



Freedom of Information Act 2000

Heard at Procession House
Decision Promulgated: 13 July 2007

BEFORE

INFORMATION TRIBUNAL DEPUTY CHAIRMAN

Anisa Dhanji

and

LAY MEMBERS

Jacqueline Clark and Pieter de Waal

BETWEEN

MICHAEL LEO JOHNSON

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

THE MINISTRY OF JUSTICE
(PREVIOUSLY THE DEPARTMENT OF CONSTITUTIONAL AFFAIRS)

Additional Party

Representation:

For the Appellant:	In person
For the Respondent:	Ms Holly Stout, Counsel
For the Additional Party:	Ms Eleanor Grey, Counsel

DECISION

The Tribunal allows the appeal to the extent that it finds that the DCA did hold the requested information. However, it finds that the DCA was not required to comply with the Appellant's request because the costs of doing so would exceed the limits provided for under section 12 of the Freedom of Information Act 2000. The Tribunal does not issue a substituted decision notice, and no action is required.

REASONS FOR DECISION

Introduction

1. This is an appeal by Mr Johnson (“the Appellant”), against a Decision Notice issued by the Information Commissioner (“the Commissioner”), dated 31 October 2006. The Decision Notice relates to a request for information made on 18 February 2005 by the Appellant to the Department of Constitutional Affairs (“DCA”) under the Freedom of Information Act 2000 (the “Act”).
2. With effect from 9 May 2007, the responsibilities of the DCA were subsumed into the new Ministry of Justice (“MoJ”). Accordingly, as acknowledged by the parties at the hearing, the MoJ now stands in the place of the DCA, as the Additional Party. For convenience, we will refer to the Additional Party as the MoJ throughout, even in respect of events that took place prior to 9 May 2007.

The Request for Information

3. The information requested by the Appellant was set out in his letter of 18 February 2005 to the MoJ in the following terms:

“Please can you provide the following statistics concerning the High Court Queen’s Bench Masters;

- *The number of claims allocated to individual Queen’s Bench Masters for the years 2001, 2002, 2003 and 2004.*
- *The number of Strike Outs of claims by individual Queen’s Bench Masters for the years 2001, 2002, 2003 and 2004.”*

4. On 18th March 2005, the MoJ wrote to inform the Appellant that the statistical information he had requested had not previously been compiled. On this basis, they said that the information was not “held” by them under the terms of the Act.
5. At the Appellant’s request, the MoJ then carried out an internal review. They said that it would take approximately 42 weeks to compile the information he had requested. Accordingly, they maintained their earlier position that they did not hold the information.

The Complaint to the Information Commissioner

6. On 21 August 2005, the Appellant made a complaint to the Information Commissioner that the MoJ had failed to provide him with the information he had requested.
7. The Commissioner undertook inquiries, following which, he agreed that the MoJ did not hold the information. He issued a Decision Notice dated 31st October 2006 to this effect.

The Appeal to the Tribunal

8. By a Notice of Appeal dated 3 October 2006, the Appellant appealed to the Tribunal against the Decision Notice. The grounds of appeal state, in effect, that the Appellant does not accept that the information he had requested would take as long to provide as the MoJ has claimed.

Evidence and Submissions

9. We have considered all the documents received from the parties, even if not specifically referred to in this determination. In particular, we have considered the agreed bundle of documents, and the written submissions from the parties. We have agreed to treat the Appellant's witness statement dated 25 March 2007, as his written submissions.
10. We have also considered the letter from the MoJ dated 7 June 2007, submitted after the hearing (but pursuant to the Tribunal's directions at the hearing), which confirms certain statements made at the hearing.
11. There was only one witness who gave oral evidence at the hearing, namely, Helene Newman, on behalf of the MoJ. She is employed as the Deputy Court Manager for the Queen's Bench Division Action Department and Master Support Unit at the Royal Courts of Justice. She has been working for the Court Services at the Royal Courts of Justice for 7 years and is responsible for the overall management of the Registry and Judgment and Orders Section within the department. Ms Newman's evidence concerns the High Court's filing system and database, the information that is stored and how the system is used. Most of the evidence she gave is said to be from within her own knowledge. She adopted her witness statement dated 12 March 2007. She was briefly examined, and was then cross-examined by the ICO and the Appellant. We also asked her a few questions.
12. Ms Newman's evidence is summarised below at paragraphs 13 to 38.

