

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 03 December 2009

Public Authority: The Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Summary

The complainant requested information relating to fraud in landed property. The Home Office advised that it would exceed the cost limit to establish if it holds the requested information. The Commissioner is satisfied that the Home Office acted correctly in refusing the request under section 12 of the Act as the appropriate limit would have been exceeded.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The complainant had made an earlier request for information '*relating to fraud in landed property*' to the Home Office. This was refused on the basis that to comply would exceed the cost limit. In its refusal letter, the Home Office advised the complainant that if he wished to pursue his request and bring it within the cost limit, he could refine his request to a specific time period. The Home Office suggested a time period of a number of months.
3. The Commissioner understands the request under consideration in this case to be the request made by the complainant following this advice.

The Request

4. Following earlier, related, correspondence, the complainant wrote to the Home Office on 11 March 2009:

'In accordance with your informative and helpful e-mail dated 5 March and attachment (which I received early today) and freedom of information legislation, with regard to fraud in landed property I now request the undermentioned during the most recent year for which the information is available or can reasonably be collated:-

- 1. total number of criminal prosecutions brought during the course of the year in question*
- 2. number and profession of defendants charged in each prosecution*
- 3. in each case, type of fraud perpetrated eg mortgage fraud*
- 4. method used eg dishonest valuation, fraudulent registration of land title*
- 5. any other charges brought against the defendant(s) in the same prosecution*
- 6. description of the victim eg building society, bank*
- 7. type of landed property affected eg residential, commercial, industrial*
- 8. in each case, actual, estimated or approximate financial loss or damage sustained*
- 9. whether or not defendant(s) convicted*
- 10. if so, sentence or fine imposed*
- 11. outcome of any appeal (if known)*
- 12. number and percentage of investigators permanently engaged in investigation of fraud in landed property*

If some of the information cannot be supplied please send me whatever can be.

About the cost aspect, I would like whatever expenditure is incurred to be up to, but not exceed, the section 12 limit, which I understand is 600 pounds. So, as an example, if the cost of complying with my above-mentioned request is 200 pounds for the year 2007/8 I would like answers to the same 12 questions for the previous two years (ie 2006/7 and 2005/6) and so on (going backwards) including portions of a year, until the cost limit is reached'.

5. The Home Office responded on 6 April 2009 advising the complainant that it was unable to establish if the information was held as to do so would exceed the cost limit at section 12 of the Act.
6. The complainant requested an internal review of this decision on 17 April 2009.
7. The Home Office upheld its decision in its internal review response dated 15 June 2009.

The Investigation

Scope of the case

8. On 6 July 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled.

Chronology

9. The Commissioner wrote to the Home Office on 17 August 2009 asking it for further explanation of its reasons for citing section 12 in relation to this request.
10. The Home Office responded on 7 September 2009. In this correspondence, the Home Office clarified the basis on which it was claiming that it would exceed the fees limit to comply with the request.

Analysis

Substantive Procedural Matters

Section 1 General right of access

11. Section 1(1) of the Act states:

'Any person making a request for information to a public authority is entitled –

a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

b) if that is the case, to have that information communicated to him.'

12. Section 1(1) therefore creates two obligations on the public authority: the duty to confirm or deny to the applicant whether the information is held, and the duty to communicate the information to the applicant.

Section 12 - Cost of compliance exceeds appropriate limit

13. Section 12(1) states:

'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.'

Section 12(2) provides that:

'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.'

Section 12(3) states that:

'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.'

14. Accordingly, section 12 provides that a public authority is not obliged to comply with a request for information if it estimates that meeting the request would exceed the appropriate cost limit. The appropriate limit is currently set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). A public authority may take into account the cost of locating, retrieving and extracting the requested information in performing its calculation. The cost limit for a central government department such as the Home Office is currently set at £600 and equates to 3½ days work or £25 per hour.
15. The Commissioner notes that in this case the complainant has made more than one request within a single item of correspondence. Section 12(4) provides that, in certain circumstances set out in the Statutory Instrument 2004 No. 3244 'The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004' ('the Fees Regulations'), requests can be aggregated so that 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. Regulation 5 of the Fees Regulations sets out the relevant condition in this case and provides that multiple requests can be aggregated in circumstances where the two or more requests relate to any extent, to the same or similar information. Although this test is very broad, it is possible that one or more requests may not meet this test and the Commissioner has therefore considered whether he is satisfied that the requests relate to the same or similar information.
16. The Commissioner is satisfied that the multiple requests in this case can be aggregated for section 12 purposes as they clearly all refer to related information on landed property fraud.
17. In this case, the Home Office has argued that it would exceed the prescribed cost limit to confirm whether or not it holds information within the scope of the request.

