Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 November 2017

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

Decision (including any steps ordered)

1. The complainant requested statistical information relating to the number of people convicted of particular types of offence who had been released by the Parole Board having completed a specific accredited programme.

2. The Ministry of Justice (MoJ) ultimately confirmed that it held information within the scope of the request but that it could not be provided without exceeding the costs limit under section 12 of the FOIA (cost of compliance exceeds appropriate limit).

3. The Commissioner's decision is that the MoJ correctly applied section 12(1) to the requested information. However, she found breaches of section 10(1) (time for compliance) and section 16(1) (duty to provide advice and assistance) of the FOIA.

4. She does not require any steps to be taken as a result of this decision.

Background

5. Sentences of Imprisonment for Public Protection (IPPs) were created by the Criminal Justice Act 2003 and started to be used in April 2005. They were designed to protect the public from serious offenders whose crimes did not merit a life sentence[1].

[1] https://www.justice.gov.uk/downloads/legislation/bills-acts/legal-aid-sentencing/ipp-factsheet.pdf

6. Offenders sentenced to an IPP are set a minimum term (tariff) which they must spend in prison. After they have completed their tariff they can apply to the Parole Board for release.

Request and response

7. On 30 December 2016, the complainant wrote to the MoJ and requested information in the following terms:

> *"How many IPPs convicted of sexual offences have been released by the Parole Board at HMP Wymott without having done the Sex Offender Treatment Programme in the last five years?"*

8. The MoJ responded on 31 March 2017, refusing to provide the requested information citing section 40(2) of the FOIA (personal information).

9. Following an internal review the MoJ wrote to the complainant on 12 June 2017, maintaining its original position.

Scope of the case

10. The complainant first contacted the Commissioner on 6 February 2017 to complain about the MoJ's failure to respond to his request for information. Following the Commissioner's intervention the MoJ responded to the complainant.

11. The complainant provided the Commissioner with the relevant documentation on 3 July 2017 to complain about the way his request for information had been handled. He disputed the MoJ's reasons for not disclosing the requested information.

12. During the course of the Commissioner's investigation, the MoJ revisited its handling of the request. It told the Commissioner that "*the wrong approach was taken*" to answer the request.

13. Having looked again at the request and interrogated central records, the MoJ stated that it should have exempted the information in accordance with section 12(1) of the FOIA (cost of compliance).

14. The analysis below considers the MoJ's application of section 12(1) of the FOIA to the requested information. The Commissioner has also considered the timeliness of the MoJ's response.

Reasons for decision

Section 12 cost of compliance

15. 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".*

16. 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.

Would complying with the request exceed the appropriate limit?

17. 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.

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

19. During the course of the Commissioner's investigation, the MoJ wrote to the complainant confirming that it considered section 12(1) of the FOIA applied.

20. Apologising for its late application of section 12, the MoJ told the complainant:

> *"We accept that when your original request was received we should have looked at central records rather than approaching the establishment directly as prison establishments are not required to keep this information and, therefore, even if they did hold the information, it was always unlikely that it would cover the whole period you requested".*

21. The MoJ told the complainant that, having interrogated central records, it had been able to establish the number of prisoners convicted of sexual

offences who were released from HMP Wymott between 2012 and 2014. However, it told him:

> *"… we are unable to confirm from these records alone whether these were releases of IPP offenders and whether they had completed SOTP* [Sex Offender Treatment Programme]*".*

22. It explained that, as the way data is recorded has changed since 1 January 2015, it could identify the number of offenders released from HMP Wymott between 1 January 2015 and 31 December 2016 who were convicted of sexual offences and who were also IPP offenders. However, it told the complainant:

> *"…there is no system which then records whether any of these prisoners had or had not completed SOTP as there is no business requirement for us to record that information".*

23. On that basis it explained that a response to his request would require staff at HMP Wymott to look through:

- offender records to establish which of the sexual offender releases between 2012 and 2014 were of IPPs, and then the number of those who had / had not completed the SOTP, and
- offender records for the IPP sexual offenders released during 2015 and 2016 to establish whether they completed the SOTP.

24. In its correspondence with the Commissioner, the MoJ confirmed what it had told the complainant about the need to look through individual offender records:

> *"…in order to provide* [the complainant] *with the level of detail he is asking we would need to locate and check individual prisoner files".*

25. The MoJ told the Commissioner that approximately 488 individual prisoner records would need to be consulted in order to respond to the request.

26. The MoJ estimated that it would take 15 minutes to assess each of the relevant manual files or records. In other words, it estimated that it would take significantly more than 24 hours to respond in this case.

The Commissioner's view

27. When dealing with a complaint to her under the FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, in a case such as this, the

Commissioner's role is simply to decide whether or not the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.

28. Section 12(1) of the FOIA requires a public authority to estimate the cost of a request; it is not required to calculate the exact cost of the request. The question for the Commissioner in a case such as this is whether the estimate made by the public authority of the cost of complying with this request was reasonable.

29. From the evidence she has seen during the course of her investigation, the Commissioner is satisfied that the MoJ has demonstrated that it would exceed the appropriate limit to locate, retrieve and extract the requested information.

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

Section 16

31. 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.

32. In this case, the MoJ told the complainant:

> *"On this occasion we are unable to suggest a way that you might refine your request as we will not be able to get the level of detail you are asking for within the cost limits set out in the FOIA".*

33. The Commissioner's guidance states[2] that the minimum a public authority should do in order to satisfy section 16(1) is to:

- either indicate if it is not able to provide any information at all within the appropriate limit; or
- provide an indication of what information could be provided within the appropriate limit; and

[2] https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

- provide advice and assistance to enable the requestor to make a refined request.

34. The Commissioner's guidance also states that if the requestor understands the way in which the estimate has been calculated to exceed the appropriate limit, it should help them decide what to do next.

35. In the circumstances of this case, the Commissioner concludes that the MoJ failed to provide the complainant with reasonable advice and assistance and therefore breached section 16(1) of the FOIA.

Section 10 time for compliance

36. Section 1(1) of the FOIA states that upon receipt of a request a public authority must confirm or deny whether information is held, and if that information is held it must be communicated to the requester.

37. Section 10(1) of FOIA states that public authorities must comply with section 1(1) within 20 working days of receipt of the request

38. The MoJ accepted that in providing its response after 20 working days the response was non-compliant with the timeliness requirements of the FOIA. In its submission to the Commissioner it apologised for the delay that occurred. It explained that this was caused by an administrative oversight which has since been rectified.

39. The Commissioner finds the MoJ in breach of section 10(1) of the FOIA.

Other matters

40. In correspondence with the complainant, the MoJ told him:

> *"…Whilst there is no legal or business requirement for MoJ to hold this information, the establishment has maintained a local list for a period of the last 10 months. Information prior to this is not available".*

41. The complainant disputed the MoJ's position and requested an internal review. In that respect, he told the MoJ that he understood that information relating to SOTP was held in London.

42. The Commissioner considers that an internal review provides the opportunity for a public authority to reconsider its handling of the request when, as in this case, an applicant complains about the authority's response to his or her request.

43. She is disappointed to note, therefore, that it was not until the Commissioner's investigation that the MoJ fully addressed the matter of the amount of information it held that fell within the scope of the request.

Right of appeal

44. 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: 0870 739 5836
    Email: GRC@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

45. 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.

46. 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
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