The filing system used in the High Court

13. The High Court uses a hybrid filing system consisting of paper files and an electronic database.
14. The paper files each have a front cover that records basic information used to identify the files. The files contain a copy of every document received or created by the Court relating to a specific case. The documents are not indexed, and new documents are simply added loose to the papers already in the file, not necessarily in chronological order.
15. The electronic database is an event-based system that logs particular events that occur in the lifetime of a case. The database is called the High Court Forms System and was introduced in April 1999. The

database is used for High Court claims, to record basic details and to track the case file through some areas of the court. For example, it records files being sent up to the Master, to the clerk to the list, and to various other offices.

16. The database is used in conjunction with the paper files. If Ms Newman, or her colleagues are asked to check something on a particular file, they may check the case using the database, but they will very often then need to go to the paper file to confirm exactly what has happened. On a day-to-day basis, the database is used mainly as a tool for looking up reference numbers and contact information. It is not used to generate statistics about the workload of the Court, nor about trends in judicial decision-making.

The information stored in the database

17. The database contains different “forms”; namely, a case form, event form and query form. The event form logs events that occur in a case, by reference to “event” codes. For example, “F Back” is the code which indicates that a file has been sent back to filing. There are a number of different codes. A user can also enter a basic level of information into the “narrative” section of the event screen. However, there are no rules as to what information should be entered into the narrative screen; it is left to the discretion of the individual staff members as to what they consider to be useful information to explain an event.
18. The database can be searched in four ways. A user can: (1) conduct a standard search in the case form screen; (2) conduct a standard search in the event form screen; (3) conduct an advanced search using the query function in the case form screen; or (4) conduct an advanced search using the query function in the event form screen. A standard search in either the case form or the event form allows a user to look up a particular case, by searching for a party name or a case numbering either in the event or case screen. This search does not allow the user to look at codes or to search narratives, and therefore, it cannot be used to deal with Mr Johnson’s request.
19. A more advanced search is possible using the “query” function in either the case or event form. This is not something that is used by the staff in their regular duties and has only been fully investigated as a result of the Appellant’s request. In the event query form, it is possible to conduct a more detailed search entering values into different fields. So, for example, one can enter the “general order” code, or the specific code for “strike out” into the event query screen to get a list of all cases where that event code has been entered, and can then add additional search terms to filter the results according to date periods, Master’s names, etc.
20. The query function is more limited in the case screen as it has fewer filters. Only information such as “case type”, “division”, and “fee paid”,

is shown on this screen. It is not possible to search by event code, nor to search by date period, and so the case form can only be searched by date of issue.

21. Ms Newman made enquiries from EDS, the Information Systems provider. She was told that the database system is Oracle 7.2.3. It is a records and report generating system which does not produce transaction logs. There are no “data extraction routines” and no such data extraction routines have previously been coded. Whilst some of the information requested by the appellant could be provided, it would require a degree of analysis such that EDS would charge a fee for conducting the exercise. They estimated that it would take two days. As the section 12 limit had already been reached, it was considered that to go to these lengths would be to go further than would be required in conducting a ‘reasonable search’. Accordingly EDS were not asked to conduct this exercise.

The Appellant’s request

22. The information requested by the Appellant as to the number of cases assigned to each Master in a particular period and the number of strike out orders made by each Master in that time, is not information for which the Court Service has any business need, so such statistics have not previously been produced. In any event, it is not possible to extract these figures from the database since the information about individual cases which would be required to generate the figures is not reliably recorded in the database. Therefore, in order to provide the Appellant with accurate answers to his request, it would be necessary to refer to every single paper file held by the Court for the requested period and to analyse whether or not a case had been struck out and by whom.

