have served indeterminate sentences from available re-offending data. The work required to meet your request would involve matching records across databases, extracting re-offending data, and manually checking individual records to ensure that the data sources were being matched correctly”.

8. It estimated that it would take more than 3.5 days to provide the appropriate information, thereby exceeding the appropriate limit. It suggested a way in which to refine the request to keep it within the limit.

9. On 25 January 2011 the complainant sought an internal review.

10. On 8 February 2011 the public authority provided its internal review. It explained to the complainant that:

"... the data system we use to calculate re-offending rates does not separately identify prisoners who served indeterminate sentences. To obtain this information would require the extraction of cases from one data system and then matching them to another database used to calculate re-offending rates for the relevant reporting period. Even if the number of prisoners serving indeterminate sentences of more than four years is small it would still require the matching process to be as accurate as possible so that we have the full representation of such offenders when calculating their re-offending rates".

11. It upheld its previous position regarding the appropriate limit.

The investigation

Scope of the case

12. On 28 February 2011 the complainant wrote to the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the cost limit would be exceeded.
13. The complainant also raised issues regarding the actual costs cited by the public authority. He was subsequently advised by the Commissioner that the costs are not something chosen by the public authority but are based on The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004². This issue will therefore not be addressed in this Notice because it is not a requirement of Part 1 of the Act.

Chronology

14. On 31 May 2011 the Commissioner wrote to the complainant to advise that he was commencing his investigation.
15. On the same day, the Commissioner raised some initial queries with the public authority.
16. On 24 June 2011 the public authority responded.
17. On 27 June the Commissioner raised a further query. This was responded to on 4 July 2010.

² <http://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

18. On 5 July 2011 the Commissioner raised specific questions regarding the calculation of the appropriate limit. The response was received on 19 July 2011.
19. Further enquiries were made and a response received on 3 August 2011.

Analysis

Substantive procedural matters

Section 12 – cost of compliance exceeds appropriate limit

20. Section 12(1) of the Act 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.”

21. The ‘appropriate limit’ in relation to this case (as set out by the fees regulations) is £600, or 24 hours at £25 per hour. 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.

22. 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 the public authority is reasonable in the circumstances.

23. In its estimate provided to the Commissioner as part of his investigation, the public authority described the tasks involved and problems surrounding searching for information held, as follows:

“The question asked for re-offending rates for offenders released from indeterminate sentences. To calculate this, the following steps would be needed:

1. *It is not possible to identify those offenders released from indeterminate sentences from the data we already hold on re-offending. This information is only held on a separate database held by NOMs [National Offenders Management Service]. The request is, therefore, not a further breakdown of the data that is already published but a whole new set of data that is required. Records for prisoners on and released from indeterminate sentences are held on the Public protection unit database (PPUD) by NOMS. This database contains all offenders that present a risk to the public. This database does NOT hold a list of ALL prisoners or ALL releases. Therefore the first stage would be for NOMs to extract a list of all indeterminate sentenced prisoners that were discharged in the relevant years from PPUD. It is not possible to determine their re-offending rates from this system alone as this only gives a list of personal identifiers, prison information and release dates. **(3hrs)***
2. *The PNC (Police National Database) extract we hold is a frozen snapshot of offending information for all offenders that have been convicted or caution in England and Wales. To obtain re-offending information we therefore need to match the list of offenders released from indeterminate sentences to the PNC. We have pre-written code that would need to be modified (as it is only currently set up for specific data) **(6 hrs work)** for this purpose to clean the data and marry up all of the records obtained from PPUD and to extract offending information from the PNC.*
3. *This code matches on surnames, initials, date of births and also looks at aliases used by the offender. To run the automatic stage of the code takes approximately **2hrs**. Not all of the offenders will be matched through this process (as we have not used this data before we do not know the quality of the data – if the quality of the data is low i.e. lots of missing DOB or initial then the match rate will be considerably lower and the number of manual records to check will be higher – our usual match rate is approx 95% but this may be considerably lower for a new dataset). For those not matched we would carry out manual checking to ensure full representation of the small numbers released from indeterminate sentences. It takes approximately 5 minutes to check each record. **(5hrs approximately)***
4. *Once this step of the process is complete we have a unique PNC identifier for the offenders discharged from an indeterminate sentence. We then have to link/match to a number of tables from the PNC database to obtain re-offending information. This involves running and modifying a*

complex piece of code which needs to be run in steps manually. (12hrs)

5. *Once we have all the re-offending information for the group of offenders we need to produce summary tables for each year (2hrs)".*

24. The public authority clarified to the Commissioner that the tables within the statistics that the complainant has viewed do not include any data for indeterminate sentences, i.e. they do not form part of the sentences in the category of '4 years and over'. Although it may be assumed that the numbers are likely to be smaller than those in the category of 4 years and over, this data has not previously been gathered and considered as part of the statistical analysis. Therefore, the numbers involved, and the accuracy of the records, which may well be quite old in many cases, has never been previously assessed. The process for calculating the figures requested would therefore need to be performed as a totally new task.

25. The issue of what constitutes a reasonable estimate in relation to the cost limit was considered by the Information Tribunal in the case of *Roberts v the Information Commissioner*. The Commissioner is assisted by the Tribunal's approach as set out in paragraphs 9 -13 of the decision:

- *"Only an estimate is required"* (i.e. not a precise calculation);
- the costs estimate must be reasonable and only based on those activities described in regulation 4(3);
- time spent considering exemptions or redactions cannot be taken into account;
- estimates cannot take into account the costs relating to data validation or communication;
- the determination of a reasonable estimate can only be considered on a case-by-case basis; and,
- any estimate should be *"sensible, realistic and supported by cogent evidence"*.

26. The Tribunal went on to suggest that producing an estimate requires a process of both investigation and assessment/calculation. At paragraph 12, the Tribunal said:

"....The investigation will need to cover matters such as the amount of information covered by the request, its location, and the hourly rate of those who have the task of extracting it. The second stage will involve making an informed and intelligent assessment of how many hours the relevant staff members are likely to take to extract the information..."

27. The Regulations specify those tasks that may be taken into account when forming a cost estimate. The Commissioner considers the tasks identified by the public authority to be caught within the tasks specified in the Regulations.
28. The Commissioner has considered the estimate put forward by the public authority and is satisfied that it is a reasonable one and that the cost of compliance would exceed the appropriate costs limit. Therefore, the public authority was correct to apply section 12(1) to the request.

Section 16 – advice and assistance

29. Section 16(1) of the Act provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so.
30. The Code of Practice issued under section 45 of the Act (the Code) provides guidance on good practice to public authorities in carrying out their duties in relation to the Act. The Code includes suggestions in relation to the nature of the advice and assistance that public authorities should provide in relation to section 16 of the Act. Paragraph 14 of the Code recommends that:

“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. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee.”

31. The Commissioner notes that, in its refusal letter of 21 December 2010 the public authority suggested:

“You may wish to narrow the scope of your request in order to try and bring it within the cost limit. For example, you may wish to narrow the scope of your request by asking for the re-offending rates for lifers which we can provide from existing data.”

32. When asking for an internal review the complainant did not seek to revise his request. Rather he sought to disagree with the costs assessment.

33. As the public authority has tried to provide advice and assistance to the complainant, the Commissioner finds that it met its obligations under section 16 of the Act.

The Decision

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

Steps required

35. The Commissioner requires no steps to be taken.

Other matters

36. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following.
37. During his investigation the public authority advised the Commissioner of the following work which was currently being undertaken:
- "You may be interested to know that we will be publishing a new quarterly re-offending bulletin on 27 October 2011 through which it will be possible to provide re-offending rates for offenders released from indeterminate/IPP sentences but only from 2009 onwards".*
38. It may be that this forthcoming publication will be of assistance to the complainant, although it does not cover the same time periods as his request.

Right of Appeal

39. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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.

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 17th day of August 2011

Signed

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

Legal annex

Section 12 - cost of compliance exceeds appropriate limit

- (1) 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.*
- (2) 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 16 - duty to provide advice and assistance

- (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.*