

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2013

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

Decision (including any steps ordered)

1. The complainant requested statistical information in relation to the number of registered linguists (interpreters) used by the public authority.
2. The Commissioner's decision is that the public authority was entitled to refuse to comply with the request on the basis of section 12(1) FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 15 June 2012, the complainant wrote to the public authority and requested information in the following terms:

'The Framework Agreement with Applied Language Solutions (ALS) for the supply on Interpreting and Translation services within the Justice sector requires a register of linguists to be maintained by ALS, although it is the property of the Ministry of Justice.

Please provide the number of linguists on the Register on the following dates: 31st August 2011, 30th September 2011, 31st October 2011, 30th November 2011, 31st December 2011, 31st January 2012, 29th February 2012, 31st March 2012, 30th April 2012, 31st May 2012. For each of these dates, please provide the total number of registered linguists, and how this number is divided between those registered as Tier 1, Tier 2 or Tier 3.

5. The public authority responded on 12 September 2012. It claimed that information within the scope of the request was exempt from disclosure on the basis of section 43(2) FOIA.
6. Following an internal review the public authority wrote to the complainant on 24 September 2012. It upheld the decision to engage section 43(2) FOIA.

Scope of the case

7. On 3 October 2012 the complainant contacted the Commissioner to complain about the way his request for information had been handled, primarily whether the public authority was entitled to withhold the information requested.
8. However, on 23 January 2013, the public authority in response to the Commissioner's letter of 19 December 2012 revised its position that section 43(2) was engaged and explained that it could not comply with the request by virtue of the provisions of section 12(1) FOIA. It confirmed that the information requested was not collated at the time of the request prior to applying the exemption at section 43(2) and that it had not been collated since the request was made.¹
9. In light of the particular circumstances of this case, the Commissioner accepted the late introduction of section 12(1) by the public authority. The scope of the investigation therefore was to determine whether the public authority was entitled to rely on section 12(1) in relation to the request above of 15 June 2012.

Reasons for decision

Section 12(1)

10. Section 12(1) FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.

¹ The Commissioner has commented on this admission in the 'Other Matters' section of this notice.

11. The appropriate limit is laid down in the Fees Regulations.² It is set at £600 for central government bodies, calculated at £25 per hour, which equates to 3½ working days.
12. The public authority confirmed that it maintains a database (i.e. register) of interpreters. It explained however that the register is not a list as suggested by the complainant. Rather, it is part of a live electronic database which cannot be searched retrospectively to specifically provide the information of the kind requested. The number of interpreters is always taken as a snapshot from the database. Therefore, any retrospective searches would need to be completed by manually checking individual files.
13. The public authority estimated that it would need to check 1300 individual records to extract information at the level of detail requested by the complainant. It estimated that it would take 15 minutes to search each record and additional time would also be required to sort and prepare the relevant data. Therefore, it would take approximately 325 hours just to search all of the 1300 records, and at £25 per hour, cost £8125.
14. The key question for the Commissioner to determine in this case is whether it would have been necessary at the time of the request for the public authority to search individual records of all registered linguists in order to comply with the request.
15. In view of the explanation provided by the public authority in relation to the search capabilities of the database, the Commissioner accepts that it would have had to conduct a manual search of individual records to provide information at the level of detail requested by the complainant. Given the estimated number of individual records (1300), he also accepts that it would have exceeded the appropriate limit to complete the searches.
16. The Commissioner therefore finds that the public authority was entitled to rely on section 12(1) FOIA to deny the request of 15 June 2012.

Procedural Breaches

17. By virtue of section 10(1) FOIA, a public authority is required to respond to a request for information within 20 working days. As mentioned, the

² Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

request was made on 15 June 2012 and a response was issued on 12 September 2012.

18. The Commissioner therefore finds the public authority in breach of section 10(1).
19. By virtue of section 17(5) FOIA, a public authority is required to issue a complainant with a refusal notice stating that section 12(1) applies to a request within 20 working days.
20. The Commissioner additionally finds the public authority in breach of section 17(5) for informing the complainant outside of the statutory time period that it could not comply with his request on the basis of section 12(1).

Other matters

21. The Commissioner would like to record his concern at the public authority's handling of the request. By its own admission, the public authority twice applied the exemption at section 43(2) to information that it was not in a position to disclose without exceeding the appropriate limit. It is regrettable that such a fundamental error was not corrected at the internal review stage when it had the opportunity to review its initial response to the request. The Commissioner acknowledges that the public authority has apologised for its mistake. However, he recommends steps are taken to ensure that in future, exemptions are only applied after the public authority has actually considered the relevant information.

Right of appeal

22. 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

23. 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.
24. 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

Alexander Ganotis
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