

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 February 2020

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

Decision (including any steps ordered)

1. The complainant requested information involving specified forms and the associated numbers utilised for unpaid penalty charges. The Ministry of Justice (the 'MOJ') refused to provide some of the requested information under section 12(1) of FOIA, as to do so would exceed the appropriate cost and time limit. It responded to the remainder of the request.
2. The Commissioner's decision is that the MOJ is not obliged to comply with part one of the request under section 12(1) of FOIA. She finds that the MOJ complied with its section 16 of FOIA obligations by providing advice and assistance to the complainant. She also finds that as section 12(1) was engaged in relation to part of the request, the MOJ was not obliged to respond to the remainder (although it did so).
3. No steps are required to ensure compliance with the legislation.

Background

4. The MOJ advised that the request was handled by its Traffic Enforcement Centre ('TEC'). The Commissioner understands that the TEC is part of Northampton County Court and was set up solely to register all unpaid Penalty Charge Notices including bus lane contraventions, TfL (Transport for London) congestion charges, Dart Charges (Dartford Crossing charges) and Merseyflow (official toll operator for Mersey Gateway and Silver Jubilee bridges).
5. The Commissioner understands that the 'Mersey Gateway' (cited in the request below) is a tolled crossing of the Mersey that opened in October 2017. Halton Borough Council is responsible for the scheme, but that

the tolls and penalties are enforced by Merseyflow. The main group opposing the tolls is 'Scrap Mersey Tolls' ('SMT').

6. The complainant advised that since the Mersey Gateway bridge opened over 1.4 million 'Penalty Charge Notices' ('PCN') have been issued as at September 2019. If they are neither paid nor successfully challenged, then Merseyflow applies to the TEC at Northampton for a Recovery Order. The complainant said:

"The TEC seems to run in tandem with the County Court Business Centre, also based at Northampton County Court to bulk handle court cases. The main function of the TEC is to give sanction to local authority use of debt enforcement agents (bailiffs) to recover money by threatening people with increasing penalties and costs and by seizing goods."

7. There are three 'TE' forms involved in the request below which are 'TE3' a Recovery Order, 'TE7' an Out of Time application and 'TE9' a Witness Statement. The request below follows a previous related request submitted on 9 May 2019, and references parts of the responses provided by the MOJ to that earlier request.
8. The request of 9 May 2019 has also been considered by the Commissioner in decision notice *FS50896164*.

Request and response

9. Having received the response and internal review outcome to his earlier request of 9 May 2019, the complainant wrote to the MOJ on 20 June 2019 and requested information in the following terms (the actual information requests are as highlighted by the complainant in bold text):

*"...You say that our request goes over the cost limit because you would need to "interrogate" "approximately" 170,000 cases at 2 minutes per case. Your responses are not absolutely clear, but it appears that you are saying that you keep no counts or statistics other than the total number of "registered" cases. **Will you please confirm that is the only figure that you keep. If in fact you do keep any figures at all on TE3s, TE7s and TE9s for the Mersey Gateway then we hereby request those figures.***

In any case your answer is puzzling. I had assumed that all of the "cases" would be on a computerised database, and that TE7s and TE9s received would be entered on to the database and further entries made when the witness statements and out of

time applications were either accepted or rejected. You however say that this is all "processed manually" rather than electronically. Given what you say it must be difficult for the TEC to somehow produce the printed letters that you send out in reply to the statements and applications. And I have seen emails that the TEC have sent out where someone has submitted, by email, duplicate TE7s and TE9s (i.e. for the same PCN). The email replies from the TEC are about an hour after the emails to you were submitted. This is a commendably fast response but even more remarkable if the TE7s and TE9s are not in a database.

Still on the assumption that the TE7s and TE9s are not in a database but have been "manually processed". It is not clear why you would go through the 170,000 TE3 case records, rather than through the presumably very much smaller number of TE7 and TE9 records. Could you explain that?

You say that "I can confirm that the TEC is impartial when an out of time is processed it is then sent to the Local Authority who have 19 days to respond to the TEC confirming if they accept or refuse the respondents application. If they refuse the out of time then this is passed onto a court officer for an impartial decision. The Court Officer is not required to give a reason for the refusal and record is not kept on the file."

*As the TEC is not really dealing with a 'local authority', how can you say that the out of time applications are sent to one. **Can you tell us exactly who and where the applications are sent to?***

And are the TEC really saying that when the court officer makes this judicial decision, no record is made of why they have rejected the application? The TEC may be aware that it has been noticed by us that the acceptance or rejection of the TE7 out of time applications seems to be random. Applications have been rejected while identical ones (apart from the PCN number) submitted at the same time by the same person have been accepted. The decision making by the court officer seems to be done on the toss of a coin. Though of course, given the TEC refusal to supply the requested information, we have no way of knowing whether the court officer is in practice doing anything more than rubber stamping whatever the Merseyflow response is.

