

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 November 2021

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

Decision (including any steps ordered)

1. The complainant requested from the Ministry of Justice (the MOJ) information relating to home working during the COVID 19 pandemic and the deployment of laptops/devices to enable home working during the pandemic. The MOJ refused to comply with the request citing section 12 (cost limits) of the FOIA.
2. The Commissioner decision is that the MOJ was entitled to refuse to comply with the request in accordance with section 12(1) of the FOIA. She also finds that the MOJ met its obligations under section 16(1) of the FOIA to offer advice and assistance.
3. The Commissioner does not require the MOJ to take any steps.

Request and response

4. On 14 January 2021, the complainant wrote to the MOJ and requested information in the following terms:

"With respect to staff who are currently required to attend the workplace as usual as essential workers in venues where there is "no home working available", can you please advise:

- how many venues this effects & which?

(If any are on a rota system, so only partially in house & not "as usual", please specify)

- if there have been laptops/devices purchased for staff at these venues to facilitate home working during COVID that are not being used or not regularly used? How many? & at what cost?

I would like to know the extent of the issue by knowing how many laptops have been acquired for people who can't work from home. Is there a large cost for laptops that are gathering dust?

A breakdown of how many working hours/days/weeks/months of work a laptop has been used for would be helpful.

Venue would be important to differentiate between in the event of differences in handling that may skew results. Month may also need to be mentioned if there are discrepancies between statistics for April '20 home working compared to January '21 for example too."

5. The MOJ responded on 1 February 2021 and refused to provide the requested information citing section 12 (cost limits) of the FOIA.
6. On 1 February 2021, the complainant wrote to the MOJ to request an internal review.
7. Following an internal review, the MOJ wrote to the complainant on 1 March 2021. The MOJ maintained its reliance on section 12 (cost limits) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 18 March 2021 to complain about the way her request for information had been handled.

9. The Commissioner considers the scope of this case to be to determine if the MOJ has correctly cited section 12(1) of the FOIA in response to the request.

Reasons for decision

Section 12 – cost of compliance

10. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit.
11. The appropriate 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 public authorities such as the MOJ.
12. 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 for the MOJ.
13. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - 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.
14. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/00041*, the Commissioner considers that any estimate must be "*sensible, realistic and supported by cogent evidence*". The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
15. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under

the FOIA to consider whether there is a public interest in the disclosure of the information.

16. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

The MOJ's position

17. As is the practice in a case in which the public authority has cited the cost limit under section 12 of the FOIA, the Commissioner asked the MOJ to provide a detailed explanation of its estimate of the time and cost of responding to the request.
18. In its submissions to the Commissioner, the MOJ maintained its reliance on section 12 of the FOIA and offered an explanation for how it had calculated that the request exceeded the cost limit.
19. The MOJ explained that there is no central record of venues where no home working is available so each site would have to be contacted individually to ask about its status regarding offering homeworking to staff. Each site would then have to task an individual with identifying and collating the relevant information. The MOJ explained that this would involve trawling through emails and making detailed enquiries with individual team leaders at each site.
20. The MOJ stated that it would need to contact 342 sites. It estimated that it would take each site a minimum of 45 minutes to locate, retrieve and extract the relevant information. Therefore, the MOJ calculated that it would take 15,390 minutes (256.5 hours) to process the request ($342 \times 45 = 15,390$). This equates to £6,412.50 and takes the request well over the cost limit under the FOIA. The MOJ considers the figures provided to be a conservative estimate of the costs.
21. The MOJ explained that if it was not clear from internal organisational charts who holds the information at each site, initial enquires would have to be made by phone or email to confirm who should be contacted. The MOJ stated that once identified, that individual may then have to make further enquires to confirm that the information held was correct. Once, the information had been located and retrieved from each person at each site, the requested information would then have to be extracted.
22. With regards to the complainant's question about how often devices were being used, the MOJ explained that whilst devices were originally assigned to an individual, as the operational status of buildings was frequently changing, devices were reallocated and were often being

treated as pool resources. The MOJ stated that as a result of this, there is no way to determine how often or how long a device is used for.

23. The MOJ explained that whilst it collects information about when a device was last connected to the MOJ's network, the data is unreliable. Therefore, the MOJ stated that the information requested in relation to the usage of devices is not held.

The Commissioner's position

24. The Commissioner accepts that the MOJ are unable to easily locate and retrieve the requested information as the information is not held centrally. Even if the MOJ's estimate of 45 minutes per site to locate and retrieve the requested information was halved, the cost of complying with the request would still be far in excess of the cost limit under the FOIA.
25. Furthermore, once the information has been located, the MOJ would then need to extract the relevant information. This would take the cost of complying with the request even further above the cost limit.
26. The Commissioner's decision is that the MOJ estimated reasonably that to comply with the complainant's request would exceed the cost limit. Therefore, the MOJ was correct to apply section 12(1) of the FOIA to the request.

Section 16(1) – the duty to provide advice and assistance

27. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
28. The Commissioner notes that the MOJ provided the complainant with some general information about the MOJ's deployment of laptops during the COVID 19 pandemic in its response to the request.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

29. In its response, the MOJ also outlined to the complainant that she may wish to resubmit a refined request. The MOJ suggested that the complainant could reduce the scope of her request by reducing the number of questions within it or focussing on the number of laptops rather than usage statistics.
30. In its submissions to the Commissioner, the MOJ stated that it included its cost estimates in its response to assist the complainant in reducing the scope of her request. For example, the complainant could request information about specific sites.
31. The Commissioner considers this was an appropriate response in the circumstances given the broad scope of the original request. She is therefore satisfied that the MOJ met its obligation under section 16 of the FOIA.

Right of appeal

32. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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

Michael Lea
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