

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 October 2017

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

Decision (including any steps ordered)

1. The complainant requested statistical information relating to applications made by Peterborough City Council held by the Traffic Enforcement Centre (TEC) at Northampton.
2. The Ministry of Justice (MoJ) ultimately confirmed that it held information within the scope of the request but refused to provide it citing section 12(1) of the FOIA (cost of compliance).
3. The Commissioner's decision is that the MoJ has correctly applied section 12(1) and that there is no breach of section 16(1) of the FOIA (duty to provide advice and assistance). She requires no steps to be taken as a result of this decision.

Request and response

4. On 21 January 2017, the complainant wrote to the MoJ and requested information in the following terms:

"I wish to make a freedom of information request in relation to statistics held by the Traffic Enforcement Centre at Northampton. In respect of applications made by Peterborough City Council, I would be grateful if you could confirm for each month the following information, if possible back to the 2007/08 financial year in respect of:

No. of cases authorised for the order for recovery (TE3),

No. of cases authorised for a warrant of control, and

No. warrants that were re-issued due to a change of address.

If possible, for each application made, if applications have been made in a batch, please can you confirm the order or batch number together with the respective date authorisation was given".

5. The MoJ responded on 16 February 2017. It stated that it did not hold the requested information.
6. Following an internal review the MoJ wrote to the complainant on 10 March 2017, revising its position. It confirmed that information within the scope of the request would be held as far back as 2007. However, it refused to provide that information citing section 12(1) of the FOIA - cost of compliance exceeds appropriate limit.

Scope of the case

7. The complainant contacted the Commissioner on 29 March 2017 to complain about the way his request for information had been handled. He disputed that it would take the time specified to comply with the request. He told the Commissioner that he considers that the timescales/cost of providing the information is being grossly exaggerated.
8. The analysis below considers the MoJ's application of section 12(1) of the FOIA to the requested information.

Reasons for decision

Section 12 cost of compliance

9. 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".

10. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (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.

Would complying with the request exceed the appropriate limit?

11. 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.
12. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) of the fees regulations 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.
13. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
14. The complainant told the MoJ that he considered that it should be a *'straight forward process of checking your records'* in order to comply with his request.
15. In contrast, the MoJ told the complainant that the information he was requesting was not readily available.
16. In correspondence with the complainant, the MoJ told him there are 160 different Local Authorities (LAs) registered with the TEC and that each issue large volumes of warrants.
17. It further explained that, unless there is a specific need:

"...the TEC may never need to access the information in regard to a warrant and an individual warrant can proceed completely automatically through the system without needing to be identified".
18. It explained that a report can be generated on a monthly basis to provide the data he had requested. However, it told the complainant:

"We believe that the cost of pulling this monthly report and extracting the information required for Peterborough City Council would take 90 minutes on average,".
19. On the basis that there is 118 months' worth of reports within the scope of his request, the MoJ estimated that this equated to over 27 days of work.

20. During the course of the Commissioner's investigation, the MoJ was asked to provide 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.
21. In its substantive response, the MoJ provided the Commissioner with arguments in support of its citing of section 12.
22. Regarding the provision of the relevant TEC reports, the MoJ told the Commissioner:

"... this would take around 30 minutes to generate and print each of the monthly reports... This would equate to 6 hours per year... Then we would be required to extract Peterborough City Council's data from 159 other local authorities this would take around a further 6 hours".

23. As it was not clear how the estimate the MoJ was relying on was calculated, the Commissioner sought further clarification of the time required to produce the requested information. The MoJ subsequently told her:

"There are 6 hours for extraction and 6 hours for printing each year, meaning there are 12 hours per year in total... The total timing of 12 hours per year for 10 years is the correct calculation. This equates to 120 hours which is over the cost limitations as set in section 12(1)".

24. In correspondence with the Commissioner, the MoJ provided a further explanation about the process to retrieve and extract the requested information and why it considered the request complex to comply with.
25. The MoJ confirmed that the information "*can only be accessed via this monthly report*". It also confirmed that there is no facility to print a report for a specific local authority or to print a different time frame such as a yearly report.
26. With regard to its estimate that each report takes 30 minutes to provide, the MoJ confirmed:

"... requesting the report takes a couple of seconds, then the system has to pull all the information together and then it prints off. In total this takes 30 minutes per report".

The Commissioner's view

27. When dealing with a complaint to her under the 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.

28. In essence, therefore, this case turns on whether the estimate provided by the MoJ was reasonable.
29. During the course of her investigation, the MoJ gave the Commissioner an overview of the process of a council making an application to the TEC and receiving acknowledgement that it has been processed. The MoJ explained that when information has been uploaded onto the TEC database:

"There is an order generated by a clerk and emailed to the local authority confirming this".

30. The Commissioner is mindful that the complainant said that he would expect the TEC to have records of the e-mails it has sent that it could easily check to provide the information requested.

31. In that respect however, the MoJ told the Commissioner:

"These [emails] cannot be kept indefinitely due to email storage restrictions as such are only kept for around 3 months".

32. In view of the estimate and limited explanation provided to him, the Commissioner considers it understandable that the complainant did not feel confident that it would take the time the MoJ originally stated to comply with the request.
33. However, having considered the submissions and evidence outlined above, the Commissioner is satisfied that the MoJ has demonstrated 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 assistance

34. 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.
35. In this case, the Commissioner acknowledges that MoJ advised the complainant that it may be able to answer a refined request. For example it suggested that he may wish to specify a narrower period of

time. It also advised that he could consider contacting Peterborough City Council as it may also hold the requested information.

Other matters

36. In correspondence with the Commissioner, the complainant said:

*"You will note that my original request made it quite clear for the information to be provided **if possible** back to the 2007/08 financial year ...".*

37. In that respect, the Commissioner would point out that her guidance on section 12¹ states:

"As a matter of good practice, public authorities should avoid providing the information found as a result of its searching and claiming section 12 for the remainder of the information. It is accepted that this is often done with the intention of being helpful but it ultimately denies the requestor the right to express a preference as to which part or parts of the request they may wish to receive which can be provided under the appropriate limit".

38. She is therefore satisfied that it was appropriate that the MoJ did not presume to know what information, which could be provided within the cost limit, the complainant might be most interested in receiving.

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

Right of appeal

39. 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

40. 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.
41. 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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