

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 January 2018

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

#### Decision (including any steps ordered)

---

1. The complainant requested information relating to legal-aid funding of judicial reviews. The Ministry of Justice (MoJ) provided some information within the scope of the request but refused the remainder citing section 12(1) of the FOIA (cost of compliance exceeds appropriate limit).
2. The Commissioner's decision is that the MoJ has not demonstrated that section 12(1) applies.
3. The Commissioner requires the MoJ to take the following steps to ensure compliance with the legislation:
  - issue a fresh response that does not rely on section 12(1) of the FOIA.
4. The MoJ 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 FOIA and may be dealt with as a contempt of court.

#### Request and response

---

5. On 21 September 2016, the complainant wrote to the MoJ and requested information in the following terms:

*"1. Is confirmation by the claimant to judicial review proceedings that the claimant is in receipt of legal aid recorded on the*

*Administrative Court database (either on the database known as 'COINS' or otherwise)?*

*2. If so, in 2015, in how many of the judicial review proceedings that were commenced in the Administrative Court in 2015 was the claimant(s) in receipt of legal aid during the course of the claim?*

*3. If this request cannot be accommodated within the 3.5 working day equivalent cost limit:*

*(a) for what prior years does the digital record referred to in (1) extend (if it is clear that the record extends to, eg 2010 but it is not clear beyond that date, please provide such information as you can)? And*

*(b) please provide like information as requested in (2) for all the prior years for which it is available".*

6. The MoJ responded on 11 October 2016. It disclosed the information requested at part 1 of the request, confirming that the COINS database has a field that can be used to record if any legal aid documentation is filed with the court.
7. However, it explained that the data could not be relied on to provide accurate information in response to parts 2 and 3(b) of the request.
8. Following an internal review the MoJ wrote to the complainant on 16 November 2016. It confirmed its position with respect to part 1 of the request and responded in respect of part 3(a) of the request. It revised its position in relation to the remaining requested information: it refused to provide the requested information within the scope of parts 2 and 3(b) citing section 12(1) of the FOIA (cost of compliance exceeds appropriate limit). The MoJ advised the complainant that it may be able to answer a refined request within the cost limit. It offered advice and guidance in that respect.
9. It is acknowledged that the internal review correspondence was not received by the complainant until 16 February 2017 "*due to a mix up of email addresses*".

## **Scope of the case**

---

10. The complainant contacted the Commissioner on 9 June 2017 to complain about the way their request for information had been handled.
11. The Commissioner is aware that, following the internal review, there had been further communication between the complainant and the MoJ. The MoJ had responded to the complainant addressing their concerns about

its application of section 12(1). In its correspondence, the MoJ also advised the complainant with respect to their options going forward.

12. The complainant told the Commissioner that they considered that the requested information "*consists of statistical data recorded by the Court on its database*". They disputed that providing the requested information from the COINS database would reach the section 12 limit.
13. In further correspondence with the Commissioner, the complainant confirmed that they were seeking the information in the scope of parts 2 and 3(b) of their request. They argued that a manual check is unnecessary and therefore section 12 cannot apply.
14. In light of the above, the Commissioner asked the MoJ to revisit its handling of the request and to clarify the exemption(s) it was relying on. In light of the concerns raised by the complainant, she also asked the MoJ to explain to what extent, if any, it had considered clarifying the scope of their request with the complainant.
15. The analysis below considers the MoJ's application of section 12(1) of the FOIA to parts 2 and 3(b) of the request.

## **Reasons for decision**

---

### *Section 12 cost of compliance*

16. Section 12(1) of the 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."*

17. 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.
18. 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.
19. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
20. 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.

*The complainant's view*

21. The complainant disputed the MoJ's grounds for refusing to provide the information requested at parts 2 and 3(b) of the request.

22. In their request for internal review they told the MoJ:

*"Having confirmed that "the Administrative Courts electronic database Coins has a field that can be used to record if any legal aid documentation is filed with the court", it was incorrect and inappropriate for [the MoJ] to refuse to provide me with the figures from the COINS database..."*

23. Furthermore, they argued:

*'... it was extremely unhelpful and contrary to the spirit as well as the letter of the Freedom of Information Act for the Knowledge and Liaison Officer to refuse to provide the information contained on the COINS database as this was obviously what was in practice being sought"*

24. They invited the MoJ:

*"... to urgently review [the decision] and to provide this information without delay"*

25. In correspondence with the Commissioner the complainant argued that:

*"It is the manual check that would cause the cost of responding to the request to exceed the section 12(1) limit. Providing the information stored on the relevant field of the COINS database would not reach the section 12(1) limit"*

*The MoJ's view*

26. In its internal review correspondence, the MoJ confirmed that it had reassessed their case. It told the complainant that, as part of its review, it had made further enquiries with HM Courts and Tribunals Service

(HMCTS) teams that support the Administrative Court and made enquiries with the Legal Aid Agency (LAA), an agency of the MoJ which administers legal aid throughout England and Wales.

27. The MoJ explained that while the Administrative Court records information on the COINS database on receipt of a legal aid certificate:

*"... the Court does not undertake a check or chase the parties if this has not been done".*

28. As a result, the MoJ told the complainant that to provide the information requested at parts 2 and 3(b) of the request:

*"...would require a manual check of LAA records against a list of judicial review cases provided by the administrative court. To obtain the information to respond to your query for 2015 would involve the manual examination of over 4500 records..."*

29. It considered that one minute per case file was a reasonable estimate. On that basis, it told the complainant that the cost of complying with their request would exceed the appropriate limit under the FOIA.

30. In support of its application of section 12, in its submission to the Commissioner the MoJ confirmed:

*"... we considered the request to be for information as referred in question 1; "either on the database known as COINS or otherwise". This was interpreted this to mean all databases".*

31. Accordingly, it explained that as part of the internal review, the MoJ:

*"... considered whether the information was held solely within the court records or whether this information was also held in other areas of the MoJ".*

32. It confirmed that the LAA identified over 4500 judicial review cases that were legally aided in 2015. With respect to those 4500 cases, it told the Commissioner:

*"... a side by side comparison of a list of judicial review cases provided by the Administrative Court would need to be checked. This would require an officer of the court to inspect each court record to confirm the correct reason for the application".*

33. Describing it as a 'conservative estimate', the MoJ told the Commissioner:

*"To search 4500 records at 1 minute per case this would take 4500 minutes or 75 hours.*

*75 hours x £25 per hour = £1,875".*

*The Commissioner's view*

34. 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.
35. The Commissioner is mindful that the wording of part (1) of the request determines the scope of parts 2 and 3(b):

*"Is confirmation by the claimant to judicial review proceedings that the claimant is in receipt of legal aid recorded on the Administrative Court database (either on the database known as 'COINS' or otherwise)?"*

36. The Commissioner recognises that the MoJ did not consider it necessary to seek clarification of the request. Contrary to the complainant's view, it told her that it did not consider that the wording of the request was narrow enough to be interpreted to mean that they were seeking information from the COINS database only.
37. Having considered the wording of the request, the Commissioner considers that an objective reading of the request would be that the complainant was seeking information recorded on the Administrative Court database – a database that may or may not be known as COINS. In that respect, she notes that, when requesting an internal review, the complainant emphasised that their request was only for information from the COINS database.
38. Based on that objective reading of the request and from the evidence she has seen during the course of her investigation, the Commissioner is not satisfied that the MoJ has demonstrated that it would exceed the appropriate limit to locate, retrieve and extract the requested information.
39. Section 12(1) does not therefore apply and the MoJ is required to comply with the request.

## Other matters

---

40. The Commissioner's guidance on section 1 of the FOIA<sup>1</sup> makes it clear that public authorities must interpret information requests objectively and avoid reading into the request any meanings that are not absolutely clear from the wording.
41. Clearly, without determining the scope of the request, it is impossible to say if the appropriate information has been considered for disclosure.
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. The Commissioner considers that the reasons the complainant put forward for requesting an internal review clearly suggested that they disagreed with the MoJ's interpretation of their request. The Commissioner considers that the MoJ should have recognised the complainant's concerns.
44. In this case, the Commissioner considers that best practice would suggest that, if the reasons the complainant put forward for requesting an internal review raised doubt over the type and amount of information within the scope of the request, the MoJ should have contacted them to clarify whether or not the material, on which they had based their initial refusal, was in fact the subject of their request.

---

<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

## Right of appeal

---

45. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

46. 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.
47. 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**