In our view there has been an unsuccessful attempt to mask who your customer is for the Mersey Gateway recovery orders and

warrants of execution. Your TE3 recovery orders until recently said that the 'applicant' was "Mersey Gateway Crossing". We have noticed that within the last week or so, the forms are now showing the applicant is "Halton Borough Council". Perhaps the TEC were not aware of that change as I understand that it is a company employed by Merseyflow who send the forms out? I also notice that in your latest letter you say that "since joining the Traffic Enforcement Centre (TEC) Mersey Halton have registered (approximately) 170,000 cases". There seems to be some confusion in the TEC as to who you have been working for."

10. The MOJ responded on 18 July 2019. For part one of the request, it advised the complainant as follows:

"I can confirm that the only statistics that the database records are the number of registered cases.

You are correct in assuming the cases are entered onto the electronic database. Following receipt of a valid TE9/7, an event code is entered onto the database and as you say, a further code is added when these are accepted/rejected. Therefore the processing is manual and a code is entered onto the database but unfortunately the database does not collate the statistics for these.

Out of the approximately 170,000 cases registered it is impossible to tell which have had a TE9/7 and which of those have been accepted/rejected without checking each case individually on the database."

11. In addition, the MOJ refused to provide the requested information for the numbers of TE3s, TE7s and TE9s, citing section 12(1) of FOIA, the cost of compliance. It explained that there were approximately 170,000 cases in scope which it said would have to be individually checked on the database in order to respond to the request, stating:

"Where section 12 applies to one part of a request we refuse all of the request under the cost limit as advised by the Information Commissioner's Office.

We believe that the cost of interrogating the (approximately) 170,000 cases which have been registered by Mersey Halton to date to identify which have had a TE9/TE7 filed and what the result was, would exceed the appropriate limit. Consequently, we are not obliged to comply with your request."

12. For part two, the MOJ explained:

"You state that the TEC is not really dealing with the local authority, it may help if I explain the Local Authority is using the TEC as a registration point to issue penalty charge notices, so TEC has to deal with them. As such when an out of time form is filed and it requires a decision it needs to be sent to the issuing local authority, the details are sent via email on the day the form is processed. This is so the local authority are aware and should bailiff action require putting on hold they can do so. We then copy the paper copies of the applications and keep the originals on file at TEC and send copies to the local authority for a decision.

When the court officer creates an order accepting or rejecting the out of time application, they add an event code to the database stating the outcome only – not the reason for their decision. It is important to remember that a local authority may not actually respond to the out of time application (or may respond outside of the time limit) which would result in a revoking order – which is an identical outcome to a court officer granting the application.

You may wish to contact the local authority regarding the information contained within the TE3 as that is produced by them."

13. The complainant requested an internal review on 2 August 2019, raising a number of points as follows:

"a) Your responses are not absolutely clear, but it appears that you are saying that you keep no counts or statistics other than the total number of "registered" cases. Will you please confirm that is the only figure that you keep. If in fact you do keep any figures at all on TE3s, TE7s and TE9s for the Mersey Gateway then we hereby request those figures.

b) .. on the assumption that the TE7s and TE9s are not in a database but have been "manually processed". It is not clear why you would go through the 170,000 TE3 case records, rather than through the presumably very much smaller number of TE7 and TE9 records. Could you explain that?

c) As the TEC is not really dealing with a 'local authority', how can you say that the out of time applications are sent to one. Can you tell us exactly who and where the applications are sent to?

d) And are the TEC really saying that when the court officer makes this judicial decision, no record is made of why they have rejected the application?

e) We have noticed that within the last week or so, the forms are now showing the applicant is "Halton Borough Council". Perhaps the TEC were not aware of that change as I understand that it is a company employed by Merseyflow who send the forms out?"

14. Following its internal review, the MOJ wrote to the complainant on 28 August 2019; it maintained that section 12(1) applied to part one of the request.

15. The MOJ also explained the following in relation to the request:

"I can confirm that we do not hold any figures at all for the amount of out of time applications which have been processed and that whilst the TEC database allows entries to be made to an individual registration and can produce a report of the amount of registrations per month per local authority, it cannot query the amount of out of time applications that were processed. I can also confirm that the reason for the court officers decision is not recorded on the database.

The applicant is Halton Borough Council and there is a private public partnership between them and the delegated authority Mersey Gateway. This was approved under the Department For Transport's regulations. I can confirm that the TE3 is produced by the 'local authority' or Halton Borough Council / Mersey Gateway."

Scope of the case

16. The complainant had previously contacted the Commissioner to complain about the way his related request of 9 May 2019 was handled. As explained in the 'Background' section above, the earlier request has also been considered by the Commissioner in a separate investigation. That case upheld the MOJ's citing of section 12(1) for a request for similar information.

17. Following identification of this later request of 20 June 2019 from the complainant, which was found amongst his previous complaint submissions, there followed an exchange of correspondence to clarify the grounds of his complaint for the request under consideration here.

