Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 May 2016

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

Decision (including any steps ordered)

1. The complainant requested information about court costs and summonses from the Ministry of Justice (the 'MOJ'). It handled part 1 of the request outside the FOIA; it said it did not hold the information requested in part 2; it relied on the cost exclusion in section 12(2) in relation to part 3 of the request.

2. The Commissioner's decision is that the MOJ should have handled part 1 of the request under the FOIA. He finds that, on the balance of probabilities, the MOJ does not hold the information requested in parts 1 and 2 of the request. He has also found that the MOJ correctly relied on section 12(1) in refusing to provide the requested information in part 3 of the request.

3. However, the MOJ failed to provide its response within the statutory 20 working days framework and thereby breached section 17(1) of the FOIA. In addition, the MOJ breached section 16 of the FOIA by failing to provide the complainant with advice and assistance as to how she might refine her request with a view to bringing it under the cost limit. He does not require the MOJ to take any remedial steps.

Background

4. The request relates to summonses of non-payment of rates and associated costs incurred.

Request and response

5. On 30 July 2015 , the complainant wrote to the MOJ and requested information in the following terms:

> *"1.What records are available to show that Camberwell Green Magistrates took reasonable in steps in 2009 to satisfy themselves that the £127 costs requested by Lambeth Council were those incurred in obtaining liability orders, and that the element of costs applied to obtaining a summons were justifiably allocated?*
>
> *2. I understand that the court has authorised Lambeth Borough Council to print summonses on its behalf. Please provide a copy of this authorisation, and state whether that authorisation can be further delegated to a private company. Please also advise whether competitive tenders were obtained.*
>
> *3. Please provide detail of all payments made to Camberwell Green Magistrates' Court by Lambeth Borough Council, specifying whether they were for legal processes (by process), hire of room/s or personnel, since 2009.*
>
> *Please reply by email to:* [name redacted] *and on paper to the address above."*

6. The MOJ (Her Majesty's Courts and Tribunals Service 'HMCTS') responded on 23 September 2015 and said it was "*unable to assist*" in relation to part 1 of the request. It answered part 2 and said it had referred part 3 to the Operations Manager for her consideration. However, during the investigation, it came to light that the complainant did not actually receive this response until it was passed to her by the Commissioner on 6 October 2015.

7. In this case, the MOJ sent the complainant a second response. It has clarified to the Commissioner that, although the letter was dated 23 September 2015 (not to be confused with the response above which has the same date), it should have instead read 2 December 2015. This response reiterates some of the information already given, and includes additional explanations, such as that about payments made by the Court to Lambeth Borough Council.

8. The complainant requested an internal review on 3 December 2015. The MOJ sent her the outcome of its internal review on 6 January 2016, following which it revised its position. For part 1 (which it had said was not a request for recorded information), the MOJ referred to its second reply of 2 December 2015 (mistakenly dated 23 September 2015),

where it had provided information outside the scope of the FOIA, and maintained that this part of the request had been handled correctly.

9. The MOJ also maintained that it did not hold the information requested under part 2, and provided some general information about summonses outside the scope of the FOIA. The MOJ conceded that part 3 of the request had not been handled correctly but stated that the cost exclusion, section 12(2) of the FOIA, was engaged.

Scope of the case

10. The complainant contacted the Commissioner on 30 November 2015 to complain about the way her request for information had been handled.

11. After his initial investigation, the Commissioner formed a preliminary view that the MOJ had, ultimately, handled the request in accordance with the FOIA, with the exception of responding late. He wrote to the complainant on 5 April 2016 outlining his view.

12. On 6 April 2016, the complainant submitted her objections to the preliminary view, which the Commissioner then considered before reaching a final decision in this case. Additionally, he wrote to the MOJ on 7 April 2016, asking it to comment on the complainant's objections. The MOJ provided its reply on 19 April 2016.

13. Following a review of the case correspondence, and both parties' views, the Commissioner has considered whether the MOJ was correct to handle part 1 of the request outside the FOIA. He has also considered whether, on the balance of probabilities, the MOJ holds information in relation to part 2 of the request. The MOJ acknowledged that the internal review used the wrong subsection in relation to part 3 of the request, applying section 12(2) instead of 12(1). The Commissioner has therefore also determined whether the MOJ was correct to rely on section 12(1) to refuse part 3 of the request.

Reasons for decision

Part 1 of request – Section 8 - is the request valid under FOIA?