Statistics that are collected for business needs

23. The only statistical information the Court Service collects is the data required for business purposes: for example, to measure productivity and workloads of staff or the statistics that are requested in order to produce the Annual Judicial Statistics. These statistics are collected manually. For example, data as to the number of different types of claims, default judgments, summary judgments, transfers in and out of claims to and from District Registries in particular periods is collected by the court counter staff who complete a manual ‘tally’ chart – i.e. by ticking a sheet of paper kept at the counter specifically for the purpose. These are then collated by the responsible administrative officer at the end of the period, transferred to a excel spread sheet and eventually sent to the statistics section. An exercise of this nature has never been carried out to provide statistics either in relation to the number of claims allocated to each individual Master in the relevant period, nor in relation to the number of claims struck out by each individual Master in that period.

Request for the number of claims allocated to each master

24. The only way to obtain the information requested by the Appellant with any degree of certainty would be to look at each individual paper file, as the front cover and the claim form show the name of the Master the case has been assigned to. For the reasons below, it is not possible to obtain this information by searching the database.
25. First, although the case query form does include the name of the Master to whom a case is currently assigned, this field is updated if a case is reallocated to another Master and so it only records the current Master handling the case. There is no specific field in which to record the name of the Master to whom the case was originally allocated. Therefore, although reallocation is not particularly frequent, it is still not possible to provide an accurate record of how many cases are assigned to each Master in a particular period simply by searching the database. It is theoretically possible to record this information in the narrative section, but as noted above, there is no consistency in how the narrative section is completed.
26. Second, in “case screens”, it is only possible to enter a specific date or no date as a search reference when looking up the number of cases assigned to a Master. It is not possible to search using a period of time. By conducting the search without date parameters, the system could return the result of how many cases that have been issued since the system began, are currently assigned to a given Master. Likewise, conducting the search for a particular date would show how many cases issued on a particular date are currently assigned to a particular Master. It is not possible, however to conduct a search which would show how many cases were assigned to Master X in the period 1 January 2001 to 31 December 2004, or even to show how many cases issued in that period are currently assigned to a particular Master. The only accurate way to provide this information would be to manually look at each paper file for the period, check who was the original assigned Master, verify if it had been transferred at any point and record these figures. It is not possible to conduct this search using the “event” screen query, although this permits searching by a range of dates, because the name of the Master is only put in the case screen, not in the event screen (see further paragraph 31 below on the alternative option of searches against Order Codes on this screen).
27. Third, the system is case sensitive. So even if it were possible to search for the number of cases allocated to a particular Master over a particular period, the search would have to be repeated to include all possible spellings of a Master’s name. For example, there would need to be a search for “Master ROSE” and for “Master Rose” and for “Master rose”, etc, to be sure that all relevant entries were thrown up.

Request for the number of claims struck out by each Master.

28. Again, the only way to obtain this information would be to look at each individual paper file. This, in itself, would require the exercise of judgment by the person looking at the file, since it is not always easy to ascertain whether a particular order falls within the scope of the request. This is because so-called “strike out” orders will not always use the term “struck out”, albeit the same practical effect is intended by the Master. An Order might, for example, say that the case has been “dismissed for being devoid of merit”, or that the claimant has disclosed “no arguable case”.
29. The information as to the numbers of claims struck out by each Master cannot be obtained from the database because this information is not routinely input into the system. It is not possible to “get out” from the system information that has never been “put in”. Furthermore, even if the information was routinely input into the system, for the reasons given below, the limitations of the database are such that it would not be possible to obtain that information simply by searching the database.
30. First, even if the name of the Master to whom the case was allocated at a particular time was recorded on the database (which it is not), it does not necessarily follow that the same Master will deal with all matters on a case. It is not uncommon for a case allocated to one Master to be dealt with by another on occasion, for example if the “allocated” Master is off sick, on Annual Leave, has a high volume of work or is attending seminars etc. For example, one Master or Deputy Master may strike out a claim which is allocated to another Master, without this fact being recorded on the database. Therefore, it is not possible to say with certainty that the strike out order was made by a particular Master without looking at the paper file, unless the person who input the data chose to record those specific details in the narrative field.
31. Second, the database is an “event” based system, ie., events are recorded on the database by entering an event specific code to show that a particular event has occurred. An Order counts as an “event” for the purpose of the database, and so any Order will generally be recorded against one of the many “event” codes. A strike out order will be entered on the database as such, using an ‘event code’. However, there are a number of different event codes for Orders, and it is left to the discretion of staff to decide which of the several codes may be applicable in any given circumstance. For example, in the case of a “strike out” order, staff could either enter the event under one of the “general” order codes (which, in practice, are the codes against which most court orders are entered), or enter it under the more specific “strike out” code. Either option would be correct, but in practice (and because there is no business reason for distinguishing “strike outs” from other types of Orders), staff rarely use the strike out code, and generally record the event under one of the more general Order codes. Indeed, Ms Newman says she was unaware of the existence of the “strike out” code until she investigated the capabilities of the database

