

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 February 2020

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

#### Decision (including any steps ordered)

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1. The complainant requested various information, including numbers of witness statements for unpaid penalty charges and recovery orders, for a specified type of unpaid penalty. The Ministry of Justice (the 'MOJ') refused to provide the requested information under section 12(1) of FOIA, as to do so would exceed the appropriate cost and time limit.
2. The Commissioner's decision is that the MOJ is not obliged to comply with the request under section 12(1) of FOIA. She finds that the MOJ complied with its section 16 of FOIA obligations by providing advice and assistance to the complainant.
3. No steps are required to ensure compliance with the legislation.

#### Background

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4. The MOJ advised that the request was handled by its Traffic Enforcement Centre ('TEC'). The Commissioner understands that the TEC is part of Northampton County Court and was set up solely to register all unpaid Penalty Charge Notices ('PCNs') including bus lane contraventions, TfL (Transport for London) congestion charges, Dart Charges (Dartford Crossing charges) and Merseyflow (official toll operator for Mersey Gateway and Silver Jubilee bridges).
5. The Commissioner understands that the 'Mersey Gateway' (cited in the request below) is a tolled crossing of the Mersey that opened in October 2017. Halton Borough Council is responsible for the scheme, but the

tolls and penalties are enforced by Merseyflow. The main group opposing the tolls is 'Scrap Mersey Tolls' ('SMT').

6. The complainant advised that since the Mersey Gateway bridge opened over 1.4 million PCNs have been issued as at September 2019. If they are neither paid nor successfully challenged, then Merseyflow applies to the TEC at Northampton for a Recovery Order. The complainant said:

*"The TEC seems to run in tandem with the County Court Business Centre, also based at Northampton County Court to bulk handle court cases. The main function of the TEC is to give sanction to local authority use of debt enforcement agents (bailiffs) to recover money by threatening people with increasing penalties and costs and by seizing goods."*

7. There are three 'TE' forms involved in the request below which are 'TE3' a Recovery Order, 'TE7' an Out of Time application and 'TE9' a Witness Statement.
8. The complainant subsequently made another related request on 20 June 2019, refused on cost grounds, which has also been considered by the Commissioner in decision notice *FS50876139*.

## **Request and response**

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9. On 9 May 2019, the complainant wrote to the MOJ and requested information in the following terms:

*"TE9 WITNESS STATEMENTS FOR UNPAID PENALTY CHARGE*

*How many statements have been received by the TEC?*

*How many have been accepted and Merseyflow told to revoke the Recovery Order?*

*How many have been turned down?*

*How many are awaiting a decision?*

*TE7 APPLICATIONS TO FILE A STATEMENT OUT OF TIME*

*How many applications have been received by the TEC?*

*How many have been accepted by Merseyflow?*

*How many have been opposed by Merseyflow and that rejection has been confirmed by a court officer on behalf of the TEC?*

*How many have been opposed by Merseyflow but the court officer on behalf of the TEC has decided to accept the application?*

*How many are awaiting a decision?*

*TE3 RECOVERY ORDERS FOR UNPAID MERSEY GATEWAY PENALTY*

*CHARGES*

*How many Orders have been made?"*

10. The MOJ responded on 29 May 2019. It refused to provide the requested information, citing section 12(1) of FOIA, the cost of compliance. It explained that there were approximately 170,000 cases in scope which it said would have to be individually checked on the database in order to respond to the request.
11. Following an internal review, the MOJ wrote to the complainant on 18 June 2019; it maintained that section 12(1) applied.