"1.What records are available to show that Camberwell Green Magistrates took reasonable in steps in 2009 to satisfy themselves that the £127 costs requested by Lambeth Council were those incurred in obtaining liability orders, and that the element of costs applied to obtaining a summons were justifiably allocated?"

14. Section 8(1) of the FOIA states that requests for information should be in writing, bear the name and address of the applicant, and describe the information requested. The Commissioner considers that the request in this case fulfilled these criteria, and therefore constituted a valid request under the FOIA for recorded information.

15. The MOJ initially said that part 1 of the request was not handled under the FOIA as it was deemed not to be a request for recorded information. On reviewing the Commissioner's guidance[1], the MOJ considered that this part of the request should have been handled under the FOIA for the following reason:

> *"A request in the form of a question will be valid under Section 8(1)(c), provided it still describes distinguishing characteristics of the information, as in the examples below where the information is differentiated by its subject matter. (sickness absence policy, overseas aid spending, and measures to tackle vandalism respectively)."*

16. The Commissioner's Guide to Freedom of Information[2] states that a question can still be a valid request. Under the FOIA, if a public authority has information in its records that answers the question it should provide it in response to the request. Public authorities are not required to answer a question if they do not already have the relevant information in recorded form.

17. The Commissioner recognises that some public authorities may initially respond to questions informally, (ie in the "normal course of business"), but he expects them to consider their obligations under the FOIA as soon as it becomes clear that the applicant is dissatisfied with this approach. Ultimately, if he receives a complaint, the Commissioner will make his decision based on whether recorded information is held and has been provided.

18. In this case, it was explained in the response that there are no records available to show in 2009 whether the court took steps to satisfy itself that Lambeth's cost of £127 were reasonably incurred. The MOJ also clarified that the records do indicate that the level of summonses' costs

[1] https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf

[2] https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/

for Lambeth Council Tax for the year 2008/9, and a summary calculation of how the levels were arrived at, were carefully considered and approved by the Deputy Justice's Clerk on 19 January 2009. This additional information was provided as discretionary, outside of the FOIA. The MOJ acknowledged that this may have caused some confusion considering the request was not responded to under FOIA.

19. As part of her complaint to the Commissioner the complainant said the following about part 1 of her request:

> *"I still wish to see the workings out. It is my opinion that the decision was flawed and not lawful and I wish to examine how it was arrived at to demonstrate otherwise".*

20. The Commissioner asked the MOJ to comment on the above statement. In reply, the MOJ advised that if this information was held, it would be likely to be exempt under section 32 as it would be a court record and also, because it may constitute the data of the applicant (the complainant), it may be exempt under section 40(1). However, the MOJ reconfirmed that the information requested in part 1 is not held.

21. Having advised the complainant of the above in his preliminary view, the Commissioner then received her reply in which she objected to the application of section 32 on the grounds that she believed the information would not be a court record. She reconfirmed that as her request does not relate to her own court hearing, section 40(1) could not apply.

22. Although not obliged to, given the MOJ's view that the requested information is not held, for the sake of completeness the Commissioner relayed the complainant's views to the MOJ. In turn, it said it had made an assessment of the request and supporting evidence and if held, the information would be held as part of a court record as it would have been: *"created by a court or a member of the administrative staff for the purposes of the proceedings in a particular cause or matter. The fact that it relates to a court record means it is likely to contain personal data. As explained using supporting documentation it has been assumed that this would be the applicants, however, without holding the information this cannot be confirmed".*

Conclusion

23. This part of the request has been complicated by the various responses given prior to and during the Commissioner's investigation. The critical issue for the Commissioner is to determine whether this part of the request should have been handled under the FOIA and whether, on the balance of probabilities, the requested information is held.

24. In this case, the complainant clearly wished for a response under the FOIA; she explicitly asked the Commissioner to require the MOJ to provide a response under the FOIA as the "normal course of business" response had, in her words, *"not functioned to produce the answers I require".* The Commissioner has concluded that the MOJ should have provided a response under the FOIA to part 1.

25. He has further concluded, on the balance of probabilities, that the requested information is not held. He acknowledges that the MOJ provided some discretionary information to the complainant which he considers to be part of its duties under section 16 of the FOIA.

Part 2 of request - Section 1 – information not held

"2. I understand that the court has authorised Lambeth Borough Council to print summonses on its behalf. Please provide a copy of this authorisation, and state whether that authorisation can be further delegated to a private company. Please also advise whether competitive tenders were obtained."

