

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 January 2016

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

Decision (including any steps ordered)

1. The complainant submitted a multi-part request to the Ministry of Justice (MoJ) requesting information relating to a job re-grading exercise.
2. The MoJ cited section 12 of FOIA (cost of compliance exceeds the appropriate limit).
3. The Commissioner's decision is that the MoJ has correctly applied section 12. He requires no steps to be taken as a result of this decision.

Request and response

4. On 18 October 2014, the complainant wrote to MoJ and requested information under the FOIA, namely information between 20 June 2014 and 18 October 2014 in respect of the panel hearings and specialist pay issues and/or decisions relating to a job re-grading exercise. Full details of the multi-part request can be found in the annex to this notice.
5. MoJ responded on 11 November 2014. It confirmed it holds information within the scope of the request but refused to provide it citing section 12(1) of FOIA (cost of compliance exceeds appropriate limit) as its basis for doing so. MoJ provided the complainant with advice as to how to refine the request. In light of the information requested in the final point of the request, it also explained how to submit a subject access request.

6. The complainant requested an internal review on 3 December 2014. In that correspondence he also made a subject access request and a further request for information under FOIA.
7. MoJ sent him the outcome of its internal review on 5 January 2015 in which it concluded that it was entitled to apply section 12(1) to his request for information dated 18 October 2014.

Background

8. The Legal Aid Agency (LAA) is an executive agency of the Ministry of Justice (MoJ) and falls within its remit for the purposes of FOIA. MoJ is therefore the appropriate public authority in this case.
9. By way of background, MoJ explained that the grievance to which this information relates concerns a number of people over a period since 2012, prior to the LAA coming into existence.
10. The Commissioner understands that a re-grading process took place prior to the LAA changing from a non-departmental government body – then known as the Legal Services Commission - to an executive agency of the MoJ in April 2013.

Scope of the case

11. The complainant contacted the Commissioner on 20 March 2015 to complain about the way his request for information had been handled.
12. He disagrees with MoJ's view that his request is 'very wide in scope' and disputes that it would take more than 24 hours to locate and provide the requested information. He told the Commissioner that the bulk of the documentation he has requested has been the subject of similar FOI requests. He indicated that MoJ has previously disclosed copies of "a substantial amount" of the information he has requested.
13. In the course of his correspondence with the Commissioner the complainant raised issues which are outside the scope of the Commissioner's remit. For example he told the Commissioner:

"These documents would be readily discoverable in pre-action disclosure or upon general or specific disclosure during the course of Court proceedings and they would all be available for inspection".
14. 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 (FOIA). He cannot investigate other matters that may lie behind a request.

15. During the course of the Commissioner's investigation, MoJ confirmed its application of section 12. It also advised, however, that it had located, extracted and collated relevant information in response to an FOI request made **after** the request under consideration in this case. MoJ told the Commissioner it was willing to informally resolve this complaint by providing the information disclosed in that case to the complainant.
16. Accordingly, during the course of the Commissioner's investigation, MoJ wrote to the complainant. It provided him with a copy of the information it had released in redacted form in relation to that request. It explained that in its view, that request related to points 1-7 of the request in this case.
17. The complainant subsequently confirmed that he was not satisfied with that approach. He told the Commissioner:

"The position is that that the MOJ has purported to provide me with documents in relation to items 1 -7 of my initial request for information but none of the remaining items (8-16). Those items that have been supplied were supplied well over a year since my initial FOI request and they are only a small part of what has been requested. In many instances the documents which have been have been inappropriately redacted in crucial particulars.... [sic]

It is also evident that that the MOJ holds further documents in relation to the "Specialist Pay" issue element in the dispute-as I suspect you are aware. It has failed to address that issue at all without any good reason. The number of documents that has been provided overall is very small in number and it suggests strongly that the primary reason advanced for not providing the documents (time and cost) has no substance.....

I have no confidence that everything that ought to have been provided has been provided or that the reason for failing to provide outstanding material is justified."

18. Having been advised that the complainant remained dissatisfied, MoJ confirmed to the Commissioner its section 12 response in this case.
19. In light of the above, the following analysis considers MoJ's application of section 12 FOIA to the requested information.

Reasons for decision

Section 12 cost of compliance

20. Section 12(1) of the FOIA states 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. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours in this case.

22. Section 12(4) of the FOIA states that:

"The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority-

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them".

23. In other words, when a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied.

24. Regulation 5(2) of the Fees Regulations requires that the requests which are to be aggregated relate "to any extent" to the same or similar information.

25. The Commissioner's guidance on requests where the cost of compliance exceeds the appropriate limit¹ acknowledges that public authorities can

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

aggregate two or more separate requests. It also recognises that multiple requests within a single item of correspondence are separate requests for the purpose of section 12.

26. In this case, MoJ confirmed that it characterised the complainant's request of 18 October 2014 as containing more than one request within a single item of correspondence. It told the Commissioner:

"Having considered the wording of the thirteen parts of the request, the MoJ concluded that they can be aggregated for the purpose of calculating the cost of compliance, in accordance with section 12(4) of the FOIA and regulation 5 of the Fees Regulations. This is because they follow an overarching theme and common thread relating to the operation of assessing the roles and 'grades' of LAA staff members".