for the purpose of making her witness statement. Therefore, in the majority of cases when the strike out order is recorded against the more general Order code, the only part of the database in which more specific reference to the strike out might be made is the “narrative” section on the event screen. It is left to the discretion of administrators to enter information that they consider may be useful to other people handling the case. As a result, there is no requirement to record that the particular type of order made is a “strike out” order, and no consistent practice of doing so. Thus, in many cases, the fact that a case has been struck out simply will not be recorded on the database.

32. Third, the Order may have included a different form of words, for example, “Claim dismissed” or “Claim devoid of merit”. Even if the person who inputs the data decides to record the subject matter of the particular Order in the narrative section of the event screen, he is unlikely to translate such terms and record the case as having been “struck out”, albeit the effect is the same. Thus, even if such a search were possible, a search of the “narrative section” of all case records on the database would not necessarily pick up all cases which have in practice been “struck out”.
33. Fourth, it is not in any event possible to conduct an effective search of the narrative to obtain this information. In order to search the database narrative, one must first enter a particular event code in the event query screen. So, for example, one can enter the event code for “general order”, and conduct a search of the narrative for all cases against which a “general order” code has been entered. It is possible to filter a search in the event screen so that in principle, a search could be conducted for the term “struck out” in the narrative section all of the cases with a general order code, which are currently allocated to a particular Master, and which were issued between 2001 and 2004. However conducting this search will still not produce accurate results. This is because not all narratives will contain the information that a case has been struck out, and even those that do could express this in a number of different ways (see paragraph 32 above). Again, the searches are case sensitive (see paragraph 27 above). Furthermore, this would only return results against the particular Order code entered. It would be necessary to repeat the search against every single Order code for every possible term (eg “struck out”, “strike out”, “devoid of merit”, etc) to ensure that all entries had been found, and this in itself might result in duplication if, for example, a case had two or more orders recorded against it of different types. In addition, where the system does return a list of cases, it does not allow the user to go into one of them, exit and return to the generated list. This could only be done if a handwritten note was kept of the results and each case number was entered separately into the system
34. To illustrate the fact that the search explained above would not return accurate results, and in the course of preparing her witness statement, Ms Newman performed the search that seemed most likely to generate

some of the information requested by Mr Johnson, i.e. a search under the widely-used general Order event code against a particular Master's name (Master Eyre), for each 12-month period mentioned in the request, for the words "struck out" in the narrative search. No results were returned. In fact, he had struck out a claim brought by the Appellant, but the reason that did not appear in the results is because the person who input the information did not record it in the narrative (and did not use the strike out code). Ms Newman also attempted a search of any case where the words "struck out" appear in the narrative of code for general order with no other filters (for example, as to date and Master allocation). This only returned 365 cases since the system was introduced. From database searches alone, therefore, it would appear that in a six year period where approximately 4500 cases per year were issued, there were on average, 60 strike outs per year, equating to an average of 6 strike outs for each Master per year. Based on Ms Newman's experience of the work of the High Court, she is confident that this is a gross underestimate of the true figure. She attributes this inaccuracy to a combination of the factors mentioned above, and says that the only way to get a more accurate picture would be to closely examine each of the paper files held by the court for the 4-year period in question.

35. Ms Newman says that the results generated by a database search appear not only to be incomplete, but also inaccurate. For example, she conducted a search using the general event code, added Master Eyre's name, and searched for the term "struck out" in the narrative. She expected that the results of this search would show any case containing the general order code, then assigned to Master Eyre, with a reference to the case to being "struck out" in the narrative. No results were returned. However, when she selected at random a case then assigned to Master Eyre with the relevant code reference, she found that there was in fact a reference to it having been "struck out" in the narrative. Nevertheless, this case had not shown up on the search results. She cannot explain this, but gives it as a further example of why it would not be possible to rely on results returned by a database search even to supply details of those cases which do happen to include references to having been struck out in the narrative. She also conducted a search against the more specific "strike out" code for cases allocated to Master Eyre, and got no matches between 1 January 2000 and 1 January 2006. Based on the foregoing, she says that none of these searches of the database will produce the information the Appellant is seeking.
36. She says that these examples and explanations show that the figures which Mr Johnson seeks cannot be extracted from the High Court Forms database because the events which would need to be counted are not always recorded on the system. Moreover, even if all of the necessary information had been entered into the database, its search facilities could not be used to generate accurate figures. The only way to produce this information would be to take out each paper file, check

the Orders that were made and decide if, on their wording, they should be considered a strike out and keep a log of the results.

The estimated cost of producing the requested figures

37. At the time of the Appellant's request, knowing that the Court does not collect that statistical information, and having concluded the database was unable to generate the information, Ms Newman says that she undertook a sampling exercise to assess how long it would take to manually check each of the hardcopy paper files, record which Master the case was assigned to, if the case was transferred, any subsequent Master, whether the case was struck out, by whom, and on what date.
38. Using a random selection of files, she found that an average of 12 files could be checked every hour. She calculated that if one person worked solidly for seven hours a day, they would be able to check 84 files a day, 420 files a week. Some 17,642 files were issued in the date range required. On this basis, it would take one employee over 1,470 hours or 40 weeks to complete this task. Calculating the cost of staff time at a rate of £25 per hour; the task would cost nearly £37,000.

Questions for the Tribunal

39. The scope of the Tribunal's jurisdiction in dealing with an appeal from a Decision Notice is set out in section 58(1) of the Act. If the Tribunal considers that the notice is not in accordance with the law, or to the extent the notice involved an exercise of discretion by the Commissioner, the Tribunal considers that he ought to have exercised the discretion differently, the Tribunal must allow the appeal or substitute such other notice as could have been served by the Commissioner. Otherwise, the Tribunal must dismiss the appeal. Section 58(2) confirms that on an appeal, the Tribunal may review any finding of fact on which the notice is based. The present case did not involve an exercise of discretion by the Commissioner, so the issue is simply whether the Decision Notice is in accordance with the law.
40. In order to determine whether the Decision Notice in this case is in accordance with the law, the Tribunal needs to address the following questions:
- (a) Is the information "held" by the public authority?
 - (b) If the information is "held",
 - (i) is the MoJ relieved of its obligations to comply with the request because to do so would exceed the limits provided pursuant to section 12 of the Act?
 - (ii) is the information exempt under section 32?

Findings

Is the information or any part of it “held” by the public authority?

