

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 June 2016

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

#### Decision (including any steps ordered)

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1. The complainant submitted a multi-part request to the Ministry of Justice (MoJ) requesting information relating to the prison estate population and the categorisation of prisoners.
2. The MoJ refused to provide the requested information, citing 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

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4. On 4 January 2016 the complainant wrote to the MoJ and made a multi-part request under the FOIA:

*"1. What is/was the total number of prisoners, held at HMP Moorland, who between January and December of the last three years (to date) were given their Category D and moved to an open prison?"*

*2. In relation to the same period as 1) above, what was the total number of prisoners held at HMP Moorland?"*

*3. In relation to 1) above, what total number of those prisoners had a conviction for a sexual offence?"*

*4. In relation to 1) above, what total number of these prisoners*

*were foreign nationals with no British citizenship?*

*5. Also in the whole of the prison estate population, in the last two years to date, (1) what was the estimated total number of prisoners, (2) how many of those prisoners got their Cat D status, (3) and out of those who got their Cat D how many were foreign nationals having no British citizenship?"*

5. Recognising that the amount of information requested may be excessive, the complainant told the MoJ that he was prepared to reduce the timeframe of his requests if appropriate.
6. The MoJ responded on 2 February 2016. It confirmed that it holds the requested information but refused to provide it citing section 12(1) of the FOIA. It told him that as it would exceed the cost limit to provide some of the requested information it would not be taking his request any further. It advised that reducing the timeframe, as the complainant suggested, did not impact on its being able to provide the requested data within the time limits.
7. The complainant requested an internal review on 18 February 2016. The MoJ sent him the outcome of its internal review on 18 March 2016 upholding its original position. It clarified that as the information within parts (2), (3) and (5) of the request could not be obtained within the cost limits, the entire request was refused. In that respect it cited section 12(4) of the FOIA.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 29 March 2016 to complain about the way his request for information had been handled.
9. The following analysis considers the MoJ's application of section 12 of the FOIA to the requested information.

## **Reasons for decision**

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### *Section 12 cost of compliance*

10. 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".*

11. 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".*

12. 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.
13. 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.
14. The Commissioner considers that requests are likely to relate to the same or similar information where, for example, the requester has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information requested.
15. The Commissioner's guidance on requests where the cost of compliance exceeds the appropriate limit<sup>1</sup> 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.
16. Having considered the matter, 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. He is therefore satisfied that the MoJ was entitled to aggregate the requests when considering whether complying would exceed the appropriate limit.

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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)

*Would complying with the request exceed the appropriate limit?*

17. In a case such as this, the Commissioner's role is simply to decide whether or not the requested information can be provided to a requestor within the appropriate costs limit.
18. 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.
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;
  - 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 initial correspondence with the complainant, the MoJ failed to provide an estimate of the work involved, simply telling him, for example:

*"In order to obtain the information requested in respect of those prisoners categorised to category D who had a conviction for a sexual offence and the number of prisoners who had been held both at HMP Moorland and nationally during the time periods specified, would significantly exceed this limit".*
22. The Commissioner acknowledges that, in its internal review correspondence, the MoJ addressed each part of the request individually. For example, with regard to point (3) of his request the MoJ told the complainant:

*"This information could not be obtained within the cost limit set by the FOIA as it requires the manual interrogation of individual prisoner records to identify whether any of those prisoners recategorised to category D during the specified period had a conviction for sexual offences..."*
23. The MoJ also explained more fully why it considered that section 12(4) applied. It told the complainant:

*"As the data requested at questions 2, 3 and part of 5 could not be obtained within the cost limits set by the FOIA, there was no requirement to provide any of the information requested. Section 12(4) of the FOIA provides that the estimated cost of complying with any of the requests is to be taken to be the estimated cost of complying with them all. Therefore under section 12(4) of the FOIA we refused the entire request".*

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, including a description of the work that would need to be undertaken in order to provide the requested information.
25. In its substantive response, the MoJ explained about the operational database that is used in prisons for the management of offenders. It told the Commissioner:

*"The primary purpose of the system is prisoner management. The system is not specifically designed in order to be able to provide snapshots of historic data".*

26. Using the information requested at part (3) of the request as an example, the MoJ told the Commissioner:

*"While the data requested by [complainant] exists, it is not held in a format which lends itself to providing it within costs. Significant time would need to be spent to gather and collate the information which is held across multiple tables and a bespoke, ad-hoc extract would need to be created in order to provide it. .... Obtaining the data requested from Prison-NOMIS alone (excluding any previous offences recorded only on paper files), the relevant NOMS team would need to design a custom extract. This is confirmed as the quickest way of obtaining the data and it is calculated that the design, testing and collation of the data would take at least four to five days' work".*

27. The MoJ also provided further explanation about its handling of parts (1) and (4) of the request. It acknowledged that it had advised the complainant:

*"that the data was available, but only guaranteed to be accurate on the day on which it was obtained (question 1) and incomplete in respect of those prisoners no longer held in custody (question 4)".*

28. In its correspondence with the Commissioner, the MoJ accepted that requests for information relate to data held and that data cannot be withheld on the grounds that it is inaccurate or partial. It accepted that this was not explained to the complainant. However, it confirmed that:

*"In fact, in this case, information on the total number of prisoners held at Moorland at the relevant time who were foreign nationals with no British citizenship, could not be provided within cost."*

29. The Commissioner recognises that there is no statutory requirement under section 17 for the refusal notice to include an estimate of the costs involved, or any other explanation of why the cost limit would be exceeded. However, in the Commissioner's view, it is beneficial to a public authority to do so because, for example, it may enable the requestor to assess the reasonableness of the estimate.
30. In this case, although the MoJ told the complainant that it considered that complying with the request would exceed the cost limit, the Commissioner is disappointed to note that it failed to provide the complainant with an estimate of the actual work involved in complying with his request.
31. In the absence of an estimate of the work involved, or a detailed explanation as to why the exemption applies, the Commissioner considers it understandable that the complainant finds the MoJ's response unsatisfactory.
32. However, 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 the MoJ has now 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 the MoJ is not required to comply with the request.

#### *Section 16 advice and guidance*

33. Section 16(1) of the FOIA provides that all public authorities are under a duty to provide advice and assistance to any person who has made, or who intends to make, an information request to it. The Commissioner's published guidance on section 12<sup>2</sup> sets out the following minimum advice and assistance that a public authority should provide to a requester when refusing a request on cost grounds:

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<sup>2</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)

- 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 requester to make a refined request.
34. The Commissioner acknowledges that while the MoJ failed to explain why it was the case, the MoJ nevertheless advised the complainant that reducing the timeframe of the request would not enable the data to be provided within the cost limits.
35. He also notes that the MoJ advised the complainant that some of the prison population information he was requesting was publically available: it told him that it was provided by way of the Prison Performance Digest and the population Monthly Bulletin. The MoJ advised that both of those are in the public domain and accessible to a prisoner via the prison library.
36. In light of the above, the Commissioner's finding is that the MoJ complied with its duty to provide advice and assistance in this case.

## 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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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