

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2014

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

Decision (including any steps ordered)

1. The complainant has requested the Statements of Case for a particular litigation case. Having originally found the requested information to be exempt under sections 44(1) (statutory bar) and 32(1) (court record), the public authority instead relied on section 12(2) (cost limit) to refuse the request. The Commissioner's decision is that the public authority has provided a reasonable estimate of the costs associated with complying with the request and has therefore correctly applied section 12. No steps are required.

Request and response

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

"... I am writing to request some documents under the Freedom of Information Act.

I am interested in the Fetal Anti Convulsant Litigation, from which the LSC withdrew funding at the end of 2010.

I understand that before the case collapsed there were two hearings of preliminary issues which referred to the Statements of Case, which brings those documents into the public domain. So I would like to request a copy of the Statements of Case".

3. The public authority responded on 11 December 2012. It confirmed that it held the information but advised that it was exempt from disclosure by virtue of section 44(1)(a) of the FOIA, citing section 20(1) of the Access to Justice Act as the legislation being relied on.
4. Following an internal review the public authority wrote to the complainant on 4 February 2013. It maintained reliance on section 44(1)(a) and added section 32(1).

Scope of the case

5. The complainant contacted the Commissioner on 9 May 2013 to complain about the way her request for information had been handled, asking him to consider the exemptions cited.
6. During the course of his investigation, the Commissioner clarified with the public authority that the complainant was seeking 'generic' statements of case rather than individual statements. As a result, the complainant was informed by the public authority that it now wished to rely on section 12 of the FOIA rather than the earlier exemptions cited.
7. Having received an updated refusal notice citing section 12 the complainant asked the Commissioner to consider its application.

Reasons for decision

Section 12 – the cost limit

8. Section 12(1) states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
9. Section 12(2) states 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.
10. In this case, the public authority estimates that it would exceed the appropriate limit to confirm whether or not the requested information is held. In other words, it is citing section 12(2).
11. The appropriate limit in this case is £600, as laid out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"). This must be

calculated at the rate of £25 per hour, providing an effective time limit of 24 hours' work.

12. When estimating whether confirming or denying whether it holds the requested information would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in determining whether it holds the information. The estimate must be reasonable in the circumstances of the case. It is not necessary to provide a precise calculation.
13. During the Commissioner's investigation the public authority wrote to the complainant and explained:

"I have interpreted the clarification you provided as a request for the summary/generic Statements of Case in the Fetal Anti-Convulsant case and on this basis I am afraid that I am not able to confirm whether the LAA holds this information.

On this occasion, the cost of determining whether we hold the information would exceed the limit set by the FOIA so we will not be able to fully answer your request. In this letter I explain why that is the case.

The law allows us to decline to fully answer requests under the FOIA when we estimate that it would cost us more than £600 (equivalent to 3½ working days' worth of work, calculated at £25 per hour) to confirm whether the department holds the information requested.

In this instance to determine if the information requested is held we would be required to go through 40 lever arch files. Over the course of the case the LSC received large amounts of information which have been stored over 40 lever arch files. The information is not held in a particular order so it is not possible to direct our search. Therefore, we would have to review each of the lever arch files. We estimate that it would take a minimum of 2.5 hours to review each lever arch file, therefore the exercise of review all of the files would take nearly 3 weeks to complete".

Would it exceed the appropriate limit to determine whether the information is held?

14. The complainant was unhappy with the estimate she received and disputed it saying:

"I am not satisfied with the latest response from the MoJ. They are claiming it would take 3 weeks just to determine whether they hold

the information I seek, so the cost would exceed the limit set by the FOIA.

Based on my understanding of the case, I believe it is likely that the 40 folders they refer to are each indexed for the hearings in which they were used.

The most up-to-date versions of the Statements of Case should be in the folders used at the last hearing in October 2010 with the date of the hearing on the spine and/or on the internal index. Each index should clearly identify the material papers in that file and that file's place in the set of files used for each hearing. Therefore, I believe that examination of the indices to those folders to find the Statements of Case would take far less time than they suggest and that it is definitely achievable within the limit set by the FOIA".

15. During his investigation the Commissioner raised queries based on the complainant's comments above. His query and the related response are as follows:

Has anyone actually viewed the folders?

- *Yes, the binders were viewed when calculating the cost of processing this request.*

Has anyone looked at any of the contents?

- *Yes, Again a number of binders were randomly looked at to see if they were indexed*

Is anything written on the outside of the folders? If so, what?

- *No, however the boxes the binders were dispatched in do have details of where the binders are from and when they were sent.*

Is there any sort of index? If so, please describe.

- *No, the binders are not indexed and do not contain individual table of contents*

Have the contents been sorted?

- *No.*

Is the information filed chronologically?

- *No, the binders are stored in the date order they were received not the date of the information within.*

Is it possible to identify and look at a folder which would cover the last hearing referred to, ie October 2010?

- *No, Again as this [sic] binders are stored in the order they were received it is possible that information from October could have arrived in early November.*

16. Having considered the estimates provided, and the volume of information that would have to be looked through, the Commissioner finds that they are adequate, realistic and reasonable. There is no obvious starting point for any search to be undertaken by the public authority as the information is not structured in any way to assist in locating what the complainant requires. Although the complainant will obviously be disappointed at the lack of structure within the files, the Commissioner ascertained in talking to the public authority that because the case never went to court there would not have been a requirement to index the papers in any way. Furthermore, the public authority also doubted that they would even have a copy of the Statements of Case as the case didn't proceed.
17. Based on the above submissions, the Commissioner accepts that to ascertain whether or not the information is held would in itself exceed the appropriate limit.

Section 16 – advice and assistance

18. 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.
19. In this case the public authority has provided the complainant with a reference number and suggested that she contacts the Royal Courts of Justice in case they can assist her further. The Commissioner therefore considers that the public authority has met its duty to provide relevant advice and assistance.

Right of appeal

20. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

21. 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.
22. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF