Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **8 May 2014**

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

Decision (including any steps ordered)

1. The complainant requested information about the number of small claims processed in Lincoln County Court since 2010.

2. The Ministry of Justice (MoJ) confirmed that it holds the information but refused to provide it citing section 12 of the FOIA (cost of compliance exceeds the appropriate limit).

3. The Commissioner considers that section 12 of the FOIA was applied correctly in this case. The Commissioner requires no steps to be taken.

Background

4. Prior to making the request that is the subject of this decision notice, the complainant had made a previous request for information to the MoJ on 5 September 2013:

> *"My present focus is on the Small Claims Court. Could you tell me please how many such claims have been processed by the Court since 2010; in how many cases leave to appeal has been sought; whether leave has ever be granted [sic] and if so in how many cases the applicant has been successful on appeal?"*

5. That request was refused on the basis that section 12 of FOIA applies.

Request and response

6. Following earlier correspondence, the complainant wrote to the Ministry of Justice on 29 November 2013 and requested information in the following terms:

> *"Thanks. You say at one point that HMCTS holds the information but you then go on to claim it is not held on a central data base. Is it held on local data bases? Could you send me please an example of what is held on the central data base in respect of appeals? As a bottom line could you provide the information I am seeking in respect of the County Court at Lincoln?"*

7. The MoJ responded on 24 December 2013. It confirmed that it holds the requested information in relation to the Lincoln County Court. However, it refused to disclose it, citing section 12 of the FOIA (cost of compliance exceeds the appropriate limit).

8. Further correspondence followed between the two parties, with the complainant questioning - and expressing dissatisfaction with - the MoJ's response of 24 December 2013.

Scope of the case

9. The complainant contacted the Commissioner on 28 December 2013 and on 15 January 2014 to complain about the way his request for information had been handled.

10. In bringing his complaint to the Commissioner's attention, the complainant suggested, among other things, that in relation to the request that is the subject of his complaint:

> *"The MoJ should be asked to state specifically how many cases came before the Lincoln County Court in the period in question".*

11. The Commissioner considers the scope of his investigation to be the MoJ's application of section 12 to the information requested on 29 November 2013 about the number of small claims processed in Lincoln County Court since 2010.

Reasons for decision

12. Section 12(1) of the FOIA states that:

"Section 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".

13. In other words, section 12 provides an exemption from a public authority's obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit.

14. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours in this case.

15. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:

- determining whether it holds the information;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

16. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.

17. A public authority does not have to make a precise calculation of the costs of complying with a request: instead only an estimate is required. However, it must be a reasonable estimate.

18. The complainant told the Commissioner:

"In their letter of 24 December in respect of the County of Lincoln only, the MoJ do not state how many files are involved baldly claiming that it would involve more than 3 ½ days' work (some 25 hours) thus placing it outside the section 12 limit".

19. In the Commissioner's view, although explaining in general terms why it considered that complying with the request would exceed the cost limit, the MoJ failed to provide the complainant with an estimate of the actual work involved in complying with the request.

20. In that respect, he notes that the MoJ told the complainant:

"In this instance to provide you with the information we would be required to manually search the individual small claims files at Lincoln County Court over the specified period".

21. The Commissioner acknowledges that the request in this case follows on from an earlier request. He accepts that, in correspondence about that request, the MoJ did provide the complainant with an estimate of the number of files involved and the time it would take to examine them.

22. However, from the evidence he has seen in relation to the requested information in this case, the MoJ failed to provide similar details.

23. The Commissioner recognises that there is no statutory requirement under section 17 for the refusal notice to include an estimate of the costs involved, or any other explanation of why the cost limit would be exceeded. However, in the Commissioner's view, it is beneficial to a public authority to do so, for example to enable the requestor to assess the reasonableness of the estimate.

24. In this case, in the absence of an estimate of the work involved in complying with the request or an explanation as to why the exemption applies, the Commissioner considers it understandable that the complainant finds the MoJ's response unsatisfactory.

25. As is the practice in a case such as this, during the course of his investigation the MoJ was asked to provide the Commissioner with:

> *"a detailed estimate of the time/cost taken to provide the information falling within the scope of this request".*

26. In response, the MoJ provided the Commissioner with arguments in support of its citing of section 12. It told him:

> *"To extract the data would require a manual check of all the court files over the four year period. The caseload through the Court over this period was 771 cases and based on 10 minutes to search each file, this equates to 128 hours or £3200, which exceeds the cost limit".*

Conclusion

27. The Commissioner is disappointed that the MoJ failed to provide the complainant with an estimate of the work involved in complying with this request. Similarly, he considers that it may have assisted the complainant if it had explained that all public authorities should calculate the time spent on the permitted activities at the flat rate of £25 per person, per hour - irrespective of the actual cost charged or incurred.

28. However, from the evidence he has seen during the course of his investigation, the Commissioner is satisfied that the MoJ has provided adequate explanations to demonstrate that it would exceed the appropriate limit to locate, retrieve and extract the requested

information. Section 12(1) does therefore apply and the MoJ is not required to comply with the request.

Section 16 advice and assistance.

29. Section 16 places a duty on a public authority to provide advice and assistance to someone making an information request, including helping an applicant refine a request so that it can be answered within the appropriate costs limit.

30. The Commissioner considers that the best way to meet this requirement in a case involving the costs exemption will usually be to include a breakdown of the costs involved in meeting the request, and an indication of what could be provided under the limit, as part of the refusal notice

31. In this case the MoJ told the complainant:

> *"… we might be able to answer a refined request within the cost limit. You may wish to consider, for example, reducing the timeframe of your request".*

32. In the Commissioner's view, in the absence of any breakdown of costs or practical advice about how to reduce the timeframe of the request, the MoJ failed to provide adequate advice and assistance to the complainant.

Other matters

33. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint.

34. The Commissioner is satisfied that when it wrote to the complainant on 28 December 2013 the MoJ advised him about his right to appeal if he thought its decision as incorrect.

35. In relation to an internal review, the MoJ told the Commissioner:

> *"At no point have we received any correspondence that has expressed dissatisfaction with the either of our responses or a direct request to review them".*

36. The Commissioner is aware however, that, the complainant wrote to the MoJ on 24 December 2013 and 10 January 2014 in relation to its response of 24 December 2013. On 10 January 2014 the complainant told the MoJ:

"I feel that you have exaggerated the cost and difficulty of giving me the facts I seek because you do not want those facts to become known".

37. Referring to the complainant's email of 10 January 214, the MoJ told the Commissioner:

"This email does not outline a revised request or request an internal review and was taken as a general dissatisfaction with the outcome of the request".

38. In the Commissioner's view, where a public authority has a complaints procedure, also known as an internal review, it should ensure the procedure is triggered whenever a requester expresses dissatisfaction with the authority's response. Such a communication should be handled in accordance with the authority's complaints procedure, even if, in the case of a request for information under the general rights of access, the applicant does not expressly state his or her desire for the authority to review its decision or its handling of the application.

39. In this case, the Commissioner considers that the MoJ failed to recognise the complainant's expression of dissatisfaction as a request for internal review. The Commissioner expects that the authority's future handling of complaints will conform to the recommendations of the Code.

Right of appeal

40. 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

41. 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.

42. 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