

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 February 2018

Public Authority: Ministry of Justice

Address: 102 Petty France

London

SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information relating to the prosecution of various parties before the Solicitors Disciplinary Tribunal or the investigation of parties by the Solicitors Regulation Authority.
2. The Ministry of Justice (MoJ) refused to comply with the request on the basis that to do so would exceed the appropriate limit in costs set by section 12(1) of the FOIA (cost of compliance).
3. The Commissioner's decision is that the MoJ correctly applied section 12(1) and found that there is no breach of section 16(1) of the FOIA (duty to provide advice and assistance).
4. She requires no steps to be taken as a result of this decision.

Request and response

5. On 6 September 2017, the complainant wrote to the MoJ and requested information in the following terms:

"... copies of email, postal or other written communications:

(i) Sent from the Ministry of Justice ("MoJ") to the Solicitors' Regulation Authority ("SRA") or the Solicitors Disciplinary Tribunal ("SDT");

(ii) Sent from the SRA or SDT to the MoJ;

(iii) Sent from the MoJ to the Ministry of Defence ("MoD"); or

(iv) Sent from the MoD to the MoJ

Concerning:

(a) the prosecution of [four names redacted] ("the Parties") before the SDT; or

(b) the investigation of the Parties or (others employed by [name redacted]) by the SRA".

6. The request was made using the *whatdotheyknow* website.
7. The MoJ responded on 4 October 2017 confirming it held some of the requested information. However, it refused to provide that information citing section 12 of the FOIA (cost of compliance exceeds appropriate limit) as its basis for doing so.
8. Following an internal review the MoJ wrote to the complainant on 31 October 2017. It upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 4 November 2017 to complain about the way his request for information had been handled.
10. He disputed the amount of work that would be involved to comply with his request. He suggested that the MoJ could effectively limit its searches to specific types of communication.
11. The analysis below considers the MoJ's application of section 12(1) of the FOIA to the requested information. The Commissioner has also considered whether the MoJ provided appropriate advice and assistance under section 16 of the FOIA.

Reasons for decision

Section 12 cost of compliance

12. 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".

13. 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?

14. 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.
15. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
16. The complainant told the MoJ:

"...the initial refusal appears to be an attempt to artificially inflate the amount of work required in order to avoid the need to consider the further exceptions in FOIA, which I am sure you will also be considering".
17. He provided the MoJ with some suggested ways of searching for the requested communications which he considered would *"significantly limit the number of emails required to be considered"*.
18. The MoJ ultimately told the complainant that although information is held by the MoJ electronically, its systems would have to be searched manually. It told the complainant the search would involve current and past files and mailboxes.
19. The MoJ calculated:

"... that it would take approximately five minutes to search each record and we estimate that there are in the region of 5000 electronic files/records that would need to be checked. We have also estimated that staff in at least 10 business units would need to be involved in the process and many people would need to be contacted to provide information".
20. It confirmed that it had considered his suggestions on how the information he requested could be obtained:

"But they neither align with our search processes nor reduce the time and effort involved in your current request".

21. 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.
22. In correspondence with the Commissioner, the MoJ confirmed that the time taken to comply with this request in its entirety would be 5000 pieces of correspondence x 5 minutes to locate, retrieve and extract, totalling 416.6 hours.
23. The MoJ provided the Commissioner with a copy of its calculation in support of its estimated cost of £10,415.00.
24. The MoJ considered that, given the time period for which emails and postal communications would have to be searched, this was a reasonable estimate.
25. In support of its position, the MoJ advised that, during the relevant timeframe:

"... a number of different teams in the MOJ ... would have been in communication with the SRA and MOD, in relation to a whole range of issues, one of which would have been about the progress and timescales of the [name redacted] prosecution".

26. It also provided further information in support of its estimate of the time required to identify, locate, extract and collate the requested information. For example, it told the Commissioner that each email and piece of postal correspondence within the scope of the request:

"...would have had to be found and then read to see which concerned the possible prosecution of [name redacted]".

27. The MoJ told the Commissioner that while it had not carried out a sampling exercise in this case, it had carried out such an exercise in respect of a similar FOI request it received at around the same time as this one.

The Commissioner's view

28. 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.

29. In essence, therefore, this case turns on whether the estimate provided by the MoJ was reasonable.
30. The Commissioner considers that a reasonable estimate is one that is "*....sensible, realistic and supported by cogent evidence*".
31. In this case, the MoJ presented arguments which focused on the breadth of the request. In that respect the Commissioner notes that the MoJ told the complainant that:

" ...numerous staff in several different parts of the MoJ [would need] to look through all emails, and copies of written communications, sent and received over the last number of years, to check which ones were to or from the Solicitors Regulation Authority, the Solicitors Disciplinary Tribunal, or the Ministry of Defence, and which of these might be about either: the prosecution of [four names redacted] before the SDT; or the investigation of any of them (or others employed by [name redacted]) by the Solicitors Regulation Authority".

32. It estimated that "*at least 20 different members of staff*" would have had to be contacted who would have to search email systems and correspondence systems to check for relevant information.
33. The MoJ cited a figure of '*at least 5000*' in relation to the number of emails and letters needing to be located, read and copied. It estimated 5 minutes for each email searched.
34. Even if the MoJ's estimate of the time taken to locate and extract the information was excessive, from the evidence she has seen during the course of her investigation, 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

35. 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.

36. In her guidance 'Requests where the cost of compliance exceeds the appropriate limit'¹, the Commissioner considers the provision of advice and assistance. She states:

"In cases where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:

- *either indicate if it is not able to provide any information at all within the appropriate limit; or*
- *provide an indication of what information could be provided within the appropriate limit; and*
- *provide advice and assistance to enable the requestor to make a refined request".*

37. In this case, the Commissioner acknowledges that the MoJ advised the complainant that it may be able to answer a refined request. In particular, it advised him that he may wish to specify a period of time or narrow the scope of his request.

38. In correspondence with the Commissioner, the MoJ told her that it considered that the advice it gave the complainant about refining his request:

"...would clearly have reduced the number of email messages that would have had to be found and read".

39. 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.

¹ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

Right of appeal

40. 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

41. 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.
42. 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

**Deborah Clark
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