

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 February 2018

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

Decision (including any steps ordered)

1. The complainant has requested from the Ministry of Justice (MoJ) information relating to cases involving joint enterprise convictions between the years 2005 and 2015.
2. The Commissioner's decision is that the MoJ has correctly applied section 12(1) of the FOIA to the requested information and has also provided the complainant with advice and assistance in accordance with section 16(1) of the FOIA. Therefore, the Commissioner does not require the MoJ to take any steps.

Request and response

3. On 23 May 2017 the complainant wrote to the MoJ and requested information in the following terms:

"How many 17 year old black male boys were convicted under joint enterprise since 2005 – 2015;

and

How many of there 17 year old boys convicted on joint enterprise, were documented to be of African descent"

4. On 5 June 2017 the MoJ responded and confirmed that it holds all of the information requested (MoJ reference 112216). The MoJ refused to comply with the request under section 12(1) of the FOIA as it would exceed the appropriate cost limit.
5. On 7 June 2017 the complainant requested an internal review.

6. On 8 June 2017 the MoJ provided its internal review outcome (MoJ reference 112433) and confirmed that its previous response was correct.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way her request for information had been handled. Specifically, about the MoJ's reliance on section 12(1) to refuse the request.
8. The Commissioner considers the scope of this case is to determine whether the MoJ has correctly withheld the information under section 12(1) of the FOIA and whether it has complied with section 16(1) of the FOIA.

Reasons for decision

Section 12 – cost of compliance

9. Section 12(1) of FOIA 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.
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 requester 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.

The MoJ's position

14. The MoJ confirmed to the complainant that it holds all of the information requested. However, the MoJ refused to comply with the request under section 12(1) as it considered it would exceed the cost limit set out in the FOIA.

15. The MoJ explained that *centrally* held information does not indicate whether or not an offender was found guilty under the principle of joint enterprise. The MoJ believes that the cost of contacting the courts in England and Wales in order to check individual case files to ascertain whether or not an offender was involved in joint enterprise, would exceed the appropriate limit. Therefore, the MoJ said, it is not obliged to comply with the request.

16. The MoJ informed the complainant that it may be able to answer a refined request within the cost limit. It suggested that she may wish to consider reducing the scope of the request to a single court or a single year. However, the MoJ advised that it could not guarantee at this stage that a refined request will fall within the FOIA cost limit or that other exemptions will not apply.

17. The MoJ confirmed to the complainant in its internal review outcome that its previous response to this request, was correct. The MoJ stated that the information requested regarding joint enterprise is not held centrally, and would require writing out to each court in England and Wales for them to search their own local records.

18. It explained that the amount of time that each individual court would take to search through their records for the information for each case occurring throughout the requested time period (2005 – 2015), aggregated together for a total amount of time for all courts in England and Wales overall, would be far in excess of the cost limit of £600.

19. During the investigation, the MoJ confirmed to the Commissioner that the same methodology was used to estimate the time taken to locate and examine each of the cases covered by the complainant's previous request for information (21 February 2017), which was on the same theme. The MoJ said that complying with the request would exceed the appropriate costs limit because it would still be required to conduct the relevant searches for the information.

The complainant's position

20. The complainant disputed the MoJ's reliance of section 12(1) and said that this should not be accepted as a reason to refuse to comply with her request. The complainant argued that she represented her question in order that it would comply with the cost limit of £600.

The Commissioner's position

21. When dealing with a complaint to the Commissioner 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 requester within the appropriate costs limit.
22. In essence, this case therefore turns on whether the estimate provided by the MoJ is reasonable.
23. The Commissioner accepts the MoJ's calculations in relation to the cost of complying with the request and she agrees that the cost of compliance would exceed the appropriate limit prescribed by the FOIA. On the basis of the calculations and having considered the explanations provided, the Commissioner is satisfied that the MoJ has correctly applied section 12(1) to the complainant's request.

Section 16 –advice and assistance

24. 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.
25. In this case, the Commissioner acknowledges that the MoJ advised the complainant that it may be able to answer a refined request. For example it suggested that she may wish to reduce the scope of the request to a single court or a single year. The MoJ also referred the complainant to the ICO guidance on how to structure successful requests.
26. The Commissioner is satisfied that the MoJ provided reasonable advice and assistance to the complainant and therefore complied with section 16(1) of the FOIA.

Right of appeal

27. 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

28. 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.
29. 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

Alun Johnson
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF