Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 October 2012

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

Decision (including any steps ordered)

1. The complainant requested various information in respect of the former HMCS decision to close the Barry Magistrates' Court. The Ministry of Justice ('the MoJ') originally provided some information but refused other information on the basis of section 35(1)(a) of the Freedom of Information Act 2000 ('the Act'). Following the Commissioner's investigation, the MoJ subsequently disclosed the withheld information, however the complainant was not satisfied that the MoJ had identified all information falling within the scope of his request. Following further intervention from the Commissioner and additional information being identified, the MoJ has confirmed that it holds no further information falling within the scope of the request.

2. The Commissioner's decision is that the MoJ has now provided all information it holds falling within the scope of the request and has therefore complied with its obligations under section 1(1)(a) of the Act.

Request and response

3. On 21 February 2011, the complainant wrote to the MoJ and requested the following information in respect of the closure of Barry Magistrate's Court:

"1. A copy of HMCS Wales detailed report (not the published summary) recommending closure of the Vale of Glamorgan Magistrates Court(the court) including any documents relating to the closure decision.

2. Copies of all responses to the closure proposals for the Court.

3. Details of any internal discussions or discussions with other authorities or any representative regulatory or advisory body concerning the consultation programme specifically in relation to the Court and the subsequent decision to close the Court. This should include copies of all relevant emails, minutes of meetings, policy documents and correspondence internal or with third parties.

4. Details of any information sought, held by the Ministry of Justice and HMCS about the true cost of running and maintaining the Court. This should include copies of all relevant emails minutes of meetings policy documents and correspondence internal or with third parties."

4. The MoJ responded on 15 March 2011. It stated that some of the information requested was exempt from disclosure. It confirmed that this applied to information in respect of points one, three and part of point four of the complainant's request and cited section 35(1)(a) of the Act. However, it provided all information in respect of point two with limited redactions under section 40 of the Act for personal information and some information in respect of point four.

5. Following an internal review the MoJ wrote to the complainant on 18 April 2011 upholding its original decision to refuse information in respect of points one, three and part of point four on the basis of section 35(1)(a) of the Act.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He was not satisfied with the MoJ's decision to refuse points one, three and part of point four of his request for information.

7. Following the Commissioner's investigation, the MoJ subsequently disclosed the withheld information to the complainant, however the complainant was not satisfied with the amount of information identified by the MoJ as falling within the scope of the request and considered that the MoJ had still not dealt with points one, three and four of his request.

8. The complainant was particularly concerned that as the court was not originally included in the list of closures but was added to the final list at a later date, that there should be emails and letters from HMCS Wales to the MoJ outlining their justification for the change. The complainant was also concerned that the correspondence relating to the closure lacked volume.

9. The scope of the Commissioner's investigation is therefore solely concerned with whether the MoJ has complied with its requirements under section 1(1)(a) of the Act in relation to points one, three and part of point four of the complainant's request for information.

10. The Commissioner considers that the MoJ has complied with its obligations under section 1(1)(a) of the Act.

Reasons for decision

11. Under section 1(1) of the Act, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.

12. In his consideration of this case, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that additional information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any additional information the normal standard of proof to apply is the civil standard of the balance of probabilities.

13. The Commissioner's judgement in cases such as this therefore is based on the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects a public authority to undertake a reasonable and proportionate search for information falling within the scope of the request and has considered the details of the search conducted by the MoJ.

14. The MoJ has confirmed that on receipt of the complainant's request it identified the following two departments as holding information falling within the scope of the complainant's request. HMCS Wales (now HMCTS Wales) and the Courts Estates Reform Programme (CERP) based in London, both of which were contacted in relation to the request.

HMCTS

15. HMCTS hold email correspondence collated and stored in a Microsoft Outlook PST file that was allocated to the HMCS Wales Business Manager. Information was also stored on an electronic file server. Both data sets were subject to searches for relevant information.

16. The HMCS Wales Business Manager was also responsible for co-ordinating the gathering of necessary performance information with the purpose of identifying court room utilisation and other management

information that was used for discussion with the central HMCS Court Estate Reform Programme.

17. The MoJ further explained that the Director for Wales and the Operations Director were both contacted in order to obtain relevant information however, the email correspondence was extremely limited due to the initial confidential nature of gathering information. Both individuals consulted directly and verbally on receipt of the request and have confirmed that no relevant information is held other than what was already stored in the electronic filing system.

CERP

18. The London based Court Estates Reform Programme (CERP) Team hold information in an electronic filing database known as TRIM. The MoJ has confirmed that the database was searched for relevant information and the information identified as falling within the scope of the request included :

- Programme documentation including papers to the HMCTS Board
- Modelling and analysis information, such as utilisation rates and travel times to court
- Regional 'fact pacts'
- Consultation documentation
- Correspondence about the programme from MP's and members of the public
- Various lists of courts recommended/not recommended for consultation/closure and accompanying data
- Ministerial and HMCTS Board submissions and briefings

19. The MoJ explained that Barry Magistrates' Court was one of 157 courts consulted on and information specific to Barry is included within the types of documentation listed above. It also confirmed that other documentation such board papers, ministerial submissions and briefings concern the programme as whole and generally do not refer to any specific courts therefore do not fall within the scope of the complainant's request. It added that the vast majority of the information specifically in relation to Barry Magistrates' Court is already in the public domain and the Qualitative Assessment has now been disclosed to the complainant.

20. In relation to the decision to include the Court in the final list of closures, the MoJ explained to the Commissioner that whilst Barry Magistrates' Court was not initially included in the short list of courts to consult on, HMCS Performance data for 2009-2010 demonstrated that Cardiff Magistrates' Court would be able to accommodate the workload of Barry, based on both courts' current and estimated future utilisation of courtrooms. On that basis the final conclusion of both the CERP team

and the region was the Court should be consulted upon. The MoJ however confirmed that no records are held regarding discussions which took place on 29 May 2010 and 11 June 2010 as the meetings were not minuted.

21. The Commissioner has considered the details of the search conducted by the MoJ and considers that it was both reasonable and proportionate for it to confine its search to HMCS Wales and the CERP team based in London. He has also considered the account of the actual searches that were undertaken by both departments and believes that both accounts were reasonable and proportionate. The Commissioner therefore accepts that on the balance of probabilities, that the MoJ is unlikely to hold any further information relevant to the complainant's request. The Commissioner has therefore concluded that the MoJ has complied with section 1(1) of the Act.

Other matters

22. The Commissioner believes that it is appropriate to comment on the piecemeal identification of information falling within the scope of the request by the MoJ and its delays in providing responses to the Commissioner's requests for information.

23. During the course of his investigation of this complaint it was necessary for the Commissioner to query the extent of the search conducted by the MoJ on a number of occasions. Most, if not all of these queries resulted in the identification of further information falling within the scope of the request and consequently piecemeal disclosure of information. Whilst the Commissioner does not expect public authorities to conduct an extensive, unfocused search of all its records in every case, he does expect that a reasonable and proportionate search is conducted from the outset to prevent such piecemeal disclosure of information occurring.

24. The Commissioner is also concerned that the MoJ failed to meet many of the deadlines he set for a substantive response to his requests for information and expects that in future, the MoJ will endeavour to meet such deadlines unless there are significant extenuating circumstances preventing it from doing so.

Right of appeal

25. 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: 0116 249 4253
    Email: informationtribunal@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

26. 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.

27. 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 ……

Andrew White
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