

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 20 July 2011

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

### Summary

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The complainant contacted the Ministry of Justice (MOJ) to request information relating to maladministration complaints in specific courts for the last three years. The MOJ responded and refused to comply with the request on the grounds that the costs it would incur exceeded the appropriate limit. The internal review carried out by the MOJ upheld the refusal under section 12(1) of the Freedom of Information Act 2000 (the "Act"). The Commissioner has investigated and finds that compliance with the request would engage the costs limit and, therefore, the MOJ was correct to refuse to comply with the request under section 12(1). The MOJ offered advice and assistance under section 16 of the Act but this was declined by the complainant. The Commissioner requires no further steps to be taken.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. On 21 October 2010 the complainant contacted the MOJ to request the following information:

*"Please also give the following information:*

*5) How many complaints of maladministration in Barnet County Court or by the court staff, have been made in the past three years?*

*6) Of those complaints, how many have been upheld?*

*7) Of those complaints that were upheld (if any), what form and amount of redress for the injustice caused, was agreed between the court and litigants?*

*8) Please give the figures for 5) 6) & 7) specifically for each of the courts in the London Civil & Family Courts Division...".*

3. On 19 November 2010 the MOJ responded to the complainant and refused to comply with the request on grounds of cost. The MOJ stated that the information was not held in the format requested and that extracting it from the raw data which was held would exceed the appropriate costs limit. The complainant was offered an opportunity to refine his request.
4. On 23 November 2010 the complainant expressed to the MOJ his dissatisfaction with the response to his request and restated the information which he wanted.
5. On 14 December 2010 the MOJ wrote to the complainant with details of the internal review it had carried out. The internal review upheld the refusal under section 12(1) of the Act.

## **The Investigation**

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### **Scope of the case**

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points.
  - The length of time that the MOJ took to respond to his request.
  - The section 12 refusal and the validity of the refusal notice.
  - The fact that the MOJ suggested that the complainant refine his request.
  - The fact that the MOJ treated the refined request as a new request.
  - The MOJ's assumption that the complainant's correspondence of 23 November 2010 was a request for an internal review.

- The length of time the MOJ took to carry out the internal review.
  - The fact that the MOJ upheld its refusal to comply with the request on grounds of cost.
7. The Commissioner wrote to the complainant on 3 March 2010 and addressed all of the points raised in the complaint. The Commissioner explained that, having considered all the correspondence provided to him, there were no procedural elements requiring further investigation with the MOJ.
8. The Commissioner's investigation has, therefore, focussed on whether the MOJ was correct to refuse to comply with the request on the grounds of cost.

## **Chronology**

9. On 8 March 2011 the Commissioner wrote to the MOJ asking for a detailed breakdown of the estimated time and cost it would take to provide the requested information. The Commissioner asked the MOJ to include a description of the type of work involved in complying with the request, to clarify whether a sampling exercise had been undertaken, and to confirm that the estimate had been based upon the most efficient method of gathering the information.
10. On 23 March 2011 the MOJ responded to the Commissioner with details of its costs estimate.
11. On 25 March 2011 the Commissioner wrote to the MOJ seeking further clarification on a number of matters raised in the MOJ's previous response.
12. On 13 April 2011 the MOJ responded to the Commissioner with the clarification he required.

## **Analysis**

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### **Substantive Procedural Matters**

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

13. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations).

14. Section 12(2) allows a public authority to refuse to confirm or deny whether it holds information of the nature requested if simply to do so would in itself exceed the appropriate limit.
15. The appropriate limit for central government departments and therefore the MOJ in this case, is £600 or 24 hours of one member of staff's time.
16. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
  - determining whether the information is held;
  - locating the information, or a document which may contain the information;
  - retrieving the information, or a document which may contain the information; and
  - extracting the information from a document containing it.
17. In investigating this case, the Commissioner has had to decide whether the estimate put forward by the MOJ, regarding the costs it would incur in complying with the request, is a reasonable one. He is aware that a number of Information Tribunals have made it clear that an estimate for the purposes of section 12 has to be 'reasonable', which means it is not sufficient for a public authority to simply assert that the appropriate costs limit has been met. In *Alasdair Roberts and the Information Commissioner* (EA/2008/0050) the Tribunal ruled that any estimate should be "*sensible, realistic and supported by cogent evidence*". This point echoed that previously made by the Tribunal in *Randall vs The Information Commissioner* (EA/2007/0004) and forms the basis of the Commissioner's investigation.
18. In its initial response to the Commissioner, the MOJ confirmed that the requested information was not held centrally and that the request was refused under section 12(1) of the Act as "*to obtain the information would involve reading through each complaint file which would take in excess of 3.5 days*".
19. The MOJ went on to say that, following the Commissioner's correspondence, it had made further enquiries with the relevant business unit regarding compliance with the request. The MOJ stated:

*"...we only hold electronic records called 'café logs', for the last two years. Before that there were only manual logs, therefore in order to obtain the level of information requested all the manual logs would have to be searched. To assess the number of complaints of maladministration would require someone in each of the Regions' 18 Civil and Family Courts, going through the complaint logs for each year*

*and assessing which complaints are due to maladministration because the complaints are not recorded as such."*