27. Having considered the matter, the Commissioner is satisfied that the individual components of the multi-part request in this case comprise separate requests for the purpose of section 12 and that the requests relate to the same or similar information.
28. He is therefore satisfied that the MoJ was entitled to aggregate the requests when considering whether complying would exceed the appropriate limit.

Would complying with the request exceed the appropriate limit?

29. In the complainant's view,

"The MoJ is primarily responsible for the cost of compliance with my FOI request through its admitted failure to maintain a single/central file...".

30. When dealing with a complaint to him under FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.
-

31. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
32. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
33. In response to the request, MoJ told the complainant that it considered it to be "*very wide in scope*", as a result of which it estimated that it would exceed the cost limit to identify, locate, extract and provide him with all the information requested, as it was not held centrally within one file.
34. In correspondence with the complainant, MoJ described the request as covering "*a potentially vast amount of documentation*" and "*a large number of categories of information*". It also said that the request asked for information "*from a very wide range of individuals*".
35. In contrast, the complainant described his request - in its entirety - as relating to the provision of specified individual documents and/or a very limited or restricted class or classes of documents, created or considered with a limited time period.
36. During the course of the Commissioner's investigation, the MoJ was asked to provide more detail in respect of its application of section 12. In its substantive response, having reviewed its handling of the request, MoJ acknowledged that it should have been clearer when explaining how it calculated the cost of complying with the request.
37. In its submission, MoJ confirmed its view that section 12(1) applies to the request as a whole. In support of its application of section 12, MoJ told the Commissioner that, in its view, the scope of the request is wide in terms of content and time frame.
38. MoJ explained why the request has the potential to cover a vast amount of documentation:

"This is because a number of these requests ask for copies of all documents, correspondence, file notes, memorandum, reports and

electronic communications between named individuals and anyone else relating to particular topics”.

39. It confirmed that it had identified a number of people that it considered may hold the information requested. It also advised that provisional searches had been carried out for documents that could be within the scope of the request in order to arrive at an estimate.

40. With respect to the nature of the information required to be searched, MoJ advised:

“this request required a search of extensive electronic documentation”.

41. MoJ explained how the information to be searched is stored – confirming that it is not held centrally within one file. It said that, in order to locate the requested information, a search of the individual electronic records of a number of staff would be required. It accepted, however:

“that not all records would need to be searched in order to obtain the requested information when it is likely that staff in the relevant departments would know where the requested information is stored”.

42. MoJ provided details of the number of emails received, during the period in question, by the Head of the High Cost Civil team and the Head of Case Management that related to the overarching theme and common thread of assessing the roles and grades of LAA staff members. It acknowledged that not all would be relevant to the request at issue.

43. MoJ provided the Commissioner with details of the key words it had used to narrow the volume of electronic information that needed to be searched, for example ‘grievance’, ‘specialist pay’ and ‘dispute’.

44. It told the Commissioner that, using those key words allowed the MoJ to reduce the number of potential emails to approximately 800 for the Head of the High Cost Civil team and Head of Case Management for the period in question.

45. It further explained:

“Each of the individuals identified as holding information within the scope of the requests would need to read each of the emails in order to ascertain if the information requested is contained within it or any attached documentation”.

46. On the basis that it would take approximately two minutes per item to examine and extract the information to answer questions 9, 10 and 11, MoJ estimated:

"That exercise for the Head of the High Cost Civil team and the Head of Case Management alone would take over 26 hours to complete".

47. On the basis of the evidence provided to him the Commissioner accepts that the cost of complying with the full scope of the multi-point request would have been even higher.
48. The Commissioner recognises that there is no statutory requirement under section 17 for the refusal notice to include an estimate of the costs involved, or any other explanation of why the cost limit would be exceeded. However, in the Commissioner's view, it is beneficial to a public authority to do so because, for example, it may enable the requestor to assess the reasonableness of the estimate.
49. In this case, although the MoJ told the complainant that it considered that complying with the request would exceed the cost limit, the Commissioner is disappointed to note that it failed to provide the complainant with an estimate of the actual work involved in complying with his request.
50. In the absence of an estimate of the work involved, or a detailed explanation as to why the exemption applies, the Commissioner considers it understandable that the complainant finds the MoJ's response unsatisfactory.
51. However, from the evidence he has seen during the course of his investigation, and in consideration of the aggregation of the multiple parts of the request, the Commissioner is satisfied that the MoJ has now provided adequate explanations to demonstrate that it would exceed the appropriate limit to locate, retrieve and extract the requested information. Section 12(1) does therefore apply and the MoJ is not required to comply with the request.

Section 16 advice and guidance

52. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. In general where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit.

53. In this case, the Commissioner acknowledges that MoJ advised the complainant that he may wish to refine his request to fewer documents or a different time period.

Right of appeal

54. 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

55. 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.
56. 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