26. The MOJ confirmed that the court does not authorise the printing of summonses; instead the Local Authority prints its own summonses to rate payers to appear before the court. As there is no practice for courts printing summonses, the MOJ said there are no searches that can be carried out as it is already known the information is not held.

Conclusion

27. The Commissioner has no reason to doubt the MOJ's explanation and has concluded that, on the balance of probabilities, the information in part two of the request is not held.

Part 3 of request - Section 12 – the cost limit

"3. Please provide detail of all payments made to Camberwell Green Magistrates' Court by Lambeth Borough Council, specifying whether they were for legal processes (by process), hire of room/s or personnel, since 2009."

28. This part of the request was responded to under the FOIA and refused as it engaged the cost limit. However, MOJ acknowledged that the internal review cited the wrong subsection, applying section 12(2) instead of 12(1).

29. Section 12(1) of the 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.

30. 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.

31. When estimating whether disclosing the requested information would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in disclosing the information. The estimate must be reasonable in the circumstances of the case. It is not necessary to provide a precise calculation.

32. 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.

33. The MOJ explained that the estimate given for providing this information was 37 hours work which equates to £950. This information is not held electronically so the MOJ said every payment book would have to be looked at in detail and each payment considered; there is no method for a quick search. It estimated that it would take just over an hour per payment book to locate and extract the information that meets the specific criteria set by the complainant.

34. The MOJ advised the Commissioner as follows:

"As we process approx 15-20 payments per day at Camberwell Green, this would then necessitate checking approximately 24 - 30 payment record files line by line, for any ad-hoc requests together with the fortnightly court date requests (1+ book/file per quarter on average for six years); we would also then need to consolidate this into a reasonable format for submission (probably an excel spreadsheet). As listing patterns have changed over the years, it would mean a thorough check of each payment record file and could not be limited to certain dates. In [sic] *there was any uncertainty over the payment record file, we would need to go back to the court records to double-check sittings and applications, but this was not previously recorded on Libra and we would have to go to the paper files - again a manual check."*

35. In addition, the MOJ said that one payment book lasts approximately a quarter so there are a minimum of 24-30 files/books to be checked to cover the six year period requested. This would take 4-5 days as it would need to check every day's entries for six years - not just set days for the council tax summons' work. As the majority of the entries are handwritten, deciphering handwriting would also be a factor in this case.

Conclusion

36. The Commissioner is satisfied that the above estimate is a reasonable one. Based on the MOJ's explanation set out above, he accepts that it is necessary for the MOJ to review the hard copy payment books in order to respond to this part of the request and that this is the most efficient means of doing so. As each payment book lasts approximately a quarter and there are an estimated 15-20 payments per day, the Commissioner considers that an estimate of just over an hour per book is a reasonable estimate. He is therefore 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 the FOIA to the complainant's request.

Section 16 - advice and assistance

37. 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.

38. In this case, the Commissioner can find no record of the MOJ having advised the complainant how she might refine her request. The Commissioner has concluded that the MOJ failed to provide advice and assistance in accordance with section 16 of the FOIA, and would remind the MOJ of the need to do so for future requests.

Procedural issues – section 17(1) breach – late refusal notice

39. Section 1(1) of the FOIA states:

> *(1) Any person making a request for information to a public authority is entitled –*
>
> *(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
>
> *(b) if that is the case, to have that information communicated to him.*

40. Section 10 of the FOIA states:

> *(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.*
> *…*
> *(3) If, and to the extent that –*
>
> *(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or*
>
> *(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,*
>
> *the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.*

41. Section 17(1) of the FOIA states:

> *(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –*
>
> *(a) states that fact,*
>
> *(b) specifies the exemption in question, and*
>
> *(c) states (if that would not otherwise be apparent) why the exemption applies*.

42. If, as in this case, the MOJ decides that information should be withheld it has an obligation to provide a requester with a refusal notice within 20 working days of receipt of the request. The MOJ failed to issue its refusal notice within the statutory timeframe, thereby breaching section 17(1) of the FOIA.

Other matters

43. In this case, the MOJ failed to respond on time to the Commissioner's investigation. The response was due on 14 March 2016, but was not provided until 1 April 2016. The Commissioner also had to contact the MOJ following its response for further information about the section 12

cost estimate. He would remind the MOJ of the need to respond to his investigation on time and to provide full supporting arguments.

Right of appeal

44. 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

45. 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.

46. 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 ……

Carolyn Howes
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Wycliffe House
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Cheshire
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