

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 October 2014

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

Decision (including any steps ordered)

1. The complainant submitted a multi-part request to the Ministry of Justice (MoJ) requesting information relating to applications by the London Borough of Redbridge to the Magistrates' Court for council tax arrears.
2. The MoJ cited section 12 of FOIA (cost of compliance exceeds the appropriate limit).
3. The Commissioner's decision is that the MoJ has correctly applied section 12. He requires no steps to be taken as a result of this decision.

Request and response

4. On 25 June 2014 the complainant wrote to MoJ and requested information in the following terms:

"This FOI request concerns the 2013 applications by the London Borough of Redbridge to the Magistrates Court for Council tax arrears.

1, How many applications were issued by the London Borough of Redbridge for council tax arrears. (being the total number of people named on the application forms)

2, How many applications were issued by the London Borough of

Redbridge for council tax arrears. (Being the total number of application forms issued by the London Borough of Redbridge)

3, What is the cost of a single application form issued by the London Borough of Redbridge for council tax arrears.

4, What was the total amount of fees for application forms issued by the London Borough of Redbridge for council tax arrears.

5, How many times were costs awarded by HMCTS to the London Borough of Redbridge for council tax arrears.

6, What was the total amount of costs awarded to the London Borough of Redbridge by HMCTS in respect of council tax arrears applications”.

5. MoJ responded on 21 July 2014. It confirmed that it held some of the requested information but refused to provide it, citing section 12 of FOIA (cost of compliance exceeds the appropriate limit) as its basis for doing so. It advised the complainant that the Council may be able to provide him with the information he is seeking.

6. The complainant requested an internal review on 21 July 2014. In requesting an internal review, the complainant told the MoJ;

“I have made the same request to the MOJ in the past month for Thurrock Council, and this request has been responded to without any problems. But the exact same set of questions regarding Redbridge Council has been refused on the basis of cost???”

7. MoJ sent him the outcome of its internal review on 6 August 2014. It clarified that it holds all the requested information. However, it upheld its position regarding section 12. With respect to the issue of a similar request having been answered in respect of a different court, it told the complainant:

“I should clarify that the operating procedures and indeed the information received by another court from another council may differ to the process followed by Barkingside Magistrates court”.

Scope of the case

8. The complainant contacted the Commissioner on 27 August 2014 to complain about the way his request for information had been handled. He told the Commissioner:

"The refusal of the MOJ to provide this FOI information is an attempt to obstruct my valid FOI requests [sic] to protect the interests of the MOJ and Redbridge for a legal scam that must be publicised".

9. The Commissioner acknowledges the concerns raised by the complainant with MoJ about its response to an apparently similar request for information. Although the Commissioner understands from this that MoJ would appear to have complied with a similar request, this does not set an automatic precedent for disclosure under the FOIA. Each case must be considered on its merits.
10. The Commissioner considers the scope of his investigation in this case to be whether MoJ is entitled to rely on section 12 as a basis for refusing to provide the requested information.

Reasons for decision

Section 12 cost of compliance

11. 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".

12. 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.

13. Section 12(4) of the FOIA states 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”.

14. In other words, when a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied.
15. Regulation 5(2) of the Fees Regulations requires that the requests which are to be aggregated relate “to any extent” to the same or similar information.
16. The Commissioner’s guidance on requests where the cost of compliance exceeds the appropriate limit¹ acknowledges that public authorities can aggregate two or more separate requests. It also recognises that multiple requests within a single item of correspondence are separate requests for the purpose of section 12.
17. The Commissioner is satisfied that the individual components of the multi-part request in this case comprise separate requests for the purpose of section 12 and that the requests relate to the same or similar information.
18. He is therefore satisfied that MoJ was entitled to aggregate the requests when considering whether complying would exceed the appropriate limit.

Would complying with the request exceed the appropriate limit?

19. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/costs_of_compliance_exceeds_appropriate_limit.pdf

- 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.
20. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
21. In response to his request for information, MoJ told the complainant:
- "The requested data is not recorded in a manner enabling retrieval of particularised information on Her Majesty's Courts and Tribunals Service's Libra database. We would need to refer to the Council Tax Registers to undertake manual counts which would require a considerable amount of resource".*
22. MoJ explained that as there are no overall statistics available it would be necessary to manually collate the response from each individual case file or computer record.
23. In that respect it told the complainant:
- "The local authority supplies the court with a folder that consists of between 50 and 500 sheets of A4 paper, each one having the details of 4-5 individuals that are in arrears of council tax. The total number of cases applied for would therefore require an individual to go through each of these folders and count up how many applications there are in each folder. There are approximately 200 such folders in Barkingside Magistrates' Court. I estimate that it will take an average of 20 minutes per file to gather, extract and then provide the information that has been requested which would equate to 67 hours work (over 8 days) which in itself would also exceed the cost limit mentioned above".*
24. During the course of the Commissioner's investigation, the MoJ was asked to provide more detail in respect of its application of section 12. In its substantive response, MoJ confirmed its estimate of the time/cost taken to provide the information falling within the scope of the request.
25. It confirmed that the information requested in parts (1) and (2) of the request is held at Barkingside Magistrates' court in approximately 200 folders and that each folder contains information relating to up to five named individuals. It reiterated that each folder contains between 50 and 500 sheets of paper which includes application forms for council tax arrears.

26. It further explained that in order to determine the total number of application forms and the total number of named individuals on those application forms, it would take an estimated 20 minutes per folder to search each of the 200 folders to identify and extract this information. It calculated 20 minutes x 200 as being approximately 67 hours' work, meaning that, at a rate of £25 per hour, the cost of processing those parts of the request would be £1,675.

27. MoJ told the Commissioner:

"Since the processing of the first two questions exceeded costs, we did not calculate the costs of processing the remainder of the request until the request as a whole is refined".

28. From the evidence he has seen during the course of his investigation, and in consideration of the aggregation of the multiple parts of the request, the Commissioner is satisfied that MoJ has provided adequate explanations to demonstrate that it would exceed the appropriate limit to locate, retrieve and extract the requested information. Section 12(1) does therefore apply and MoJ is not required to comply with the request.

Section 16 advice and guidance

29. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. 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, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.

30. In this case, the Commissioner acknowledges that MoJ told the complainant:

"Although we cannot answer your request at the moment, we might be able to answer a refined request within the cost limit. For example, you may wish to consider reducing the number of questions or the time period for which information is sought".

31. He also recognises that MoJ informed the complainant that the council may be able to answer some of his questions about council tax hearings at Barkingside Magistrates Court. In that respect, MoJ provided him with the relevant contact details for the London Borough of Redbridge.

32. From the evidence he has seen, the Commissioner is satisfied that advice and assistance was provided to the complainant. He therefore finds that MoJ complied with section 16(1).

Right of appeal

33. 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@hmcts.gsi.gov.uk

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

34. 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.
35. 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

Jon Manners
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