

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 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 requested information relating to statutory 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, citing section 12(1) (cost of compliance) of the FOIA.
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) (duty to provide advice and assistance) of the FOIA.
4. The Commissioner requires no steps to be taken as a result of this decision.

#### Request and response

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5. On 25 May 2020, the complainant wrote to the MoJ and requested information in the following terms:

*"In FOI [reference redacted], the MoJ replies that it and its Agencies do not provide any services to consumers under contract. Any services we provide to the public for a fee e.g. Court Services, are instead provided under Statutory Authority.*

*Please cite specifically where the statute states as claimed, and if publicly available already please direct me specifically as MoJ has not been able to help to date".*

6. The request was made using the 'whatdotheyknow' website.

7. The MoJ responded on 22 June 2020. It stated that it was unable to confirm whether or not it held the requested information, citing section 12(2) (cost of compliance) of the FOIA.
8. Following an internal review, the MoJ wrote to the complainant on 21 July 2020. It stated that while the correct exemption was applied:

*"...the sub section that should have been used was (1) Costs to locate, rather than (2) Costs to investigate".*

## Scope of the case

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9. The complainant contacted the Commissioner on 21 July 2020 to complain about the way his request for information had been handled. He disputed the MoJ's refusal to provide the requested information.
10. He told the Commissioner:

*"My request is uncomplicated and should be readily available / provided, and costs to locate should be virtual nil".*
11. He considered that 'the correct person' would be able to resolve his request.
12. As is her practice, the Commissioner wrote to both parties advising that the case had been accepted as a formal complaint. In correspondence with the complainant, she explained the process if he wished to send any further documents while the case was awaiting allocation.
13. During the course of the Commissioner's investigation, both parties were given the opportunity to provide further written evidence in support of their position.
14. The analysis below considers the MoJ's application of section 12(1) of the FOIA to the requested information.

## Reasons for decision

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### *Section 12 cost of compliance exceeds appropriate limit*

15. 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".*

16. This limit is set in 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?*

17. 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.
18. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.

*The complainant's view*

19. The complainant disputed that it would exceed the time limit to comply with his request.
20. He told the MoJ:

*"The response should be instantly available to the permanent secretary, and or the original author of my FoI request. It should therefore take non [sic] more than 15 minutes".*

*The MoJ's view*

21. In correspondence with the complainant, the MoJ told him the reason for applying section 12(1), the cost exemption, in this case:

*"... is due to there being several statutes concerned in empowering the charging of fees for Court Services, and whilst all are published, there is no single point of reference to answer specifically what you have asked. Therefore, searching for all those involved to give you a complete and accurate answer would fall outside of the reasonable costs".*

22. During the course of the Commissioner's investigation, the MoJ was asked to provide more detail in respect of its application of section 12.

23. Mindful of the arguments put forward by the complainant in this case, the Commissioner also asked the MoJ to confirm which departments or specific members of staff had been consulted about this request.
24. The MoJ confirmed that advice was sought from Government Legal Department (GLD). It confirmed that the initial response received from GLD had been reviewed and that an independent reviewer, someone not involved in the original request, had subsequently confirmed the response provided.
25. By way of background to its handling of the request, the MoJ explained that the request under consideration in this case was made further to an earlier request. It told the Commissioner that, in relation to that request, it had replied that the MoJ is not subject to the Consumer Rights Act:

*"... as it is a Crown Body, not a Business Entity. We further explained that a statute needs to expressly state that it binds the Crown or do so by necessary implication, otherwise it does not do so, ...".*

26. The MoJ told the Commissioner that following that earlier request, the requestor then made this request:

*"... in which he asked for the MoJ to specifically cite where the statute stated as we had claimed; ...".*

27. In its submission to the Commissioner, the MoJ explained that there is no one over-arching statute. It re-iterated what it had told the complainant, namely:

*"... that there was no single Statute which stated that the MoJ was not subject to the Act and that in order to answer the FOI fully with all the statutes we would have to search through all possible legislation in order to quote the relevant parts".*

28. In correspondence with the MoJ, the Commissioner asked whether the statutes are online, and, if so, whether it is possible to search them using appropriate search terms to identify the information within the scope of the request.
29. The MoJ acknowledged that it was possible to search the statutes using various search terms, for example 'Crown Body' and 'fees'.
30. With regard to the number of statutes that it considered fell within the scope of the request, the MoJ told the Commissioner:

