

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 March 2017

Public Authority: Ministry of Justice

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

Decision (including any steps ordered)

1. The complainant submitted a two part request for information about The Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008. The Ministry of Justice ("MoJ") asked for clarification as to the meaning of the first part of the request and refused the second part of the request on the grounds that compliance with it would exceed the appropriate limit, under section 12 of the FOIA. The complainant provided the requested clarification with regard to the first part of the request and, in respect of the second part of the request, asked for advice and assistance as to how he might submit a refined request. At the date of this decision notice the MoJ had neither responded to the clarified part of the request nor provided the requested advice and assistance.
2. The Commissioner's decision is that the MoJ has breached section 10 of the FOIA by failing to respond to the request with 20 working days. By failing to provide advice and assistance with regard to the second part of the request, the MoJ has not complied with the duty at section 16(1).
3. The Commissioner requires the MoJ to take the following steps to ensure compliance with the FOIA legislation.
 - Issue a response to the first part of the request which complies with the FOIA, either by complying with section 1(1) or issuing a valid refusal notice.

- Respond to the complainant's request for advice and assistance as to how he might refine the second part of the request.
4. The MoJ must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 30 October 2016, referring to The Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, the complainant wrote to the MoJ and requested the following information:
- "(i) Any relevant material relating to the genesis of Rule 11(7)(a).*
 - (ii) Details of the cases in which the Tribunal has exercised its powers pursuant to Rule 11(7)(a) and any reasons given for so doing"*
6. The MoJ responded on 21 December 2016. With regard to the first part of the request, it asked the complainant to provide *"more information in respect the information you are seeking regarding "the genesis of rule 11 (7) (a)"*. It stated that it was not obliged to deal with the second part of the request, as compliance would exceed the appropriate costs limit, under section 12 of the FOIA.
7. The complainant wrote to the MoJ on 11 January 2017. He provided clarification about the meaning of the first part of the request and, citing section 16 of the FOIA with regard to the second part of the request, asked for advice and assistance as to how he could submit a refined request which would be more likely to fall within the appropriate cost limit.
8. At the date of this decision notice, the MoJ had not provided the complainant with its response to the first part of the request and it had not provided the advice and assistance requested with regard to the second part of the request.

Scope of the case

9. The complainant contacted the Commissioner on 6 December 2016 to complain about the MoJ's failure to respond to the request. The MoJ subsequently contacted the complainant on 21 December 2016, as described in paragraph 6, above.
10. The Commissioner therefore considers the scope of this decision notice to be the MoJ's compliance with the statutory timescale for responding (section 10(1) FOIA) and with the requirement to provide advice and assistance (section 16(1) FOIA).

Reasons for decision

Section 10 - time for compliance

11. Section 1(1) of the FOIA states that anyone making a request for information to a public authority is entitled to be informed whether the public authority holds the information, and if so, to have that information communicated to him. Section 10(1) of the FOIA provides that a public authority should comply with section 1(1) within 20 working days.
12. However, section 1(3) of the FOIA provides that where a public authority reasonably requires further information in order to identify and locate the requested information and it requests this from the applicant, it need not comply with section 1 until the further information is supplied.
13. The Commissioner's approach is to expect that a public authority will seek clarification of a request where its meaning is not clear, or where its meaning is capable of more than one objective reading, and that this clarification will be sought promptly and within the 20 working day time limit set out under section 10. The clock will then "stop" for the period between the public authority requesting the clarification and the complainant supplying it.
14. In this case, the request was submitted on 30 October 2016. The MoJ did not ask for clarification of the first part of the request until 21 December 2016, 38 working days after the request was received and therefore outside of the 20 working day statutory time limit. Having been supplied with the requested clarification, at the date of this decision notice the MoJ had still not responded to the first part of the request.
15. The Commissioner's decision is that the MoJ has breached section 10(1) of the FOIA by failing to respond to the request within the statutory

timescale. It must take the steps set out in paragraph 3 of this decision notice to comply with the legislation.

Section 16 - advice and assistance

16. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request, in so far as it would be reasonable to do so.
17. In this case, having had the second part of his request refused under section 12 of the FOIA, the complainant asked the MoJ for advice and assistance so that he may submit a refined request which would be likely to be dealt with without exceeding the costs limit. He specifically referred the MoJ to the duty under section 16 in this regard, and provided some information which might help it to advise him on focusing the request.
18. However, at the date of this decision notice, the MoJ had not provided the requested advice and assistance. The Commissioner's decision is that the MoJ has not complied with the duty under section 16 of the FOIA. It must take the steps set out in paragraph 3 of this decision notice to comply with the legislation.

Other matters

19. As well as issuing this notice, the Commissioner has made a separate record of the failure by the MoJ to respond to the complainant's request. This issue may be revisited should evidence from other cases suggest that this is necessary.

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

Samantha Bracegirdle
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