

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 14 July 2014

**Public Authority:** Ministry of Justice

**Address:** 10<sup>th</sup> Floor, Postal point 10.31  
Zone B  
London  
SW1H 9AJ

#### **Decision (including any steps ordered)**

---

1. The complainant submitted ten requests for information relating to public and private prisons. The Ministry of Justice aggregated the requests and applied section 12.
2. The Commissioner's decision is that the Ministry of Justice has initially aggregated requests 1, 2, 3, 4, 5, 6, 7 and 10 appropriately. However, he considers that requests 8 and 9 should be dealt with separately.
3. The Commissioner therefore requires the Ministry of Justice to take the following steps to ensure compliance with the legislation:
  - issue fresh responses to requests 8 and 9.
4. The Ministry of Justice 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 March 2013 the complainant submitted ten requests to the Ministry of Justice (MoJ) – please see appendix 1 for a list of the requests.
6. The MoJ responded on 19 June 2013. It explained that it had aggregated the complainant's ten requests under Regulation 5 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the regulations) in order to estimate whether the cost of compliance would exceed the appropriate limit. In addition, the MoJ explained that it considered that the cost of compliance with the requests would exceed the appropriate limit of £600, citing section 12 of FOIA.
7. The MoJ also explained that it was going to provide some information to the complainant on a discretionary basis in relation to some of his requests; one such disclosure included a redaction made by virtue of section 43(2) (commercial interests) of the FOIA. In relation to request 4, it confirmed that it did not hold any information.
8. The complainant requested an internal review on 21 June 2013, asking the MoJ to review its decision to aggregate all of his requests.
9. Following an internal review the MoJ wrote to the complainant on 19 July 2013. It confirmed that it was upholding its decision to aggregate all of the requests and apply section 12.

## **Scope of the case**

---

10. The complainant contacted the Commissioner on 4 October 2013 about the MoJ's aggregation of all of his requests for the purposes of applying section 12 and the length of time taken to deal with his request.
11. The complainant also complained that he was initially advised to submit his requests in a group in order to expedite them, but the MoJ then 'lost them'.
12. The complainant subsequently complained about the MoJ's responses to requests 1, 2, 3, 4 and 5.
13. The Commissioner notes that when the complainant made his requests, he explained to the MoJ that he had made them separately as otherwise they would be treated as one request and would exceed the cost threshold. Furthermore, when the complainant requested an internal

review, he stated: *"I ask for an internal review of the decision to aggregate all of the requests in my application"*. He did not complain about the MoJ's discretionary responses to requests 1, 2, 3, 4, and 5, its application of section 43(2) within this discretionary disclosure, nor did he raise any other issues for the MoJ to reconsider. As these issues were not previously raised with the MoJ, the Commissioner does not consider it appropriate for him to investigate them in this notice.

14. The Commissioner will therefore consider whether the MoJ was entitled to aggregate all of the responses for the purpose of applying section 12 and the time taken to deal with the requests.

### **Reasons for decision**

15. Section 12(1) of FOIA 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.
16. Under FOIA, if a public authority receives multiple requests it should ensure that each request can be aggregated in accordance with the conditions laid out in the Fees Regulations. Any unrelated request should be dealt with separately for the purposes of determining whether the appropriate limit is exceeded.
17. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions in regulation 5 of the regulations are satisfied. Requests must be:
  - made by one person, or different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
  - made for the same or similar information; and
  - received by the public authority within any period of 60 consecutive working days.
18. Section 12(1) of FOIA states that:

*"Subsection 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."*

19. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the regulations) sets the appropriate limit at £600 for central government authorities. A public authority can charge £25 per hour for work undertaken to comply with a request, which

amounts to 24 hours work, in accordance with the £600 limit set out above.

20. If an authority estimates that compliance with a request may cost more than the cost limit, it can consider the time taken in:
- determining whether it holds the information,
  - locating the information, or a document which may contain the information,
  - retrieving the information, or a document which may contain the information and,
  - extracting the information from a document containing it.
21. The MoJ explained that it had aggregated the requests as they were deemed to be requesting similar information.
22. The Commissioner notes that the requests were all made by one person on the same day. Therefore, he will consider whether the ten requests are for the same or similar information.

*Are the requests for the same or similar information?*

23. Regulation 5(2) of the regulations requires that requests which are to be aggregated relate "to any extent" to the same or similar information. The Commissioner acknowledges that this is quite a wide test but public authorities must ensure that the requests meet this requirement.
24. Initially, the MoJ informed the complainant that it had aggregated his requests in line with the regulations, but did not explain why. However, in its internal review, the MoJ explained that it had aggregated the requests as it considered that they asked for similar information.
25. The Commissioner considers that requests are likely to relate to the same or similar information where, for example, the requester has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information requested.
26. The complainant explained that he considered that the MoJ had interpreted regulation 5 of the regulations too broadly and that the requests were not for the same or similar information. He went on to explain that some of his requests were about privately run prisons, some about publicly run prisons and two were not actually about the management of prisons, but about the electronic monitoring of all offenders and escorting.

27. The complainant also pointed to a previous decision notice – FS50464000<sup>1</sup> – in which the Cabinet Office aggregated four requests in relation to the application of section 12 FOIA. In that case the Commissioner held that three of the four requests could be aggregated as they related to a similar subject matter. However, one request could not be aggregated as the Commissioner considered it to relate to a different subject matter.

*Can the requests be aggregated?*

28. The Commissioner has considered the wording of each of the individual requests and the complainant's and MoJ's submissions. He considers that there is a common thread running through all of the requests apart from requests 8 and 9. This is because the other requests are about the workings of both private and/or public prisons. However, request 8 is about a service level agreement of a prison and 9 is asking for a comparison of staff terms and conditions in both private and public prisons.
29. As the Commissioner's decision is that the MoJ was entitled to aggregate requests 1, 2, 3, 4, 5, 6, 7 and 10, but not requests 8 and 9; he requires the MoJ to issue fresh responses to requests 8 and 9.

### **Section 16 - advice and assistance**

30. Section 16(1) of the FOIA provides that a public authority is required to give 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 suggest to a requester 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).
31. On this occasion the Commissioner notes that the MoJ aggregated all of the requests and then applied section 12. However, it went on to disclose some information in relation to a number of the requests on what it termed to be a "discretionary basis". The complainant has advised that he found the information provided to be helpful, however, from a procedural stance, the Commissioner has found this type of *ad hoc* disclosure to be confusing. This is because the MoJ has firstly

---

<sup>1</sup> <http://ico.org.uk/FS50464000.ashx>

aggregated all the requests, then cited the cost limit, yet then gone on to decide that some information can be disclosed. Having made a limited disclosure it has then cited a further exemption in relation to some of the content withheld within the 'discretionary' disclosure.

32. It is the Commissioner's view that if a public authority wishes to apply the cost limit then it should provide advice and assistance to the complainant to allow them to make a request which may succeed within the boundaries of the appropriate limit, or suggest which elements of a request can be met. As such he determines that the MoJ breached section 16(1) of the FOIA.

### **Section 17**

33. Section 17(5) states that:

*"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."*

34. The Commissioner notes that the complainant made his requests on 21 March 2013 but the MoJ did not respond until 19 June 2013. The time for compliance with section 1(1) is 20 working days, as laid down in section 10(1). Therefore, the Commissioner considers that the MoJ has breached section 17(5).

## Right of appeal

---

35. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

36. 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.
37. 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**

## **Appendix 1**

For ease and convenience, the Commissioner has followed the same numbering as the MoJ applied to the requests:

1. *"I make the following application under the Act:  
a copy of the contract for Thameside prison and associated documents  
including the financial model."*

2. *"I make the following application under the Act:  
for the original contract for Altcourse prison including the financial model.*

*In so doing I am responding to your invitation (ref 77250 dated 7.8.12) to  
narrow the range of information sought in my application ALT1 last year, so  
that it falls under the cost limit."*

3. *"I make the following application under the Act:  
the original contract for Rye Hill prison including the financial model."*

4. *"I make the following application under the Act:  
for the latest competition for contracts for electronic monitoring of offenders:*

*the value of the winning bid and the range of all other compliant bids*

*the quality score on evaluation of the winning bid and the range for all other  
compliant bids."*

5. *"I make the following application under the Act:  
for the latest competition for contracts for prison escorts:*

*the value of the winning bid and the range of all other compliant bids*

*the quality score on evaluation of the winning bid and the range for all other  
compliant bids."*

6. *"I make the following application under the Act:*

*both*

*any studies that compare the performance and costs of public and private  
sector prisons, other than those already published*

*and*

*reference to any that have been published."*

7. *"I make the following application under the Act:*



*for each prison managed by the private sector;*

*for each of the past 3 years;*

*the points, positive and negative, awarded by NOMS under the performance system laid down in the contract*

*rectification and default notices issued, if any*

*financial deductions made by NOMS, if any, and the reason for it."*

8. *"I make the following application under the Act:*

*the current SLA for Buckley Hall prison*

*the SLA that preceded it."*

9. *"I make the following application under the Act:*

*the latest study that compares the remuneration of staff in public and private sector prisons, including pensions, and their terms and conditions."*

10. *"I make the following application under the Act:*

*the data used by NOMS to measure changes in the efficiency of all public sector prisons, as a group, for as many years as it is available.*

*If the total exercise would exceed the cost limit that I limit the request to as many years' data as can be obtained within the cost limit."*