

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 September 2014

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information about Private Finance Initiative ('PFI') contracts between the Ministry of Justice (the 'MOJ') and G4S. The MOJ refused to provide the requested information on the basis that the cost of compliance with the request would exceed the appropriate limit under section 12(1) of FOIA.
2. The Commissioner has investigated and has found that the MOJ correctly relied on section 12(1) in refusing to provide the requested information. He does not require the MOJ to take any further steps.

Background

3. The complainant's request of 18 May 2013 was initially the subject of decision notice *FS50510247*¹.
 4. After seeking clarification about what the complainant meant by "exact terms", the MOJ responded to the clarified request on 9 July 2013, refusing the request on the basis that it was vexatious under section 14(1) of the FOIA. This was upheld at internal review.
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¹http://ico.org.uk/~media/documents/decisionnotices/2014/fs_50510247.as
hx

5. Following a complaint to the Commissioner, *FS50510247* was issued which did not uphold the MOJ's application of section 14(1), ordering the MOJ to issue a fresh response.

Request and response

6. On 12 June 2013 the complainant wrote to the MOJ and requested information in the following terms:

"1. Please confirm the exact terms of the PFI contracts held between the ministry of justice and G4s, the owner or corporate members the SPV

2. and the value of the contract.

3. Please confirm whether there is any truth in the rumours being put about by G4S chief executive officer that there are further prison construction programmes being considered using PFI at present and full details of these.

4. Please release all information pertaining to the recently announced construction of the new houseblock at HMP Parc another contracted out prison to G4S.

5. Have safeguards been put in place so that when Galliford Try construction come in under the agreed contract value between the contracting authority and G4S or when G4S restructure the finance around the project if it is PFI, that the money will be returned to the public purse and not redistributed to G4S shareholders."

7. The MOJ responded on 30 January 2014 and applied the exclusion contained in section 12(1) of the FOIA. It stated that it had not considered question 3 in the cost estimation and instead answered this question outside of the FOIA.
8. Following an internal review the MOJ wrote to the complainant on 27 February 2014 which maintained that section 12(1) applied to the request.

Scope of the case

9. The complainant contacted the Commissioner on 15 July 2014 to complain about the way her request for information had been handled. She asked the Commissioner to consider that this information *"is of extremely high public interest"*.

10. The Commissioner has considered whether the MOJ properly applied section 12(1) of FOIA to all parts of the request, except question 3 which the MOJ dealt with outside the FOIA because it considered that it did not constitute a valid FOIA request.

Reasons for decision

Section 12 – the cost limit

11. Section 12(1) 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.
12. The appropriate limit in this case is £600, as laid out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”). This must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours’ work.
13. 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.
14. The Commissioner notes that the initial request asked for “all correspondence” (which may have included hard copy correspondence in the search) but the internal review request clarified the scope of the request to cover only information held electronically. The MOJ confirmed that its internal review had reconsidered the cost calculation based on the new parameters of the request.
15. 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.*

16. The MOJ confirmed that at all times during the costs estimation exercise the most efficient means of obtaining the information had been examined. It provided the following cost estimate to the Commissioner:

"Manual records

Questions 1, 2, 4, 5 request information contained in manual records. It has been estimated that there are 5 files across MoJ containing documents relevant to these questions. This does not include hard copies of the three PFI contracts that fall in scope of questions 1 and 2 as the most efficient method of extracting the information required would be from the electronic copy.

5 files x 15 minutes per file = 1.25 hours

Electronic records

Question 4 requests all information relating to HMP Parc.

A sampling exercise was conducted to establish the number of electronic records in scope of the request. The exercise focused on the procurement lead only. The exercise established that there were 1500 internal and external emails relating to this contract held by the procurement lead alone which would require locating and extracting.

On review of this cost estimation ... it was brought to [the complainant]'s attention that the estimation did not take into account emails and other documentation between other staff and stakeholders within the MoJ and so in fact this was an underestimation of the costs. The internal review estimated that in total, there would be in excess of 3000 electronic files from across the whole of the MoJ.

Other records which would need locating and extracting include internal email correspondence between other staff in the MoJ; email correspondence between the MoJ and external parties; contract documentation; meeting minutes, agendas and notes. This was estimated as follows:

3000 electronic files x 5 minute per file = 250 hours

Contacting other directorates

The pre-procurement, procurement and contract management phases will have involved staff in at least three other directorates to establish how much information that is in scope of the request that they hold. This was estimated as follows:

3 directorates x 15 minutes per directorate = 0.45 hours

Total estimate – 251.7 hours x £25 per hour = £6,292.50”.

Conclusion

17. The Commissioner is satisfied that the above estimate is a reasonable one. As the overall estimate equates to just under 252 hours, the Commissioner is satisfied that the MOJ has correctly applied section 12(1), as compliance with the request would significantly exceed the appropriate cost limit. The MOJ was therefore correct to apply the exclusion in section 12(1) of FOIA to parts 1, 2, 4 and 5 of the complainant's request.

Section 16 - advice and assistance

18. If the public authority estimates the cost of determining whether the information is held as being above the appropriate limit, it is not required to conduct searches but should consider providing advice and assistance. The MOJ suggested that the complainant consider limiting the request to a specific time frame or to specific details of the procurement process. In this case, the Commissioner is therefore satisfied that the MOJ provided advice and assistance in accordance with section 16 of FOIA.

Other matters

19. The complainant did not refine her request and added further requests after the internal review stage, which the MOJ has either handled or is handling as new requests. The Commissioner has therefore disregarded the complainant's additional requests for the purposes of this notice.

Right of appeal

20. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

21. 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.
22. 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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