20. With regard to how the requested information could be searched for the MOJ confirmed the following:

*"Data from the last two years on numbers of complaints could be picked up from the electronic log, but as they are not recorded as specifically maladministration there is no search term that would identify maladministration complaints. So each case file would need to be considered separately to decide which ones are due to maladministration."*

21. The MOJ confirmed to the Commissioner that a sampling exercise had been carried out in order to determine the costs estimate. In its response to the Commissioner it wrote:

*"We have carried out a sample exercise on one of the courts caught by this request – Barnet court. The court confirmed that they have had 70 complaints this year; 75 last year and 50 the previous year. In order to pull the information...requested an officer would have to manually check each file. On a rough average each complaint would take 20 minutes to ascertain all the information required. We have used the sum 20 minutes x 195 cases..."*

22. The MOJ continued the calculation stating that at a rate of £25 per hour it would therefore cost the named court £1,625 to comply with the request. Barnet court was only one of the 18 courts which fell within the scope of the request; therefore, the MOJ stated that, based on the Barnet estimate, the overall cost would be £29,250.

23. The Commissioner sought further details regarding the 'café logs' described by the MOJ in its response, along with clarification regarding the size and structure of the manual, paper files and how information was recorded and searched for.

24. The MOJ responded to the Commissioner and explained that the 'café log' system was an electronic database, similar to a large spreadsheet, on which complaints were logged. The paper files relating to each case could be identified from this system but were not scanned on to the database or stored electronically. The MOJ stated:

*"...where the complaint is entered on the Café Complaint log it will be just the basic details such as the name and address of the complainant and brief details of the complaint. It would not be possible to see the original complaint letter or the written reply without looking at the actual paper complaint file which would have to be manually checked."*

25. With regard to how the MOJ logged each complaint received, the MOJ stated:

*"Complaints are put on the Café logs as 'complaints', they are itemised as a category and then a sub category. A category could be 'enforcement', 'case/trial management', 'staff behaviour/conduct' etc. A sub category for 'enforcement' could be 'civil court bailiff', 'unlawful eviction', 'warrants', 'delay'."*

The MOJ confirmed that complaints were not recorded as 'maladministration' and therefore the specific search term could not be used to locate and identify such complaints on the Café logs.

26. Given the Commissioner's understanding that the individual paper court files would need to be examined in order to locate, retrieve and extract the information, he made enquiries to the MOJ regarding the size of the files involved. The MOJ responded:

*"A court file could be any size from a couple of pages to hundreds... The complaint files that we hold usually have the complaint letter, the reply and any relevant paperwork. In Barnet court the case files are held in the office. There may also be some information...that is cited but not held in the complaints file, it could for example, be held on the court file or in the area director's office so would have to be retrieved."*

27. The Commissioner appreciates the arguments put forward by the MOJ as to why it has estimated that compliance with the request would engage the costs limit. He is also mindful of the fact that under section 12 of the Act, a public authority is not obliged to comply with part of a request if to comply with the request in its entirety would exceed the costs limit.
28. The Commissioner notes that in this case the complainant has made more than one request within a single item of correspondence. Section 12(4) provides that, in certain circumstances set out in the Fees Regulations, requests can be aggregated so that the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.
29. Regulation 5 of the Fees Regulations sets out the relevant condition in this case and provides that multiple requests can be aggregated in circumstances where two or more requests relate, to any extent, to the same or similar information. Although this test is very broad, it is possible that one or more requests may not meet this test and the Commissioner has therefore considered whether he is satisfied that the requests relate to the same or similar information.
30. Parts 5 – 8 of the request all relate to maladministration complaints made to courts in the London Civil and Family Courts Division. The

Commissioner is satisfied that the cost of compliance can therefore be aggregated in line with Regulation 5.

31. The Commissioner has considered the estimate put forward by the MOJ and is satisfied that it is a reasonable one and that the cost of complying with all parts of the request can be aggregated. He had found that compliance with the request would exceed the appropriate costs limit and therefore the MOJ was correct to apply section 12(1) to the request.

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

32. Section 16(1) of the Act places a duty on a public authority to provide advice and assistance, where reasonable, to those making or intending to make a request for information. In relation to requests which engage section 12, the Commissioner usually expects a public authority to offer advice and assistance regarding refining the request to attempt to bring it under the costs limit.
33. The Commissioner clarified with the complainant as to whether he had refined his request after receiving the MOJ's refusal notice of 19 November 2010. The complainant confirmed that he had not refined his request.
34. Owing to the fact that the MOJ offered the complainant the opportunity to refine his request, giving examples of how this might be done, the Commissioner considers that the MOJ discharged its section 16 duties under the Act adequately.

### **The Decision**

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35. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

### **Steps Required**

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36. The Commissioner requires no steps to be taken.

## Right of Appeal

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37. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 20<sup>th</sup> day of July 2011**

**Signed .....**

**Jon Manners  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**



## Legal Annex

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### General Right of Access

#### **Section 1(1) provides that -**

"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."

### Exemption where cost of compliance exceeds appropriate limit

#### **Section 12(1) provides 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."

#### **Section 12(2) provides that –**

"Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit."

#### **Section 12(3) provides that –**

"In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases."

#### **Section 12(4) provides that –**

"The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

### **Duty to provide Advice and Assistance**

#### **Section 16(1) provides that -**

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