Calculations

18. 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.
19. Section 12 makes it clear that a public authority does not have to make a precise calculation of the costs of complying with a request. Only an estimate is required. However, the estimate must be reasonable and can only be based on the four activities identified above.
20. The Home Office has advised the complainant that the Judicial Co-operation Unit (JCU) is the only part of the Home Office that may hold information within the scope of his request. It also explained that the requested information is not specifically collated into an overall statistic. Consequently, the only way it can establish whether or not it holds information within the scope of the request '*would be to identify all fraud cases and then examine them individually and closely to assess whether landed property is involved*'.
21. In support of its citing of section 12, the Home Office advised the complainant:

'To establish whether we hold the requested information even for one year would mean carefully examining several thousand files and to so do would exceed the prescribed cost limit. JCU receive approximately 253 case files (on any crime and not just landed property fraud) a month and that it would take [sic] in the region of 30 minutes to examine each file to decide if it would be relevant to your request. Therefore, it would take in the region of 126 hours to establish what, if any, information is held for just one typical month'.
22. In his request for an internal review, the complainant stated that he '*cannot accept that the work of extracting the info [sic] I requested (or at least some of it) cannot be done by computer*'.
23. In this respect, the Home Office explained that :

'all of the files which might contain relevant information are stored in hard copy. This is because they contain legal documents which would not be admissible in court as scanned copies. There is no information in the file titles, or the small amount of data held electronically, which would identify those files which concern Landed Property Fraud. Consequently, a time consuming manual search of the paper files would be the only possible way to locate any relevant information'.
24. The Commissioner asked the Home Office to provide him with examples of the titles of the hard copy files together with an explanation of what information is held within the electronic files.

25. With respect to the hard copy files, the Home Office has advised that they all come under the broad heading of Mutual Legal Assistance (MLA) and have the following generic format:

'Crime Reduction – International Coordination – [Country] – [Name of individual] – Records – [reference number beginning MLI/09 (where MLI stands for 'Mutual Legal Incoming' and 09 (for example) is the year the file was opened), followed by an alphanumeric reference incorporating an abbreviation for the relevant country]'.

26. The Home Office has confirmed that the file titles of the hard copy files do not cite the type of alleged criminal activity. Having viewed examples of the hard copy files, the Commissioner accepts that it would be necessary to examine the content of each of the files to establish whether or not they contain information within the scope of the request.

27. With respect to information held electronically, the Home Office has advised the Commissioner that the relevant policy unit has a database which is used for casework monitoring, statistics etc. The template for an MLA case has a section for 'offence' and one of the possible offences is fraud.

28. The Commissioner understands that although this database could be used to identify all files having 'fraud' as the offence, as there is no facility for sub-division of the fraud category, the associated paper files would then have to be examined to establish what sort of fraud is alleged. The Home Office has advised that when the policy unit log cases:

'they categorise them by offence and by the nature of the enquiries requested. Fraud is one of the categories of offence. However, they are not able to search for 'landed property fraud' as this is not a recognised category of offence. They are not able to search the actual letters of request themselves (regardless of whether they are in Word or PDF format) for the term 'landed property'.

They therefore would only be able to identify 'fraud' cases (of which there are many). They are not able to identify 'landed property'. The only way they could do that is by examining paper files, which would exceed the cost limited [sic].'

The Commissioner accepts that even if the database were to be used to identify fraud cases, the resultant number of files needing to be searched manually would still greatly exceed the cost limit.

29. Having examined the evidence, and considered the arguments put forward by the Home Office, the Commissioner is satisfied that section 12 has been correctly applied to the request.

Procedural Requirements

30. Section 16(1) provides that:

'It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.'

31. The Commissioner notes that, in its refusal letter of 6 April 2009, the Home Office advised the complainant how to refine the timeframe of his request if he wished to pursue the matter without engaging the cost limit:

'Unless you are able to provide us with a very short period, of no more than a few days, to search Alternatively, you may wish to provide a start date that we could work from until we reach the limit.'

There is no evidence that the complainant provided either of these.

32. Regarding the terminology of the request, the Commissioner understands that the term 'landed property fraud' is not one of significance to the Home Office's systems. However, he considers it likely that the examples contained within the individual elements of the complainant's request provided the Home Office with sufficient information to conduct its search.
33. He therefore accepts that the Home Office acted in accordance with its obligations under this section of the Act.

The Decision

34. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

35. The Commissioner requires no steps to be taken.

Right of Appeal

36. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 3rd day of December 2009

Signed

**Anne Jones
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 12(1) provides 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.”

Section 12(2) provides that –

“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.”

Section 12(3) provides that –

“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.”

Section 12(4) provides 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.”

Section 12(5) – provides that

“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 estimated.