

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 October 2014

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

#### Decision (including any steps ordered)

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1. The complainant has requested, in respect of an amnesty offered on 1 April 2008 to certain suppliers of legal aid services, how many of the relevant suppliers had been sent a request for payment.
2. The Commissioner's decision is that the Ministry of Justice (MOJ) had applied the section 12(1) FOIA exemption and section 16(1) FOIA correctly. He requires no steps to be taken.

#### Request and response

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3. On 22 January 2013, the complainant wrote to MOJ, seeking information as an integral part of a much larger body of correspondence and other related information requests. The request was in three parts - A, B and C. There followed correspondence, during the course of which MOJ provided parts of the requested information. The main outstanding issues were parts B and C(6) of the request. The complainant subsequently said, on 16 June 2014, that his main concern was with C(6) of the request rather than with part B.

4. Part C(6) of the request was for:

*C(6) Prior to the amnesty on 1st April 2008, in the case of each and every one of the said 5587 providers subsequently offered the amnesty, how many of them were sent or delivered a request for payment as described in (5) above or would have been so sent or delivered*  
*(1) None?*

- (2) *Some?*
- (3) *Most?*
- (4) *All?*

5. Initially MOJ said that the part C (6) information was not held, a position it maintained at internal review on 17 October 2013. However, MOJ later accepted that the part C(6) information was held but said that it could not be provided within the cost constraints of section 12(1) FOIA and the 2004 Regulations.

### **Scope of the case**

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6. This matter is of long standing and has involved the complainant's correspondence with MOJ itself and with some of its executive agencies. For clarity, the Commissioner refers to MOJ throughout this notice.
7. MOJ told the Commissioner, by way of background information that, following judicial review proceedings, a deed of settlement had been agreed with the Law Society whereby there had been an 'amnesty' (the amnesty) for historic cases of un-recouped payments on account, where MOJ had paid money on account to legal aid providers which needed to be reconciled against the final work done and any excess payments recovered. MOJ said that the complainant had not been refused the benefit of the amnesty but rather that he had never qualified for it, something which the complainant disputes.
8. The amnesty itself, and the determination of those who do or do not qualify to benefit from it, is not a matter for the Commissioner and he has not had regard for it in reaching his decision about the application of section 12(1) FOIA.
9. On 22 April 2014 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant did not accept that FOIA had been correctly applied by MOJ.
10. The Commissioner considered the application by MOJ of the estimated costs limit section 12(1) FOIA exemption to the information requested at part C(6) of the information request and still being withheld by MOJ (the withheld information).
11. He also considered the application by MOJ of section 16 FOIA (duty to provide advice and assistance).

## Reasons for decision

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### Section 12 – cost of compliance

12. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
13. The appropriate limit in the case of MOJ is £600, as set out in regulation 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, SI 2004/ 3244 (“the Regulations”). This must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours’ work.
14. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
  - determining whether the information is held;
  - locating the information, or a document which may contain the information;
  - retrieving the information, or a document which may contain the information; and
  - extracting the information from a document containing it.
15. When estimating whether confirming or denying whether it holds the requested information would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in determining whether it holds the information. The estimate must be reasonable in the circumstances of the case. It is not necessary to provide a precise calculation.
16. The Commissioner noted that the complainant’s request for an internal review had clarified the scope of the request, limiting it to cover only information held electronically. MOJ confirmed to the Commissioner that its further review had reconsidered the cost calculation based on the new, and more restrictive, parameters of the request.
17. During his investigation, MOJ explained to the Commissioner the debt recovery process used. MOJ said that the time taken to investigate each legal services provider varied due to a number of factors: the period the provider was in debt, the volumes of cases closed, and the numbers of payments on account made and reclaimed by way of being set off against other balances or payments made during the period of indebtedness. In practical terms this meant an investigation at case

level for every transaction on every statement (the request for payment issued to advise the firm that it owes money to MOJ) for every firm to be considered.

18. MOJ said that where a case was straightforward (ie with few transactions and little complexity) it might be possible to look up the required information in around two minutes. This was MOJ's experience where there was a need to make a specific query on a specific case for a supplier. The time needed increased with volumes of transactions or if there were increased complexity eg the transfer of a case between firms. More time would be needed if a paper file needed to be obtained and searched to further clarify matters. This meant that the minimum time required (assuming two minutes per enquiry) would be around 186 hours' work. This far exceeds the FOIA cost limit. MOJ said that its experience suggested this would be a significant over-simplification of the scale of the investigation required.
19. MOJ added that service providers were sent statements of account when it was paying money to them or requests for payment when money was owed by them to it. Where the demand for repayment took the form of a letter, it had been saved to the system as an ad-hoc letter. MOJ said it had no way of ascertaining the content of such letters without viewing them individually. There was no specific letter type or code or flag used to identify letters of this nature. This meant that, because of the way the data is stored, it was not possible to collate the information requested by running reports electronically although the information could be extracted manually.
20. ICO explored with MOJ whether there were indicators embedded within the information, or in the form in which it was stored, that could enable relevant requests for payment and letters to be identified electronically. MOJ confirmed to the Commissioner that this was not technically possible.
21. The Commissioner's staff inspected a sample record and received further representations from MOJ who explained that it was unable to find out how many requests for payment it had sent out in line with the amnesty as asked for in the information request. MOJ added that requests for payment were often sent out without a covering letter but for the requests for payment issued in line with the amnesty, a covering letter had been created for each. However, a manual file search would be required to differentiate between the two.
22. The complainant made representations to the Commissioner about the electronic database and the possibility of MOJ extracting information from it to answer his information requests. ICO put his points to MOJ

who again confirmed that a manual file search would need to be performed which would far exceed the FOIA cost limit.

23. The Commissioner decided therefore that the section 12(1) FOIA exemption had been correctly applied by MOJ.

### **Section 16 - advice and assistance**

24. Section 16(1) FOIA says that the public authority must provide advice and assistance so far as it would be reasonable to expect the authority to do so. The Commissioner expects that if a public authority estimates the cost of determining whether the information is held is above the appropriate limit, then it should provide reasonable advice and assistance.
25. MOJ suggested to the complainant that he consider limiting the request to a specific time frame or to specific details of the procurement process. The suggestion being that if he could refine the request to a small group of suppliers then MOJ might be able to provide a sub-set of the requested information within the cost threshold. However, the complainant was unable to do so.
26. ICO explored with MOJ whether or not there might be scope for a sampling exercise to be carried out to provide a valid and reliable estimate of the information requested within acceptable cost limits. MOJ said, and the Commissioner accepts, that this could not be done, not least because the information request had specified '*each and every one of the said 5587 providers*'.
27. Having reviewed the evidence before him, the Commissioner decided that MOJ had taken reasonable steps to provide advice and assistance in accordance with section 16(1) FOIA.

## Right of appeal

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28. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. 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.
30. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**