

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 October 2017

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

Decision (including any steps ordered)

1. The complainant requested information relating to prisoners who are maintaining their innocence. The Ministry of Justice (MoJ) refused to comply with the request on the basis that to do so would exceed the appropriate limit in costs set by section 12(1) of the FOIA (cost of compliance).
2. The Commissioner's decision is that the MoJ correctly applied section 12(1) and found that there is no breach of section 16(1) of the FOIA (duty to provide advice and assistance).

Request and response

3. Following earlier correspondence, the complainant wrote to the MoJ on 25 January 2017. He clarified that his request was for information of the following description:

- "1) How many men are currently incarcerated for sexual offences?
- 2) What percentage are maintaining innocence?
- 3) What percentage of those convicted of other crimes maintain innocence?
- 4) How many are deemed too low risk for SOTP? [Sex Offender Treatment Programmes] – clarified as referring to:
 - (i) How many who committed a sex offence are too low risk [for SOTP]?
 - ii) How many who maintain innocence are too low risk [for SOTP]?
- (5) What percentage of those who maintain innocence of sexual

offences offend post release?

- 6) *What percentage of those who complete SOTP reoffend?*
- 7) *How are these figures calculated?"*

4. The MoJ responded on 13 February 2017. It refused to provide the requested information, citing section 12(1) of the FOIA (cost of compliance) as its basis for doing so. In particular, it told the complainant that the cost of answering parts 2, 3, 4(ii) and 5 would exceed the cost limit.
5. Following an internal review the MoJ wrote to the complainant on 21 March 2017 upholding its original position.

Scope of the case

6. The complainant contacted the Commissioner on 25 April 2017 to complain about the way his request for information had been handled.
7. He disputed that the requested information could not be provided "*given [that] prison records are computerised*".
8. The analysis below considers the MoJ's application of section 12(1) of the FOIA to the requested information. The Commissioner has also considered whether the MoJ provided appropriate advice and assistance under section 16 of the FOIA.

Reasons for decision

Section 12 cost of compliance

9. 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".

10. This 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 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.

Would complying with the request exceed the appropriate limit?

11. In a case such as this, the Commissioner's role is simply to decide whether or not the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.
12. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) of the fees regulations 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.
13. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
14. The complainant told the MoJ that:

".. it is "interesting" that the most important information is that which is deemed too expensive to obtain".
15. The MoJ told the complainant that information on whether prisoners are maintaining their innocence is not held centrally. It therefore explained that gathering such information would involve investigating every prisoner's record to capture the number of those offenders who are recorded as maintaining their innocence.
16. It told him that to provide the information requested at parts 2, 3, 4(ii) and 5 of the request would require the MoJ to contact all prison establishments across England and Wales and search approximately 73,500 files.
17. 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.
18. In correspondence with the Commissioner, the MoJ confirmed that its central databases:

"... cannot be filtered to obtain information specific to offenders who are 'maintaining innocence' hence the need for a manual search of all paper and electronic records of each prisoner ...".

19. It also provided further information in support of its estimate of the time required to identify, locate, extract and collate the requested information.
20. For example, it told the Commissioner that it considered that it would take:

"5 minutes to locate information requested in each of the 81,856 individual prisoner files in both manual and electronic storage systems. This totals 409,280 minutes

45 minutes each to read the paperwork including electronic downloads from the prisoner database (NOMIS) in respect of the 81,856 prisoners estimated. For some inmates, paperwork which need reading through run into thousands of pages. This totals 3,683,520 minutes".

21. The MoJ also confirmed that no formal sampling exercise was undertaken. However, it told the Commissioner:

"...a rough estimate of cost to provide only the information at parts 2, 3, 4(ii) and 5 in one of our lowly populated prisons was done and cost still fell outside the FOIA threshold".

The Commissioner's view

22. When dealing with a complaint to her under the FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.
23. In essence, therefore, this case turns on whether the estimate provided by the MoJ was reasonable.
24. The MoJ has cited various figures in relation to the number of files needing to be searched, the lowest of those numbers being 73,500.
25. Even if the MoJ's estimate of the time taken per file to locate and extract the information was excessive, from the evidence she has seen during the course of her investigation, the Commissioner is satisfied that the MoJ has demonstrated 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 assistance

26. 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.
27. In this case, the Commissioner acknowledges that the MoJ advised the complainant that it may be able to answer a refined request. In particular, it advised him that he may wish to refine his request to exclude parts 2, 3, 4(ii) and 5 of the request.
28. In its submission to the Commissioner the MoJ explained:

"We believe [the complainant] submitting a refined request to exclude these parts will enable us consider for disclosure, the data he has requested in the remaining parts".
29. The Commissioner is satisfied that the MoJ provided reasonable advice and assistance to the complainant and therefore complied with section 16(1).

Right of appeal

30. 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

31. 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.
32. 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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