41. The first question is whether the information requested or any part of it, is “held” by the public authority for the purposes of the Act?
42. The right of access established by Section 1 of the Act, applies to information “held” by a public authority (see sections 1(1)(a) and section 1(4)). The Act does not contain a definition of “held”. What is clear, however, is that the Act is concerned with access to information, rather than access to the documents containing the information. Pursuant to section 84, “information” means “information recorded in any form”. The focus of the Act is on the content of the information. This is particularly clear in Part II of the Act where exemptions turn on what the information is about, rather than the form or document in which it is held. Therefore, when considering whether information is “held”, the focus must be on the information itself, rather than on where or how it is recorded.
43. We turn now to consider the information that the Appellant has requested and why it is said that this information is not “held”. Ms Newman has provided a very helpful explanation about the nature of the filing systems used in the High Court, the information that is stored in the database, and the particular sample exercises she conducted in relation to the information that the Appellant has requested. Much of her evidence, as summarised above, is not in dispute. In particular, it is not in dispute that the information that the Appellant has requested (ie, the figure for the number of claims allocated to individual Queen’s Bench Masters for the years 2001 – 2004, and the number of strike outs of claims by individual Queen’s Bench Masters for those years), has not previously been compiled. It is also not in dispute that the information can be compiled by manually going through the paper files relating to all Queen’s Bench actions during the relevant period (although there is some dispute as to precisely how long such an exercise would take, and to what extent it would require the exercise of skill and judgement – both issues that we will revert to in due course).
44. As to whether the information can be obtained from searching the database, we accept that it cannot, for the reasons Ms Newman has given, the thrust of which is that the relevant data has either not been input into the database, or it has not been input with the consistency necessary to obtain reliable results. We are satisfied that this problem could not be overcome with the assistance of EDS. The Appellant has taken issue with why the information has not been input, or has not been input in a systematic way, bearing in mind that the database already has the relevant system codes for the information to be input. However, as we explained at the hearing, the Act and Tribunal’s jurisdiction under the Act, does not extend to what information public authorities should be collecting, nor how they should be using the

technical tools at their disposal, but rather, it is concerned with the disclosure of the information that they do hold.

45. Given that the information requested by the Appellant cannot be obtained from searching the database, we accept that the only practical way in which the information can be compiled, is by going through the relevant paper files, manually. The MoJ says that to carry out this exercise amounts to creating new information, and that the purpose of the Act is to allow people to obtain existing information, not to require public authorities to undertake research to create new information. They say that the paper files should be viewed as containing within them, the “building blocks” of information that can be used to generate the information sought by the Appellant, but that the fact that they hold these “building blocks”, does not mean that they actually hold the information that can be generated from the building blocks. This proposition holds true, they say, regardless of whether the exercise would be burdensome or simple. To this extent, the MoJ disagrees with the ICO. The ICO’s view (as set out in the Decision Notice and in the submissions made by Ms Stout at the hearing), is that the level of ease or difficulty involved is a relevant factor when assessing whether or not the information is “held”. The MoJ, on the other hand, says that even if the exercise were a simple one, their position would still be that the information is not “held” for the purposes of the Act.
46. The question for the Tribunal is this: if the MoJ has to do something with the building blocks, does this mean that they do not hold the information? We consider that the answer lies in the extent to which something needs to be done to the building blocks, in order to comply with the request. At the hearing Ms Grey gave the hypothetical example of a public body which forecasts future oil prices. If it holds forecasts for oil prices in respect of countries A and B, and it receives a request for a forecast for country C, she says, and we agree, that that would not be information that is “held” by that public body. To arrive at a forecast for country C, the raw data that the public body holds (or the “building blocks” to use the MoJ’s terminology), would likely have to be subjected to complex mathematical formulae, and also, a high level of skill and judgement would likely be required, in order to take account of political and other considerations.
47. However, we consider that the present facts are quite different. The steps involved to get from the “building blocks” to the information that the Appellant has requested, are relatively simple. If, hypothetically, there were only five files for 2001, to answer the Appellant’s first question, the MoJ would simply need to look at each of the five files, identify the Queen’s Bench Master in each case, and arrive at a total to show that Master X had two claims allocated to him and Master Y had three claims in that year. To answer the Appellant’s second question, would likewise simply involve going through the five files to arrive at totals to show, for example, that in 2001, Master X made two strike out orders and Master Y made none. These steps clearly involve doing

something to the building blocks, but that something amounts to a simple collation of the raw data to arrive at the total figures that the Appellant has sought. Where, as here, it is accepted that the raw data or the building blocks are held, we find that the need to undertake the very simple exercise referred to above, does not mean that the information requested is not held. Also, the fact that the request involves information contained in several thousands of files rather than in five files, does not detract from the principle (although it may of course raise issues under section 12 of the Act, which we will address in more detail, below).