*"There are actually 81,503 UK Statutory Instruments currently on [www.legislation.gov.uk](http://www.legislation.gov.uk) – but after searching for 'key words' such as*

*Services, Costs, Fees, Charges etc. we found over 300 statutes that would need checking”.*

31. However, it cautioned:

*“This doesn't guarantee that we have captured all possibilities as some statutes may simply not be titled under the expected words”.*

32. With regard to the cost involved in complying with the request, the MoJ told the Commissioner:

*“There is no single source which holds the requested data in a quickly accessible way to answer this question. We would have to explore over 300 statutes on the Gov website in order to determine whether they are relevant to this FOI response. We estimated that it would take 10-20 minutes to thoroughly check each one, resulting in costs between £1279.17 and £2558,33, therefore exceeding the appropriate limit”.*

33. The MoJ told the Commissioner:

*“We would be able to instantly direct [the complainant] to a specific piece of legislation if he asks about a specific statute and/or contract – but in our response to him where we stated ‘any services we provide to the public for a fee are provided under Statutory Authority’ – he has asked where this is specifically written in a/the statute... There is not one specific piece of legislation that states the above”.*

34. In its correspondence, the MoJ confirmed:

*“There is also not a single point of reference (I.E a list) for all statutes that fall into similar brackets. This is a bespoke/individual request and other [than] to respond to this FOI, there is no need for there to be such a list”.*

#### *The Commissioner's view*

35. 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, the Commissioner's role is simply to decide whether the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.

36. In essence, therefore, this case turns on whether the estimate provided by the MoJ was reasonable. The Commissioner considers that a

reasonable estimate is one that is "...*sensible, realistic and supported by cogent evidence*".

37. The Commissioner observes that it was not until her investigation that the MoJ provided an estimate of the work involved.

38. In her guidance<sup>1</sup>, the Commissioner recognises that:

*"A sensible and realistic estimate is one which is based on the specific circumstances of the case. In other words, it should not be based on general assumptions, for example, that all records would need to be searched in order to obtain the requested information when it is likely that staff in the relevant department would know where the requested information is stored".*

39. Her guidance also states:

*"However, an estimate is unlikely to be reasonable where an authority has failed to consider an absolutely obvious and quick means of locating, retrieving or extracting the information".*

40. The Commissioner accepts that the complainant considers that the requested information "*must be held and readily accessible*" and acknowledges his suggestion that a specific individual at the MoJ, (whose full name was not provided), could supply the information. However, despite being given the opportunity to do so, he has not provided any supporting evidence in that regard.

41. With respect to the MoJ's consultation about this request, while she is unable to provide an expert opinion on this matter, the Commissioner acknowledges that GLD:

*"... are the government's principal legal advisers... We provide a legal service to the majority of central government departments, including ... Ministry of Justice<sup>2</sup>".*

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

<sup>2</sup> <https://www.gov.uk/government/organisations/government-legal-department>

42. In this case, although explaining in general terms why it considered that complying with the request would exceed the cost limit, the MoJ failed to provide the complainant with an estimate of the actual work involved in complying with the request. For example it did not quantify the scale of the investigation.
43. In the absence of an estimate in its responses, the Commissioner finds it understandable that the complainant considers it to be unsatisfactory to be told that it was not a simple task for the MoJ to supply the requested information.
44. However, 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 of 24 hours to locate, retrieve and extract the requested information.
45. Section 12(1) does therefore apply and the MoJ is not required to comply with the request.

*Section 16 advice and assistance*

46. 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 "so far as it would be reasonable to expect the authority to do so".
47. In her guidance on section 12, 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".*
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48. 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.
49. In this case, the Commissioner is satisfied, that, by way of advice and assistance, the MoJ directed the complainant, on a discretionary basis, to some of the statutes which empower the charging of fees for court services.
50. The MoJ also confirmed:

*"We also offered some narrative by the way of what powers a statute gives in regard to fees (as the original request refers to a consumer paying the MOJ directly for a service) but that the actual fees are set up in statutory instruments which are updated regularly. We provided the link to the Government document which explained this in more detail and may have been helpful to the requestor".*
51. She is therefore satisfied that the MoJ fulfilled its duty at section 16(1) of the FOIA to provide advice and assistance as far as is reasonable.



## Right of appeal

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52. 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)

53. 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.
54. 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** .....

**Laura Tomkinson**  
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**Information Commissioner's Office**  
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