## **Scope of the case**

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12. The complainant contacted the Commissioner on 20 September 2019 to complain about the way his request for information had been handled.
13. Following identification of a later request from the complainant on the same topic amongst his complaint submissions, there followed an exchange of correspondence to clarify the grounds of his complaint. As explained in the 'Background' section above, the subsequent request has also been considered by the Commissioner in a separate investigation.
14. The complainant provided confirmation of his grounds of complaint in relation to both his requests on 2 December 2019. In respect of this complaint, he disputed that the cost limit would be exceeded given that the 170,000 cases were on a computer database.
15. In addition, he was concerned that the TE3, TE7 and TE9 forms, (which he said can only be used by local authorities), had knowingly been used by a non-local authority, specifically Merseyflow. This point is not an FOIA issue, so the Commissioner has excluded it from her section 50 consideration as it falls outside her jurisdiction. However, she raised all the complainant's grounds of complaint with the MOJ; further details of which are included in the 'Other matters' section of this notice.
16. The Commissioner has considered whether the MOJ was entitled to rely on section 12(1) to refuse to comply with the request.

17. She has also considered whether the MOJ has fulfilled its obligations under section 16 of FOIA.

## Reasons for decision

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### Section 12(1) – cost of compliance exceeds the appropriate limit

18. Section 1(1) of FOIA states that:

*"(1) Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

19. Section 12(1) of 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."*

20. The Fees Regulations set the appropriate limit at £600 for the MOJ; they also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that the appropriate limit for the MOJ equates to 24 hours.

21. 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:

- a. determining whether it holds the information;
- b. locating the information, or a document containing it;
- c. retrieving the information, or a document containing it; and
- d. extracting the information from a document containing it.

*Can all parts of the request be aggregated?*

22. During the course of the Commissioner's investigation, the MOJ said it had considered all parts of the request together. Section 12(4) of FOIA can be engaged where one person makes two or more requests. It allows for the aggregation of these requests for the purpose of

calculating costs in circumstances which are set out in Regulation 5 of the Fees Regulations. This Regulation provides that multiple requests can be aggregated where two or more requests relate, to any extent, to the same or similar information.

23. Given the effect of section 12(4), the Commissioner first considered whether the complainant's request of 9 May 2019 constituted a single request with multiple elements or multiple requests. The Information Tribunal considered a similar issue in *Fitzsimmons v ICO & Department for Culture Media and Sport* [EA/2007/0124]<sup>1</sup>.
24. Taking the Tribunal's decision in *Fitzsimmons* into consideration, the Commissioner would characterise the complainant's request as containing multiple requests within a single item of correspondence.
25. Having established that the complainant has made multiple requests in a single letter, the Commissioner went on to consider whether those requests could be aggregated for the purpose of calculating the cost of compliance. The Commissioner notes that all parts of the request relate to the forms used by the TEC and therefore to a similar subject matter. The Commissioner has therefore concluded that it is reasonable for them to be aggregated for the purpose of calculating the cost of compliance because they follow an overarching theme.
26. Having reached this conclusion, the Commissioner will next consider the application of section 12(1). In determining whether the MOJ has correctly applied section 12 of FOIA in this case, the Commissioner has considered the MOJ's rationale provided to her during the investigation.

#### *Application of section 12(1)*

27. The MOJ advised that there are 170,000 PCN cases in scope of this request which are entered onto an electronic database. As a TEC user, each local authority has to pay per registration; in this case the relevant local authority is Halton Borough Council. The numbers of registrations are recorded on the database and are therefore readily available.
28. However, in order to interrogate those cases applicable to the request, the MOJ explained that it would first need to secure the associated PCN (Penalty Charge Notices) reference numbers. It said it could not open and view each of the 170,000 case records in scope of the request:

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<sup>1</sup><http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i242/Fitzsimmons.pdf>

*"...until we have ascertained all 170,000 PCNs. To do that requires completion of a Civil Application Ad-Hoc Data Extract, which would cost £592.00".*

