

**Freedom of Information Act 2000 (FOIA)  
Re-use of Public Sector Information Regulations 2015  
(RPSI)**

**Decision notice**

**Date:** 18 January 2021

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

**Decision (including any steps ordered)**

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1. The complainant made a request to the Ministry of Justice (MoJ) under the Re-use of Public Sector Information Regulations 2015 (RPSI) to re-use information, namely court listings for a specified date.
2. The MoJ made the information available for re-use, with restrictions.
3. The Commissioner's decision is that the MoJ applied Regulation 12(2) correctly as the conditions of re-use were not unnecessarily restrictive. However, the Commissioner found that the MoJ breached regulation 8(1) of RPSI by failing to respond to the request within a reasonable time.
4. As the information has been provided for re-use, the Commissioner requires no steps to be taken as a result of this decision.

**Background**

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5. By way of background to the request in this case, the MoJ explained to the Commissioner:

*"The Queen's Bench is one of the three divisions of the High Court; the others are the Chancery Division and the Family Division. Most cases are heard at the two sites that comprise the Royal Courts of Justice (RCJ) estate in London: the main RCJ buildings and the Rolls Building".*

## Request and response

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6. On 5 May 2019, the complainant wrote to the MoJ and requested re-use of information in the following terms:

*"I'd like to re-use the Royal Courts of Justice & Rolls Building List for the Queen's Bench for May 7th 2019 available on CourtServe at the following URL ([https://www.courtserve.net/courtlists/viewcourtlist2014.php?courtlist=rcjus\\_S190507.01.rtf&type=rcjlists](https://www.courtserve.net/courtlists/viewcourtlist2014.php?courtlist=rcjus_S190507.01.rtf&type=rcjlists)) and provided by the HMCTS [Her Majesty's Courts and Tribunals Service] thanks to the contract between HMCTS and Courtel*

...

*As Courtel already has the right to re-use those court listings on its website, I'd like to re-use the requested information under the Open Government Licence, or at least to be offered the same terms and conditions to re-use information as Courtel".*

7. The MoJ wrote to the complainant on 19 September 2019 apologising for the delay in responding. It told the complainant that it hoped that the matters giving rise to the delay would be resolved *"within the next couple of weeks"*.
8. Despite further correspondence between the parties, and the intervention of the Commissioner, the MoJ did not provide its substantive response until 25 August 2020. It provided the requested information, confirming that the information may be re-used, subject to conditions.
9. The complainant expressed dissatisfaction with that response.
10. In the circumstances, the Commissioner exercised her discretion to accept the case without an internal review.

## Scope of the case

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11. Following earlier correspondence, the complainant contacted the Commissioner on 7 September 2020 to complain about the way his request to re-use information had been handled.
12. He disputed that the conditions for re-use required by the MoJ, namely the obligation to destroy the information after two years and the ban on any re-use after that time, were in accordance with RPSI.
13. In that respect, the complainant told the MoJ:

*"You did answer the first part of my request regarding the Open Government Licence but you ignored the second part regarding the fair and equal treatment of all reusers, including Courtel".*

14. The analysis below considers whether the MoJ dealt with the request for re-use in accordance with the requirements of RPSI.
15. Specifically the Commissioner has considered its application of Regulation 8 (responding to a request for re-use) and Regulation 12 (conditions) of RPSI.

## **Reasons for decision**

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### *Regulation 12 – Conditions*

16. Regulation 12 of RPSI states the following:

*"(1) A public sector body may impose conditions on re-use, where appropriate through a licence.*

*(2) Where conditions are imposed they must not unnecessarily restrict—*

*(a) the way in which a document can be re-used; or*

*(b) competition".*

### *The complainant's position*

17. The complainant considers that the MoJ placed unnecessary restrictions on the way the requested information can be re-used. He considers that the restrictions are neither fair nor transparent, and that they restrict competition.
18. He disputed that there was any justification for, or logic behind, the ban on re-use after two years. He also disputed that he was offered the same terms and conditions to re-use information as Courtel, as explicitly stated in his request for information.

### *The MoJ's view*

19. In its correspondence with the complainant, in which it made the requested information available for re-use, the MoJ said:

*"I confirm you may re-use the attached lists, subject to the conditions we apply for the re-use of this information: this information is retained for no longer than two years (from the date*

*you receive the information) and that you ensure it is securely destroyed".*

20. In subsequent correspondence, the MoJ provided the complainant with further reasoning for the two-year retention period, referencing General Data Protection Regulation (GDPR) and the Data Protection Act (DPA) 2018.

21. During the course of her investigation the MoJ explained to the Commissioner that, contrary to the impression given by the wording of the request, information of the type requested in this case is not provided under **contract** by HMCTS to Courtel. The MoJ confirmed that there are **licencing agreements**, as opposed to contracts, in place between HMCTS and Courtel.

22. The MoJ also explained, that, due to the complex structure of the courts, those licensing agreements have no relevance to the lists specified in the request in this case:

*"... because he requested lists for the cases heard in the RCJ and Rolls buildings".*

23. With regard to the complainant's wish to be offered the same terms and conditions to re-use information as Courtel, the MoJ told the Commissioner:

*"... the restrictions placed upon the re-use of the information (the retention period) are equivalent to the restrictions as applied in the Courtel licensing agreement".*

24. In its submission, in support of the conditions for re-use imposed in this case, the MoJ re-iterated what it had told the complainant regarding its obligations under GDPR and DPA. The MoJ also addressed the matter of the Open Government Licence (OGL) in its correspondence with the Commissioner:

*"As well as the RPSI Regulations 2015, the MoJ is also subject to other obligations in respect of the use and re-use of information, including obligations under the Data Protection Act 2018 and the General Data Protection Regulation. The information requested includes personal data and the Open Government Licence (OGL) expressly does not cover personal data. Having considered its various legal obligations, the MoJ did not consider that allowing re-use of the requested information on the terms of the OGL would be in compliance with its legal obligations in respect of personal data."*

25. By way of background, the MoJ explained:

*"Most of the information in a court list is personal data which HMCTS has collected in line with its privacy notices for the purposes of administering justice. Organisations that are licenced to publish court lists are licensed to do this in order to support the administration of justice. As the court case becomes more distant, so the sensitivity of the personal data increases as it may cause distress to data subjects to be reminded of court cases at some point in the future".*

26. With respect to the conditions imposed in this case, the MoJ told the Commissioner that the only restriction applied to the provision of the requested court lists was a retention period. It confirmed that the retention period was in accordance with its draft retention schedule that was current at the time of the request. It also confirmed that a retention period is also applied within the licensing agreement with Courtel.
27. It explained that the retention criteria were in place to ensure its own compliance with General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA).
28. In its submission to the Commissioner, the MoJ said:

*"... that licensing the re-use of lists containing a large quantity of personal data beyond agreed retention periods would not meet its obligations under GDPR and DPA".*

29. The MoJ confirmed:

*"There are no other restrictions on the use of the information by the requestor. The restrictions are therefore as open and non-restrictive as reasonably possible in the circumstances, while ensuring compliance with the relevant data protection legislation".*

#### *The Commissioner's view*

30. The Commissioner's published guidance<sup>1</sup> states that a public sector body may impose conditions on re-use:

*"... but the conditions must be as open and non-restrictive as possible".*

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<sup>1</sup> <https://ico.org.uk/for-organisations/guide-to-rpsi/obligations/>

31. The Commissioner accepts that the only restriction applied to the re-use of the requested information in this case was a retention period.
32. The Commissioner acknowledges that, while the MoJ explained to her that, due to the structure of the courts, its licensing agreements have no relevance to the lists specified in the request, this may not have been clear to the complainant.
33. The Commissioner has considered the arguments put forward by both the complainant and the MoJ regarding the conditions for re-use applied in this case. She has also been provided with a copy of the information within the scope of the request.
34. In reaching her decision in this case, the Commissioner has taken into account her role to uphold information rights, both with regard to protecting personal information and the re-use of public sector information.
35. Having considered all the above, the Commissioner is satisfied that the conditions imposed in this case do not unnecessarily restrict the way in which the requested information can be re-used or unnecessarily restrict competition.
36. Accordingly she finds that the MoJ was entitled to impose conditions on re-use in accordance with Regulation 12(1) of RPSI. She is also satisfied that the conditions imposed do not unnecessarily restrict the way in which the requested information can be re-used and are therefore in accordance with Regulation 12(2).

*Regulation 8 - Responding to a request for re-use*

37. Regulation 8(1) of RPSI provides that a public sector body must respond to a request for re-use promptly and in any event before the end of the twentieth working day beginning with the day after receipt.
38. Regulation 8(2) does, however, permit a public sector body to extend the period for responding to a request where the documents requested are extensive in quantity or if the request raises complex issues. The time for responding may be extended:

*"... by such time as is reasonable in the circumstances".*

39. In that respect, the Commissioner's guidance<sup>2</sup> states:

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<sup>2</sup> <https://ico.org.uk/for-organisations/guide-to-rpsi/obligations/>

*“When you receive a request to re-use information you must respond within 20 working days. You can extend this time if the information is extensive or the request raises complex issues, but you must inform the requester of this within the 20 day period”.*

40. In this case, the complainant made his request on 5 May 2019. He contacted the Commissioner on 20 July 2019 to complain that the MoJ had failed to respond to his request. Following the Commissioner’s intervention, the MoJ acknowledged his request on 16 August 2019. However, it was not until 25 August 2020 that the MoJ provided its substantive response.

