

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 February 2018

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

Decision (including any steps ordered)

1. The complainant has requested from the Ministry of Justice (MoJ) information relating to cases involving joint enterprise convictions between the years 2005 and 2015.
2. The Commissioner's decision is that the MoJ has correctly applied section 12(1) of the FOIA to the requested information and has also provided the complainant with advice and assistance in accordance with section 16(1) of the FOIA. Therefore, the Commissioner does not require the MoJ to take any steps.

Request and response

3. On 21 February 2017 the complainant wrote to the MoJ and requested information in the following terms:

"1. How many 17 year old boys were convicted under joint enterprise since 2005 -2015

2. How many of these boys were documented to be of African descent.

3. How many of these cases are to be considered for retrial.

4. What is the estimated cost of retrial?"

4. On 17 March 2017 the MoJ responded to the request (MoJ reference 110436) and confirmed that it holds the information. However, the MoJ refused to comply with the request under section 12(1) of the FOIA as it would exceed the appropriate cost limit.

5. On 23 March 2017 the complainant asked the MoJ for an internal review.
6. On 6 April 2017 the MoJ provided its internal review outcome (MoJ reference 111027). It maintained its position that section 12(1) applied to the request.

Scope of the case

7. The complainant contacted the Commissioner on 6 June 2017 to complain about the way her request for information had been handled. Specifically, about the MoJ's reliance on section 12(1) to refuse the request.
8. The Commissioner considers the scope of this case is to determine whether the MoJ has correctly withheld the information under section 12(1) of the FOIA and whether it has complied with section 16(1) of the FOIA.
9. The Commissioner will not investigate question 4 of the complainant's request regarding court costs. The MoJ stated that it does not hold information to this part of the request as it does not record a breakdown of the costs of individual cases. The complainant has not disputed this; instead her concerns relate to the MoJ's refusal, under section 12(1), to provide the information for the other parts of the request.

Reasons for decision

Section 12 – cost of compliance

10. Section 12(1) of FOIA 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. 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.
12. 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 requester within the appropriate costs limit.

13. 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.
14. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.

The MoJ's position

15. The MoJ confirmed to the complainant that it holds some of the information requested. However, the MoJ refused to comply with the request under section 12(1) as it considered it would exceed the cost limit set out in the FOIA.
16. The MoJ believed that the cost of examining the files in order to establish which of these cases pertained to joint enterprise, would exceed the appropriate limit. This is because it would involve contacting the courts in England and Wales to determine whether or not a 17 year old male of African descent, found guilty of a crime, had been involved in joint enterprise.
17. The MoJ informed the complainant that it may be able to answer a refined request within the cost limit. It suggested that she may wish to consider reducing the scope of the request to a single court or a single year. However, the MoJ advised that it could not guarantee at this stage that a refined request will fall within the FOIA cost limit or that other exemptions will not apply.
18. In the MoJ's internal review outcome, it confirmed that its previous response to the request was compliant with the requirements of the FOIA. The MoJ provided the complainant with its reasons for estimating that the total cost of finding and examining the case files and collating the information would exceed the cost limit set out in section 12 of the FOIA.

19. The MoJ provided its explanation in the following terms:

“To answer parts 1 and 2 of your request, we hold data centrally to establish that 116 cases at the courts involved 17 year old males being found guilty of murder between 2005 and 2015. However we do not hold information centrally on which of these involved ‘joint enterprise’. To obtain this information, the case files would need to be located and examined in the courts. It is estimated that it would take 10 mins to locate, examine and collate the information from each case file. Given the cost of staff time is £25 per hour, the total cost of gathering this information would be £483.33. Moreover, as it is possible for cases to involve joint enterprise that do not involve murder, a substantially higher costs estimate would be obtained by searching through all case files relating to 17 year old males who were found guilty of an offence.

To answer part 3 of your request, we hold data centrally to establish that there were 643 retrials between 2005 and 2015. However we do not hold information centrally on which of these involved ‘joint enterprise’ and 17 year old males of African descent. To obtain this information, the case files would need to be located and examined in the courts. It is estimated that it would take 30 mins to locate, examine and collate the information from each of these case files. Given the cost of staff time is £25 per hour, the total cost of gathering this information would be £8037.50. Moreover, as it is possible for more cases to be considered for retrial than were actually retried, a substantially higher costs estimate would be obtained by searching through all case files relating to appeals between 2005 and 2015.”

20. The MoJ confirmed to the complainant that the advice given in its previous response to this request was also correct. The MoJ reiterated that it may be able to answer a refined request within the cost limit if the scope could be reduced. It added that if however, a refined request was made that falls within the cost limit, it is possible that the information will be exempt from disclosure under section 32 of the FOIA because it is held in a court record. The MoJ stated to the complainant that it was satisfied that its initial response to her request was correct.

21. The MoJ provided the Commissioner with its reasonable estimate of time taken to locate and examine each of the cases. Its estimation is as follows:

- 643 files x 30 minutes = 321.5 hours

22. The MoJ reported that this number could be substantially higher as the above figures are only those which went to retrial. It said that this would be the quickest method of gathering the information because the information is only held in court records at individual courts.

The complainant's position

23. The complainant disputed the MoJ's reliance on section 12(1) and said that this should not be accepted as a reason to refuse to comply with her request. The complainant argued that she represented her question in order that it would comply with the cost limit of £600.

The Commissioner's position

24. When dealing with a complaint to the Commissioner 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 requester within the appropriate costs limit.
25. In essence, this case therefore turns on whether the estimate provided by the MoJ is reasonable.
26. The Commissioner accepts the MoJ's calculations in relation to the cost of complying with the request and she agrees that the cost of compliance would exceed the appropriate limit prescribed by the FOIA. On the basis of the calculations and having considered the explanations provided, the Commissioner is satisfied that the MoJ has correctly applied section 12(1) to the complainant's request.

Section 16 –advice and assistance

27. 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.
28. In this case, the Commissioner acknowledges that the MoJ advised the complainant that it may be able to answer a refined request. For example it suggested that she may wish to reduce the scope of the request to a single court or a single year. The MoJ also referred the complainant to the ICO guidance on how to structure successful requests. For the purposes of managing the complainant's expectations, it is further noted that the MoJ has explained that some information of interest to the complainant may be exempt under section 32 of the FOIA.

29. The Commissioner is satisfied that the MoJ provided reasonable advice and assistance to the complainant and therefore complied with section 16(1) of the FOIA.

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

Alun Johnson
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF