

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 May 2016

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

Decision (including any steps ordered)

1. The complainant requested information from the Ministry of Justice (MoJ) relating to unreconciled payments on account (POA) of legal work to law firms in legally aided cases.
2. The MoJ ultimately refused to provide the requested information citing section 12 (cost of compliance) as its basis for doing so.
3. The Commissioner's decision is that the MoJ was entitled to rely on section 12 as its basis for refusing to respond to the request. It has also provided adequate advice and assistance in accordance with section 16 of the FOIA.
4. No steps are required as a result of this decision.

Background

5. The Legal Aid Authority (LAA) is an executive agency, sponsored by the MoJ. For the purposes of this decision notice, the Commissioner considers the relevant public authority to be the MoJ.
6. The complainant reminded the Commissioner of the background to this request, referring him to related case references numbers, namely FS50538948 and FS50598790.
7. The Commissioner considers it helpful to quote from FS50538948 in order to establish the background to the request in this case.

"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.

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"

Request and response

8. On 13 November 2015, the complainant wrote to the MoJ and requested information in the following terms:

"Freedom of Information Act Request by [name redacted] to the Legal Aid Agency of the Ministry of Justice concerning unreconciled payments on account of legal work to law firms in legally aided cases.

Whereas: -

In respect of long outstanding unreconciled POAs in dormant cases particularly in "historic" cases with no activity since 31 Mar 2002, the LAA (including LSC) has sought recovery of the said POAs from the law firms concerned save for those the subject of an amnesty on 1 Apr 2008 (5587 law firms being offered it) for cases under £20,000 net, the remaining situation being that there continued to be requests for law firms (the relevant law firms) to repay unreconciled POAs because they were not granted an amnesty and/or because they were granted it but still had cases over £20,000 net.

Question: -

Now the FOIA questions are as follows in which the LAA is only requested to provide approximately from their information whether by numbers or by percentages or otherwise.

1, In respect of the relevant law firms how many have benefited from compromise financial settlements with the LAA in

- (a) Dormant cases; and*
- (b) How many thereof in "historic" cases; and*
- (c) How many said settlements have been below*
 - (i) 75% of the payment request; or*
 - (ii) 50% thereof; or*
 - (iii) 25% thereof*

2 (a) How many relevant law firms are presently the subject of Legal proceedings (whether active or in abeyance); and

(b) Name them together with their locations and stating particularly which firms concern "historic" cases.*

** The LSC has already confirmed in writing that it has no objection to this request under the Data Protection Act".*

9. The MoJ responded on 11 December 2015: it denied holding the requested information. Following an internal review, the MoJ wrote to the complainant on 15 January 2016 upholding its original position.

Scope of the case

10. The complainant contacted the Commissioner on 12 February 2016 to complain about the way his request for information had been handled.
11. The complainant told the Commissioner:

"The LAA must have some information. This FOIA request relates to the law firms not granted an amnesty".
12. During the course of the Commissioner's investigation, the MoJ revised its response. It wrote to the complainant, confirming that it holds information within the scope of the request but refusing to provide it citing section 12 of the FOIA (cost of compliance exceeds the appropriate limit).
13. The complainant expressed dissatisfaction with the MoJ's changed position – both with respect to the delay in confirming that it holds information within the scope of the request and with respect to its late claiming of section 12 and consequent refusal to provide that information.

14. However, following the binding decision of the Upper Tribunal in *McInerney v IC and Department for Education GIA/4267/2014* 29 January 2015, the Commissioner is obliged to accept a late claim of section 12.

15. The complainant also drew attention to the wording of his request, in particular where he states that the LAA is only requested "*to provide approximately from their information...*"

16. He told the Commissioner:

"I wish to emphasise that the LAA are only being requested to provide reasonable approximate answers from their information particularly in respect of question 1, although they should have the actual answer to question 2".

17. In respect of the information requested at part (1) of his request, he told the Commissioner he was willing to accept:

"a reasonable, meaningful statement saying generally speaking to the best of knowledge and belief roughly what has been the volume of settlements and level of settlements in the old POA cases. The LAA/MoJ has to know this information as due diligence in management".

18. The Commissioner acknowledges the complainant's willingness to accept an approximate statement. However, the FOIA is to do with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

19. The following analysis considers the MoJ's application of section 12 of the 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. In a case such as this, the Commissioner's role is simply to decide whether or not the requested information can be provided to a requestor within the appropriate costs limit.
22. 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.
23. 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.
24. In its revised response, the MoJ told the complainant:

"The MoJ does not hold any pre-existing list of indebted firms who were not offered the amnesty, nor does it hold any pre-existing list of firms offered the amnesty who also held non-qualifying debts which would not be dealt with under its terms. There was and is no legal or business reason for MoJ to hold such lists....."

MoJ has concluded that it could compile a list of firms not offered the amnesty at all. Due to the steps involved in such an exercise, doing so would be likely to exceed the limit set by the FOIA in and of itself. However, this is rendered moot by the fact that this would not produce a list of 'relevant law firms' within the meaning of your request. Not being offered the amnesty does not confirm that a provider was in some way indebted to the LSC via non-qualifying recouped payments on account. A provider may not have been offered the amnesty simply because it was not indebted at all.

Accordingly, to answer your request concerning firms owing Unrecouped Payments on Account ("UPOAs") which were not subject to the amnesty, MoJ would be required to consider the relevant indebted cases themselves".

25. The MoJ also told him - in relation to the information requested in part (1) of his request:

"By way of a practical illustration, MoJ projects that the time taken to interrogate both 'historic' and 'dormant' cases within the meaning of your request so as to extract settlement data would exceed 6,000 hours.

Such an estimate does not factor in the time required to identify and appropriately filter such cases in the first place, which would first be necessary [as explained above] - procedures which of themselves would also exceed the limits set by the Act".

26. With respect to part (2) of his request, the MoJ advised the complainant:

"As a list of 'relevant law firms' as defined by your request cannot be ascertained within FOIA cost limits, it follows that MoJ cannot advise you on any legal proceedings concerning the same, active or otherwise".

27. In correspondence with the Commissioner, the MoJ similarly confirmed that it would, in theory, be able to compile a list of firms not offered the amnesty at all.
28. During the course of the Commissioner's investigation, the MoJ provided more detail in respect of its application of section 12 including a description of the work that would need to be undertaken in order to provide the requested information. For example, it explained that this would be achieved by retrieving a historic list of active legal aid providers and comparing this against the 5,587 providers who were offered the amnesty. It further explained that the MoJ would be required to consider the relevant indebted cases themselves.
29. Having regard to those explanations of the steps required and time that it would take to identify the law firms falling within the scope of the request, the Commissioner accepts the complexity of extracting the requested information.
30. The complainant disputes the approach taken by the MoJ in determining that section 12 applies. However, having considered the representations from both parties, the Commissioner is satisfied that the MoJ has demonstrated that it would exceed the appropriate limit to locate, retrieve and extract the requested information.
31. He is also satisfied that the MoJ's estimate would need to be wholly unreasonable in order to bring the cost of compliance down to 24 hours.
32. Section 12(1) does therefore apply and the MoJ is not required to comply with the request.

Section 16 advice and guidance

33. Section 16(1) of the 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.

34. In this case, the Commissioner acknowledges that the MoJ advised the complainant that:

"Due to the numerous and time-consuming steps which would be required to collate the information needed to begin to answer the questions you have posed, I can confirm that the MoJ can provide you with no information within the appropriate FOIA limit".

35. In light of the above, the Commissioner is satisfied that the MoJ has complied with its obligations under section 16.

Right of appeal

36. 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

37. 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.
38. 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