*Was it reasonable to extend the period for responding?*

41. The Regulations do not define what might constitute a ‘reasonable’ extension of time.
42. The Commissioner has issued guidance on the ‘*Time limits for compliance under the Freedom of Information Act (Section 10)*’<sup>3</sup>. Although this guidance relates to responding to requests made under the FOIA, given that the wording of regulation 8(1) of RPSI is substantially similar to the wording of section 10 of the FOIA, the Commissioner considers that the guidance can be taken into account when making a decision relating to the time limits for responding to a re-use request.
43. Her guidance states:

*“The Act does not define what might constitute a ‘reasonable’ extension of time. However, our view is that an authority should normally take no more than an additional 20 working days to consider the public interest, meaning that the total time spent dealing with the request should not exceed 40 working days. An extension beyond this should be exceptional. Examples of such circumstances could include extreme pressures placed on the public authority by a major incident or exceptional levels of complexity involving a number of external parties. Public authorities will need to demonstrate that the length of time of any time extension is justified”.*

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1165/time-for-compliance-foia-guidance.pdf>



44. In correspondence with the Commissioner, the MoJ said:

*"MoJ accepts the delay in responding to [the complainant] was unreasonable, outside of the statutory requirements and that it did not keep [the complainant] fully informed about the reasons for the delay".*

45. In its correspondence, the MoJ explained that there were "*various matters that needed to be resolved*" before a response could be provided to the complainant. It also considered that matters were complicated by the complainant making a number of separate, but related, requests under RPSI and the FOIA.

46. It told the Commissioner:

*"... the MoJ had to ensure it adopted a consistent position in responding to those".*

47. The MoJ also cited disruption arising from the need to prepare for EU Exit and the Covid-19 pandemic as factors that added to the delay.

48. The Commissioner has seen some of the correspondence between the MoJ and the complainant regarding progress in providing a response to his request in this case. She accepts that that correspondence spans a number of months and, in some instances, includes references to his other requests for information/re-use of information.

49. The Commissioner notes the following from the correspondence between the two parties in relation to the request for re-use under consideration in this case:

- 9 September 2019, the MoJ told the complainant

*"With regard to the court listings,... I am seeking clarification from colleagues as to what we can authorise you to reuse and will get back to you as soon as I have heard back from them".*

- 24 March 2020, the MoJ told the complainant:

*"I am writing to let you know that we have commissioned further legal advice before we can respond to this request. As we are currently working in unprecedented times, I am not able to give you a likely deadline for responding to your request"*

- 17 June 2020, it told him:

*"This remains a complex request".*

- 1 July 2020, the MoJ wrote:



*"Further to my last email of 17 June, I can report that we are still working on this request".*

50. The MoJ provided the Commissioner with a detailed timetable of activities undertaken between receipt of the request and eventual response.
51. The Commissioner accepts that the MoJ described the request in this case as '*a complex request*' and that it was being handled against a backdrop of Brexit. She also recognises that in the COVID-19 pandemic climate, many public authorities faced severe front-line pressures and re-deployed their resources to meet those demands. She accepts that public authorities required maximum flexibility to optimally deploy its resources to best respond to a national crisis.
52. However, the Commissioner is mindful that that the request for re-use in this case was for a discrete amount of information and was received by the MoJ well in advance of the national crisis.
53. With response to its argument that matters were complicated by the existence of other requests from the same complainant, she has taken into account that the MoJ is a large government department with significant experience in dealing with volumes of requests for information.
54. From the evidence she has seen, the Commissioner is not satisfied that the documents requested for re-use are extensive in quantity. She therefore does not consider that that criteria for extending the time for responding applied.
55. She is prepared to accept that, in the circumstances of this case, the request for re-use raised complex issues that justified responding outside of the 20 working day limit. However, she finds that the MoJ failed to notify the requester of this within the 20 day period.
56. Furthermore, from the evidence she has seen, she is not satisfied that the issues raised by the request are sufficiently complex to justify the lengthy delays experienced by the complainant in this case.
57. Mindful of her guidance on time limits under the FOIA, the Commissioner finds that the time taken to respond in this case is clearly unreasonable. Accordingly, it follows that the MoJ breached Regulation 8(1) of RPSI.

## **Other matters**

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58. The MoJ provided the Commissioner with details of the steps it has taken to ensure delays, such as those encountered in this case, are avoided in the future. The Commissioner welcomes this approach and expects that, in future, the MoJ will respond to a request under RPSI in a timely manner.

## Right of appeal

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59. 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)

60. 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.

61. 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 .....**

**Gerrard Tracey  
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