

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 February 2022

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant has requested information relating to Ministry of Justice (MoJ) complaint procedures.
2. The Commissioner's decision is that MoJ has correctly cited section 12(1) FOIA (cost of compliance) in response to the request.
3. The Commissioner does not require MoJ to take any steps as a result of this decision notice.

Request and response

4. On 2 August 2021 the Commissioner issued a decision notice¹ relating to this request, in which he found that the exemption at section 21 was not applicable. He ordered MoJ to provide a fresh response without reliance on section 21.
 5. MoJ provided its new response on 3 September 2021 and refused to provide the requested information citing section 12(1) FOIA. Following an internal review MoJ wrote to the complainant on 5 November 2021 and upheld its position.
-

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/4017829/ic-85025-y3w5.pdf>

Scope of the case

6. The complainant contacted the Commissioner on 5 December 2021 to complain about the way his request for information had been handled.
7. The Commissioner considers the scope of this case to be to determine if the public authority has correctly cited section 12(1) of the FOIA in response to the request.

Reasons for decision

Section 12 – cost of compliance

8. Section 12(1) of 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.
9. 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 departments.
10. 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 18 hours for the public authority.
11. 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.

MoJ's position

12. MoJ explained it consists of a large headquarters group, and the following Executive Agencies:
 - Her Majesty's Prison and Probation Service (HMPPS - an Executive Agency of the MoJ)

- Her Majesty's Courts and Tribunal Service (HMCTS - an Executive Agency of the MoJ)
 - The Office of the Public Guardian (OPG - an Executive Agency of the MoJ)
 - The Legal Aid Agency (LAA - an Executive Agency of the MoJ)
13. Each of these Executive Agencies have several different complaints procedures and routes that complainants can use if they are dissatisfied. The details on the different complaints procedures are stored in each of the Agency's own internet sites, intranet sites and shared drives, (e.g. storing letter templates, including instructions on how to make a complaint). The MoJ is a very large government department. For context, the department's structure includes a central headquarters for policy teams and corporate functions such as Human Resources (HR), and finance and large Executive Agencies, each with their own Chief Executive Officer (CEO).
14. In its previous response MoJ provided some examples to the complainant of the different types of complaints processed that the MoJ has available depending on the nature of the issue Please see the examples below and note this is not an exhaustive list.

- Her Majesty's Court Service (HMCTS)

Complaints regarding the handling of a case, condition and facilities of a building, security and experiences

Depending on the nature of the complaint, there will be various procedures, and some held via the court system

- MoJ Headquarters Ministerial Correspondence Unit

Grievance

Whistleblowing

Freedom of Information complaints

Data Protection complaints

Complaints between Judicial office holders and MoJ staff

- Her Majesty's Prison and Probation Service (HMPPS)

Youth custody complaints

Prisoner complaints

Probation complaints

- Office of the Public Guardian (OPG)

Complaints on the services provided by OPG

Concerns about the actions of an attorney, deputy or a guardian.

How a complaint was handled - The CEO will look at how your complaint was handled and the outcome.

Complaints from members of parliament (MP)

- Legal Aid Agency (LAA)

Complaints on the services provided by LAA

MP correspondence and Ombudsman investigations

Compensation claims

Representations (complaints about opponents being granted legal aid)

Appeals (complaints about refusal of funding)

Bill reject fixer (complaint that bills have been incorrectly rejected).

Civil Legal Aid complaint

15. The MoJ explained it does not have a central IT system that holds all the different types of complaints procedures within the MoJ and its Executive Agencies. The above areas within the MoJ consist of many sub teams, which will all need to be contacted, to carry out a search and confirm what complaints procedures they hold. If any information is held, then the information will need to be located, retrieved and extracted.
16. To give an idea of the number of teams within the MoJ, (which regularly changes due to restructures), MoJ provided a link² to its Organogram of Staff Roles & Salaries. By clicking on the document 2021-11-18 Organogram (Senior), and filtering column E, it confirms that there are over 160+ different teams within the MoJ. Some of these teams will have its own complaints procedures.

² <https://data.gov.uk/dataset/a90a9f70-e28c-4a95-a7a70.25-f79d12fbe219/organogram-of-staff-roles-salaries> 0.50

17. As a sampling exercise, the Disclosure and Library team (one of the 160+ teams within the MoJ), carried out a search for the requested information (complaints procedures) held.

Disclosure & Library team tasks	Estimated mins	Hours	Cost (£)
Time taken by one team member to consider all the types of complaints and procedures we have	10	0.17	£4.17
One person from the team to search the internet for complaints and procedures	10	0.17	£4.17
One person from the team to search the intranet for complaints and procedures	20	0.33	£8.33
One person from the team to search electronic files (shared) for complaint and procedures	15	0.25	£6.25
Information that is held, needs to be retrieved and extracted (e.g. complaints and procedures on: FOI, SAR, EIR and Grievance)	30	0.50	£12.50
Total	85	1.42	£35.42

18. MoJ confirmed that the above estimate has been based upon the quickest method of gathering the requested information electronically, as per ICO guidance.
19. Based on the calculations above, MoJ also provided an estimate for the whole of the MoJ.
20. The calculation assumes that not all of the 160+ teams may hold information and is based on 50 teams out of the 160+ teams holding. It also stated that it had used 60 minutes per team for the estimate, rather than the 85 minutes taken in the sampling exercise to take into account variances between teams.

21. As such, it would take each of the 50 teams 60 mins per team to consider what complaints procedures they have and locate, retrieve and extract the information held.

Tasks	Estimated mins	Hours	Cost (£)
Time taken by one team member to locate the contact details for each of the 160+ teams across MoJ and ask for the information requested.	60	1.00	£25
Each of the teams to consider if the information is held or not	1600 (10 mins per team)	26.67	£666.67
On the basis that less than a third of the teams hold information, it will need to be located, retrieved and extracted.	2500 i.e 50 teams x 50 mins	41.67	£1041.67
Total	4160	69.34	£1733.33

22. MoJ further stated that the above estimate does not include the time/cost for sorting/removing duplicate information (as once all of the complaints procedures are received from the 50 teams, there may be some overlap of complaints, or duplicates).
23. Based on the above calculations, the MoJ believes that to provide the information requested, would exceed the cost limit set out in the FOIA. Consequently, it is not obliged to comply with the request.

Commissioner's position

24. Having considered the cost estimate provided, the Commissioner's overall conclusion is that MoJ has estimated reasonably and cogently that to comply with the complainant's request would exceed the cost limit of 24 hours. Given that the above calculations are based on only a third of the teams holding relevant information, and MoJ reduced the time actually taken in the sampling exercise, it is clear that that the cost limit would be exceeded.
25. Therefore, MoJ was entitled to cite section 12(1) FOIA in response to the request.

Other matters

Section 16 – Advice and assistance

26. Section 12 triggers the duty to provide advice and assistance under section 16 of FOIA. MoJ confirmed that it provided the complainant with guidance on how he could potentially narrow his request in its initial response and again, in its internal review.
27. It advised the complainant they may wish to consider requesting a specific type of complaint's procedure, such as a copy of the prisoner complaint's procedure or by a category for example complaints about Freedom of Information requests.
28. The Commissioner is therefore satisfied that MoJ has complied with its obligation under section 16 FOIA.

Right of appeal

29. 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

30. 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.
31. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF