Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **26 September 2012**

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

Decision (including any steps ordered)

1. The complainant requested information concerning the cost to the Ministry of Justice (MoJ) of the Interpretation Project. The MoJ refused this request on cost grounds under section 12(1) of the FOIA.

2. The Commissioner's decision is that the cost of complying with the request would exceed the cost limit and so the MoJ applied section 12(1) correctly. The MoJ is not, therefore, required to comply with the complainant's request. However, the Commissioner also finds that the MoJ breached the requirement of section 16(1) of the FOIA in that it did not provide to the complainant advice as to how his request could be refined in order to bring it within the cost limit.

3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

    - Contact the complainant in writing and provide advice as to how to refine her request in order that it may be possible to comply with it without exceeding the cost limit.

4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 21 February 2012, the complainant wrote to the MoJ and requested information in the following terms:

> *"Please confirm the total cost of the operation of the Interpretation Project within the Ministry of Justice, i.e. salaries, other employment costs and any bonus payments as well as running and other associated costs, including but not limited to telephone, provision of IT facilities, communication, office space, tele-working, travel since January 2010."*

6. The MoJ responded on 14 March 2012. It stated that the request was refused under section 12(1) of the FOIA as it believed that the cost of compliance with the request would exceed the limit.

7. The complainant responded on 22 March 2012 and requested an internal review. The MoJ responded with the outcome of the internal review on 22 May 2012. It stated that the refusal of the request on cost grounds under section 12(1) was upheld.

Scope of the case

8. The complainant contacted the Commissioner on 11 May 2012 to complain about the way her request for information had been handled. The complainant indicated that she did not accept that it would not be possible for the MoJ to comply with her request without exceeding the cost limit as she believed that the information she had requested would be held in a pre-collated form within the MoJ's accounting information. The complainant also at this stage raised the issue of the delay in the completion of the internal review.

Reasons for decision

Section 12

9. Section 12(1) provides that a public authority is not obliged to comply with a request if the cost of doing so would exceed the appropriate cost limit. 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 bodies. The fees regulations also state that the cost of a request must be calculated at the rate of £25 per hour, meaning that section 12 effectively provides a time limit of 24 hours.

10. The tasks that can be taken into account when calculating a fees estimate are specified in the fees regulations as follows.

    - Determining whether the requested information is held.

    - Locating that information.

    - Retrieving the information.

    - Extracting the information.

11. The task for the Commissioner here is to consider whether the MoJ has made a reasonable estimate of the cost of complying with the complainant's request. If it was reasonable for the MoJ to estimate that the time spent on the complainant's request would exceed 24 hours, section 12(1) will apply and the CPS was not obliged to comply with this request.

12. Turning to the explanation given by the MoJ for the citing of section 12, whilst the complainant argued that this information would be available in ready collated form held for accounting purposes, the MoJ stated that this was not the case. Instead it stated that it would be necessary to collate this information from *'staff files', 'central finance files'* and *'project unit's records'*.

13. In explanation for why it was the case that the costs of the interpretation project were not held in a ready collated form for accounting purposes, the MoJ stated that there was no separate budget for this project. Instead this project was funded from a number of different budgets. Based upon this explanation, the Commissioner accepts that it would be necessary to separate information about the costs of the interpretation project from other information and that it is not the case that this information is held in a form that can be readily accessed.

14. The MoJ stated that it would be necessary to undertake the following tasks in order to comply with the requests and gave an estimate of time and cost for each of these.

    - Determine the number and grade of civil servants who had worked on the project.

    This would necessitate a search of 300 staff files. The estimate of the MoJ was 5 minutes per file, giving a total estimate of 1,500 minutes / £625.

    - Determine the proportion of time devoted to the interpretation work by each individual aside from their other duties.

Requiring a search of 100 staff files: 500 minutes / £208.

- Determine the precise dates on which individuals were working on the project.

Requiring a search of 100 staff files: 500 minutes / £208.

- Determine the reason for any travel, where this occurs (ie whether someone was incorporating a task relating to the interpreter into a journey made primarily in pursuance of their 'normal' job).

Requiring a search of 100 staff files and 200 central finance files: 1,500 minutes / £625.

- Determine a utilities cost derived from the total utilities costs of the MoJ, based on the number of officials found to have worked on the project by time, and assuming an average usage rate.

Requiring a search of 200 central finance files and the project unit's records: 1,000 minutes / £417.

15. As noted above, the fees regulations specify those tasks that may be taken into account when forming a fees estimate. The Commissioner accepts that the tasks described by the MoJ constitute the extraction of information.

16. The Commissioner accepts that 5 minutes per staff file is a reasonable estimate, however the MoJ appears to have taken into account the time that would be spent on reviewing these files more than once. Under the first bullet above the MoJ states that it would be necessary to search 300 staff files to determine whether those staff members were involved in the Interpretation Project. Under the following three bullet points the MoJ refers to the necessity of searching 100 staff files.

17. The view of the Commissioner is that the activities described in the second, third and fourth bullet points above should be covered under the first bullet point; that is, it would only be necessary for the MoJ to search the staff files once. The Commissioner expects that once it has been identified that a file relates to a staff member who has worked on the Interpretation Project, it could also then determine the proportion of time devoted to this project, the dates on which the individuals were working on this project, and the reason for any travel - without it being necessary to also carry out a further search at some later time.

18. Under the fifth bullet above the basis for it being necessary for the MoJ to search through 200 central finance files appears to be in order to calculate an average usage rate for utilities. It is appropriate for the MoJ

to take utilities costs into account given that these were specified in the wording of the request and the Commissioner accepts that this part of the cost estimate is reasonable.

19. The Commissioner accepts the cost estimate set out under the first and fifth bullet points above. He does not, however, accept that part of the estimate covered under the second, third or fourth of the bullet points. However, the combined time and cost of the activities described under the first and fifth bullet points is 2,500 minutes, or £1,042. The Commissioner therefore accepts that the MoJ has made a reasonable estimate of the cost of this request that is in excess of the limit set in the fees regulations. He therefore concludes that section 12(1) does apply in this case and the MoJ is not required to comply with the complainant's request.

Section 16

20. Section 16(1) of the 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, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.

21. In this case the cost estimate, whilst above the limit, was within reasonable proximity to it and so the Commissioner would expect that the MoJ should have been able to provide useful advice on refining the request. Although the MoJ did refer in the refusal notice and in the internal review response to the possibility of being able to comply with a refined request, no explanation was provided as to how to refine the request in order to achieve this result.

22. The Commissioner therefore finds that the MoJ breached the requirement of section 16(1) in that it failed to provide advice to the complainant as to how to refine his request in order to bring it within the cost limit. At paragraph 3 above the MoJ is required to take remedial action.

Right of appeal

23. 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

24. 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.

25. 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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