48. Even if we are wrong about our findings as set out in paragraph 47, we note that the Appellant's request could have been met by simply providing him with the raw data or building blocks. The Appellant made it clear at the hearing that he would have been content simply with a list of the relevant information contained in each file. To use the same example as above, if there were five files, and the MoJ provided the Appellant with a list showing that in file 1, there were no strike outs, in file 2 there were likewise no strike outs, in file 3 there was one strike out by Master X, and that in files 4 and 5, there were also no strike outs, the Appellant would have been able and willing to add up the numbers to arrive at the totals for the year himself. It is true of course that the Appellant did not request a list; he requested the totals or statistics as he called it. However, the MoJ did have a duty, pursuant to section 16 of the Act, to advise and assist, and it could have engaged with the Appellant to see whether it could satisfy his request in another way.
49. We have considered whether (and to what extent), it would have been necessary for the MoJ to exercise skill and judgement in order to meet the Appellant's request, and if so, whether that has bearing on whether the information is "held". We accept, as indicated in paragraph 46, that the degree of skill and judgement that must be applied to the building blocks may well have bearing on whether the information is held or whether what is being sought is more properly construed as being new information. Ms Newman says that to answer the Appellant's second question (ie. about the number of strike outs of claims by individual Queen's Bench Masters for the years 2001 to 2004), would not only require someone to look at each individual paper file, but that that person would also have to exercise skill and judgement to ascertain whether a particular order comes within the scope of the request. This is because, as explained in paragraph 32 above, so-called "strike out" orders are not always described as such. An order, might, for example, say that the case has been "dismissed for being devoid of merit", or that the claimant has disclosed "no arguable case", although these would still amount to "strike out" orders. However, it was clear from Ms Newman's evidence at the hearing, that there are only a limited number of such descriptions that are used, and she also conceded that there are probably only relatively few files where such descriptions might be used. We find it likely that a staff member with even limited familiarity

with such matters would have no difficulty in knowing that these different descriptions refer to strike out orders. Alternatively, it would be a simple matter for the person reviewing the file to be provided with a list of the three or four different descriptions that a Master might use. In short, we find that the level of skill and judgement that would be required to interpret the terms that some Masters might use is minimal. We find that it is not such as to have any material bearing on what is essentially a simple (albeit time consuming) exercise of going through the individual files to identify the number of strike out orders made and the Masters who made them.

50. For all these reasons, we find that the information is “held” for the purposes of the Act.

Would complying with the request exceed the limits in section 12?

51. The next question is whether the MoJ is relieved of the obligation to comply with the request on the basis that to do so, would exceed the limits prescribed pursuant to section 12 of the Act.
52. Section 12 does not provide an exemption as such. Indeed, it does not come within Part II of the Act. Rather the effect of the section is to render inapplicable the general right of access to information contained in section 1. It was aptly described by a differently constituted Tribunal in **Quinn v. The Information Commissioner and the Home Office (EA/2006/0010)**, as “a guillotine which prevents the burden on the public authority from becoming too onerous under the Act”.
53. Section 12 provides as follows:

12. (1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

54. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations"), prescribe the appropriate limits referred to in section 12. In the case of a public authority which is listed in Part 1 of Schedule 1 to the Act, the appropriate limit is £600. In the case of any other public authority, the appropriate limit is £450. All government departments are included in Part 1 of Schedule 1, so the appropriate limit in the present case is £600.

55. Regulation 4, to the extent that it is relevant to this appeal, provides as follows:

4. (1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in-

(a) determining whether it holds the information,

(b) locating the information, or a document which may contain the information,

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.

56. Since the time cost is to be estimated at the rate of £25 per person per hour, this allows for 24 hours of time before the £600 limit is reached.