29. Following receipt of a valid TE7 (out of time application) or a TE9 (witness statement), the MOJ said that the processing is manual in that an event code is entered onto the database, with a further code being added to show whether the TE7/9s have been accepted/rejected. It also confirmed that the database does not collate statistics for these event codes.
30. The MOJ told the Commissioner that, in order to provide the information being requested, it would need to open and view each individual case record. Out of the approximately 170,000 cases registered it said it is impossible to tell which have had a TE9/7 and which of those have been accepted/rejected without checking each case individually on the database.
31. The MOJ also explained that its system does not have the facility to run a bespoke report and that it can only run standardised reports within given parameters.
32. In response to the Commissioner's enquiries, the MOJ confirmed that whilst it had not advised the complainant, it had in fact included the £592 cost of the data extract report as part of its cost estimate.
33. In terms of its cost estimate and sampling exercise, the MOJ further explained:

*"Once we have all 170,000 PCN's we would go into each case by typing in the 10-digit penalty charge number then pressing the F1 key, this then brings up the case information.*

*We would then have to look at the events that are brought up in the box at the bottom.*

*Then we would have to review which events had been added and cross reference them with [the complainant's] list of questions.*

*In some cases, we would have to double click on the box that states event details to determine the answer of his question. The average time taken to find answers to all of his questions would be 2 minutes as timed by a clerk at the TEC using a random PCN."*

34. The MOJ confirmed that this estimate is based on the quickest method of gathering the requested information. This exercise is in addition to the £592 cost which would be incurred for the report necessary to identify the PCN reference numbers required to interrogate the

database. All PCN cases would then need to be opened individually at two minutes per record. Given that the cost limit for the MOJ is £600 and £592 of it would be accounted for by the ad hoc report, this would only leave £8 towards the cost of doing the further work required, ie less than half an hour using the appropriate rate of £25 per hour.

### *Conclusion*

35. From the information provided, the Commissioner is satisfied that the database is not set up in a way that allows for the required PCN reference numbers to be reported on from within the system. She accepts that a separate ad-hoc report would be needed (at a cost of £592), and that, following receipt of that report, each of the 170,00 PCN cases in scope would then need to be manually interrogated in order to respond to the request.
36. At two minutes per record, this would take 340,000 minutes or 5666 hours.
37. The Commissioner has concluded that the MOJ's estimate is reasonable and that it was entitled to rely on section 12 for this request.

### **Section 16 – duty to provide advice and assistance**

38. Section 16 of FOIA states:

*"(1) It shall be the duty of a public authority to provide advice and assistance, so far as would be reasonable to expect the authority to do so, to persons to propose to make, or have made, requests for information to it.*

*"(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."*

39. The Commissioner's view is that, where a public authority refuses a requests under section 12(1) of FOIA, section 16(1) creates an obligation to provide advice and assistance on how the scope of the request could be refined or reduced to avoid exceeding the appropriate limit.
40. In its substantive response to the request on 29 May 2019, the MOJ told the complainant:

*"Although we cannot answer your request at the moment, we may be able to answer a refined request within the cost limit. You may wish to consider, for example, reducing the volume of your request, and or specifying a narrow period of time. Please*

*be aware that we cannot guarantee at this stage that a refined request will fall within the FOIA cost limit, or that other exemptions will not apply."*

41. In light of the above, the Commissioner is satisfied that the MOJ has complied with its advice and assistance obligations in accordance with section 16 of FOIA.

## **Other matters**

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42. The complainant raised the following as part of his grounds of complaint:

*"The TEC say that they have some statistics that seem as if they would be relevant to our request, but they did not say what these statistics were or offer to supply them."*

43. In response to her enquiries about this point, the MOJ told the Commissioner that:

*"In order to monitor our office productivity and performance, we are able collate figures on how many TE9's, TE7's and Court Officer Orders we process in total. But the figure is not broken down 'per Local Authority'. It is the total processed for all 570 Local Authorities that use the TEC, combined."*

44. In response to the complainant's concerns about the possibility of a "cover up", the MOJ also said:

*"I can confirm that the TEC is a Government department and is in no way doing anything illegal, at all times the TEC carries out its duties and responsibilities in line with the rules governing Civil Courts."*



## Right of appeal

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45. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

46. 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.
47. 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 .....**

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**