

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 September 2012

Public Authority: Crown Prosecution Service
Address: Rose Court
2 Southwark Bridge
London
SE1 9HS

Decision (including any steps ordered)

1. The complainant requested information concerning the identity of the official who allocated work on receivership proceedings to a named individual during a particular time period. The Crown Prosecution Service (CPS) refused this request under section 12(1) of the FOIA as it estimated that the cost of compliance with the request would exceed the appropriate limit.
2. The Commissioner's decision is that the cost estimate made by the CPS was reasonable and so it is not required to comply with this request. However, the Commissioner also finds that the CPS breached section 16(1) of the FOIA in that it did not provide advice and assistance to the complainant as to how his request could have been refined to bring it within the cost limit.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Contact the complainant with advice as to how the request could be refined so that it may be possible to comply with it without exceeding the cost limit.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 2 December 2011, the complainant wrote to the CPS and requested information concerning who had been responsible for allocating work on receivership proceedings to a named individual during a particular time period. The wording of the request was as follows:

“who allocated...work [on receivership proceedings] to [named individual]”.

6. The CPS responded on 4 January 2012. It stated that the request was refused under section 12(1) of the FOIA as compliance with it would exceed the cost limit of £600.
7. The complainant requested an internal review on 10 January 2012. The CPS wrote to the complainant with the outcome of the internal review on 25 January 2012, stating that the refusal under section 12(1) was upheld.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled on 25 January 2012. At this stage the complainant indicated that he was dissatisfied with the refusal of his request under section 12.

Reasons for decision

Section 12

9. Section 12(1) provides that a public authority is not obliged to comply with a request if the cost of doing so would exceed the appropriate cost limit. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations) at £600 for central government bodies. The fees regulations also state that the cost of a request must be calculated at the rate of £25 per hour, meaning that section 12 effectively provides a time limit of 24 hours.
10. The tasks that can be taken into account when calculating a fees estimate are specified in the fees regulations as follows.
- Determining whether the requested information is held.
 - Locating that information.

- Retrieving the information.
- Extracting the information.

The task for the Commissioner here is to conclude whether the time that it would be necessary for the CPS to spend on the above tasks in relation to the complainant's request would exceed 24 hours. If that limit would be exceeded section 12(1) will apply and the CPS would not be obliged to comply with this request.

11. Turning to the explanation given by the CPS of the cost estimate, it has specified two locations in which information falling within the scope of the request may be held; in electronic form on its database known as 'SOLAR' and in paper form in 34 boxes. In relation to 'SOLAR', the CPS has provided an explanation as to why it would not be possible to provide the information requested from this database.
12. This explanation concerned each receivership record not clearly showing an individual lawyer responsible for each case. It gave several reasons in explanation for this; a case may run for several years and have a number of different lawyers working on it during this time, but the database would record only the identity of the last lawyer who worked on the case. Alternatively, it may record the names of all lawyers who worked on the case at every stage. It also stated that there is the possibility of the wrong lawyer being attributed to a case.
13. It was evident from the explanation given by the CPS that it would be the case lawyer in each case who would have been responsible for allocating work to the individual named in the request, meaning that it is the identity of the lawyer in each case that the complainant is seeking. The position of the CPS appeared to be that, whilst the identity of *a* lawyer who had worked on each insolvency case would be recorded on SOLAR, it would not be possible to identify from this database who had been *the* lawyer responsible at the time of the allocation of work to the individual named in the request.
14. For this reason, the CPS believed that it would be necessary to search paper records for the information requested. It stated that it would be necessary to search 64 'boxes' of information, and that each of these boxes would hold approximately 1,500 pages. As to why it was necessary to search through each of these boxes, it stated that this would be required to check names on correspondence and witness statements in order to identify the relevant name. It gave an estimate of 30 minutes per box, giving an overall time of 32 hours or a cost estimate of £800.

15. The Commissioner has some reservations about the explanations for its cost estimate provided by the CPS. First, these were not of the level of detail that any public authority should be capable of supplying in explanation for refusing a request on cost grounds. The Commissioner gave the CPS two opportunities to explain the reasoning for its estimate. On the second occasion, the CPS was directed specifically to detail which tasks listed in the fees regulations it would be necessary for it to undertake in relation to the 64 boxes of material in order to comply with the request. The response on this point consisted of two sentences which did not include the requested explanations. This response was instead primarily a repetition of its previous response to the ICO, which itself for the most part simply repeated the wording of the refusal notice.
16. Secondly, part of the concern of the CPS in relation to supplying information from the SOLAR database was that this information could have been inaccurate. The CPS should be aware that the FOIA provides a right of access to recorded information; that recorded information may be inaccurate does not mean that it should be withheld from disclosure if it nonetheless falls within the scope of a request. In short, that recorded information may be inaccurate does not remove the obligation to disclose that information should it be requested. Also, that the CPS holds information which it appears to believe may well be inaccurate appears to indicate a records management issue that should be resolved.
17. The Commissioner does, however, accept that the estimate of cost made by the CPS was reasonable. Whilst it may have been possible to supply the requested information with relative ease had it been held on the SOLAR database, the Commissioner accepts the explanation from the CPS as to why this was not the case and so also accepts that it was necessary to conduct a search of paper records.
18. In relation to the paper records, the Commissioner accepts that 30 minutes is a reasonable estimate of time to locate and extract the requested information from each box of approximately 1,500 pages and so he finds that the estimate of £800 for complying with this request is also reasonable. Section 12(1) does, therefore, apply and the CPS is not required to comply with the complainant's request.
19. In any event, as noted below the CPS should now contact the complainant offering advice as to how his request could be refined. This provides an opportunity for the CPS to give detailed consideration to how it may be possible for it to provide some information to the complainant. There is also the option for the complainant to specifically request information recorded on SOLAR, regardless of any concerns held by the CPS about the accuracy of that information.

Section 16

20. Section 16(1) requires that public authorities should provide advice and assistance to any person making an information request. In relation to section 12, where it may be possible for the request to be refined so that it could be possible to comply with it without exceeding the cost limit, advice should be provided to the requester as to how such refinement may be achieved.
21. In this case, whilst the Commissioner has accepted the cost estimate, this is not so far in excess of the limit that it would be unlikely to be possible to provide meaningful advice on refining the request. The CPS did not, however, provide to the complainant any advice on refining the request. As a result the Commissioner finds that the CPS breached section 16(1) of the FOIA and at paragraph 3 above it is now required to take remedial action.

Right of appeal

22. 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: 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

23. 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.
24. 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

Jon Manners
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