57. As noted above, we have already accepted that the information requested cannot be obtained by an electronic search of the database. It would have to be extracted manually from each paper file. In her witness statement Ms Newman describes the exercise that was undertaken to arrive at an estimated cost of complying with the Appellant's request. As noted in paragraph 38 above, she says that an

average of 12 files can be checked per hour which means that one person working solidly for seven hours a day would be able to check 84 files a day. On this basis, the MoJ says that it would take one employee over 1,470 hours or 40 weeks, to complete the task of checking the 17,642 files in issue. At £25 per hour, the task would cost nearly £37,000, far exceeding the limits in the Regulations.

58. The MoJ's calculations assume five minutes per file. This is disputed by the Appellant. He argues that in most cases, the Orders would be found at the back of the file, and that the process of removing a file from a shelf or cabinet, looking at the name of the Master on the file cover, opening the file and checking the terms of any Order and whether the file had been transferred to another Master, would take much less than five minutes. Ms Newman, on the other hand, says that the process of removing a file from a shelf or cabinet and returning it would take two minutes, and that the additional three minutes is a reasonable estimate of how long it would take to go through each file to identify and extract the relevant information.
59. We find it likely that the task would take less than five minutes per file. For one thing, a reasonable approach to the task would be to remove several files at a time from the shelf or cabinet, rather than to remove and return only one file at a time. However, we also accept Ms Grey's argument that the time should not be calculated as if the person or people undertaking the task would do so with maximum efficiency for the whole duration of the task. This would be a manual task, not a mechanical one, and we accept that a person would not be able to function at a consistent or optimal level of efficiency throughout the duration of the exercise.
60. For obvious reasons, however, it has not been necessary for the Tribunal to make a finding as to the exact length of time that would be required per file. Quite simply, even if we were to find that the time required was a quarter or a tenth of the MoJ's estimate, the time cost would still be well in excess of the limits in the Regulations.
61. For completeness, we have considered whether it might be possible to respond at least to the first of the Appellant's two questions within the cost limits. This does not overlook the fact that the cost limits apply to the entirety of the request, not to individual elements that comprise the request. We also accept that the cost limits do not mean that the request must be complied with up to the point at which the limit has been reached.
62. However, if it were possible for the MoJ to comply with part of the Appellant's request within the cost limits, then arguably, it would have an obligation under section 16 of the Act, to engage with the Appellant to see if he wished to re-define or limit the scope of his request accordingly. Ms Newman's evidence at the hearing is that the MoJ had not considered how long it would take to answer just the first of the Appellant's two questions. She attempted to estimate this during the

course of her oral evidence, but her estimate of two minutes per file was vigorously disputed by the Appellant. We note, however, that even if the exercise would take, hypothetically, as little as thirty seconds per file (which we recognise is an unrealistically low estimate), to answer the Appellant's first question would still far exceed the cost limits.

63. It is also relevant to note that the Appellant acknowledged at the hearing, that an answer to only the first of his two questions would not be of interest to him. The information he is seeking is useful to him only if he has the answers to both questions. While the Act is motive blind, the Appellant's purpose is clearly relevant to whether it would have been possible, through any process of advice and assistance rendered by the MoJ pursuant to its obligations under section 16, to delineate the request in a way that would have been acceptable to the Appellant and still come within the section 12 cost limits. We are satisfied that it would not. We are equally satisfied, from the Appellant's evidence at the hearing, that the shortest length of time for which he would have accepted answers to his questions would have been six months, i.e. for one eighth of the overall period in his request. As will be clear from the figures in paragraph 57 above, on any reasonable estimate, this would still have exceeded the cost limits by a considerable margin.
64. For all the foregoing reasons, we find that the information requested by the Appellant is held by the MoJ. However, we also find that pursuant to section 12, it is not obliged to comply with the Appellant's request.
65. Since this effectively determines the appeal, there is no need to go on to consider whether the information might also be exempt under section 32.

Signed:

Date 13 July 2007

Anisa Dhanji

Deputy Chairman