18. The complainant provided confirmation of his grounds of complaint in relation to both his requests on 2 December 2019. He disputed the following:

"The TEC [on behalf of the MOJ] answers to the requests (highlighted in bold in the message sent to them on 20th June)

and numbered (a) to (e) in our messages of 2nd August and 2nd September) are either non-existent or ambiguous as to whether the information exists or not. Their statement that supplying the information "would take us over the cost limit" is nonsense. As set out above re our complaint about their response to the 8th / 9th May request, it is implausible that they would manually have to go through approx 170,000 records. BUT in any case, there is no reason why they would have to go through all these records anyway in order to deal with items a to e. They were all simple questions which they should have readily been able to answer from their recorded information without going through even one of the 170,000 records (manually or by computer)."

19. The Commissioner has considered whether the MOJ was entitled to rely on section 12(1) to refuse to comply with part one of the request.
20. She has also considered whether the MOJ has fulfilled its obligations under section 16 of FOIA.
21. In addition, she has determined whether the MOJ was obliged to respond to the second part of the request.
22. As part of her investigation, the Commissioner raised the complainant's grounds of complaint (above) with the MOJ; further details of which are included in the 'Other matters' section of this notice.

Reasons for decision

Part one of the request - section 12(1) cost of compliance exceeds the appropriate limit

23. Section 1(1) of FOIA states that:

"(1) Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him."*

24. Section 12(1) of 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."

25. The Fees Regulations set the appropriate limit at £600 for the MOJ; they also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that the appropriate limit for the MOJ equates to 24 hours.
26. 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:
 - a. determining whether it holds the information;
 - b. locating the information, or a document containing it;
 - c. retrieving the information, or a document containing it; and
 - d. extracting the information from a document containing it.
27. In determining whether the MOJ has correctly applied section 12 of FOIA in this case, the Commissioner has considered the MOJ's rationale provided to her during the investigation.

Application of section 12(1) – part one of the request

28. The MOJ advised that there are 170,000 PCN cases in scope of this request which are entered onto an electronic database. As a TEC user, each local authority has to pay per registration; in this case the relevant local authority is Halton Borough Council. The cases are recorded on the database so the requested information is therefore available.
29. However, in order to interrogate those specific cases which fall within the scope of the request, ie TE3s, TE7s and TE9s only, the MOJ explained that it would first need to ascertain the associated PCN (Penalty Charge Notices) reference numbers. It explained that:

" To do that requires completion of a Civil Application Ad-Hoc Data Extract, which would cost £592.00".
30. The MOJ also explained that, following receipt of a valid TE7 (out of time application) or a TE9 (witness statement), the processing is manual in that an event code is entered onto the database, with a further code being added to show whether the TE7/9s have been accepted/rejected. It also confirmed that the database does not collate statistics for these event codes.
31. The MOJ told the Commissioner that, in order to provide the information being requested, it would need to open and view each individual case record. Out of the approximately 170,000 cases registered it said it is impossible to tell which have had a TE9/7 and which of those have been

accepted/rejected without checking each case individually on the database.

32. The MOJ also explained that its system does not have the facility to run a bespoke report and that it can only run standardised reports within given parameters.
33. In response to the Commissioner's enquiries, the MOJ confirmed that whilst it had not advised the complainant, it had in fact included the £592 cost of the data extract report as part of its cost estimate.
34. In terms of its cost estimate and sampling exercise, the MOJ further explained:

"Once we have all 170,000 PCN's we would go into each case by typing in the 10-digit penalty charge number then pressing the F1 key, this then brings up the case information.

We would then have to look at the events that are brought up in the box at the bottom.

Then we would have to review which events had been added and cross reference them with [the complainant's] list of questions.

In some cases, we would have to double click on the box that states event details to determine the answer of his question. The average time taken to find answers to all of his questions would be 2 minutes as timed by a clerk at the TEC using a random PCN."

35. The MOJ confirmed that this estimate is based on the quickest method of gathering the requested information. This exercise is in addition to the £592 cost which would be incurred for the report necessary to identify the relevant PCN reference numbers which are initially required before any interrogation of the database can be commenced. All PCN cases would then need to be opened individually to retrieve the requested information, at an estimate of two minutes per record. Given that the cost limit for the MOJ is £600 and £592 of it would be accounted for by the ad hoc report, this would only leave £8 towards the cost of doing the further work required, ie less than half an hour using the appropriate rate of £25 per hour.

Conclusion

36. From the information provided, the Commissioner is satisfied that the database is not set up in a way that allows for the required PCN reference numbers to be reported on from within the system. She accepts that a separate ad-hoc report would be needed (at a cost of £592), and that, following receipt of that report, each of the 170,000

PCN cases in scope would then need to be manually interrogated in order to respond to the request.

37. At two minutes per record, this would take 340,000 minutes or 5666 hours.
38. From the information provided, the Commissioner has concluded that the MOJ's estimate is reasonable and that it was entitled to rely on section 12 for the first part of this request.

Section 16 – duty to provide advice and assistance

39. Section 16 of FOIA states:

"(1) It shall be the duty of a public authority to provide advice and assistance, so far as would be reasonable to expect the authority to do so, to persons to propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."

40. The Commissioner's view is that, where a public authority refuses a requests under section 12(1) of FOIA, section 16(1) creates an obligation to provide advice and assistance on how the scope of the request could be refined or reduced to avoid exceeding the appropriate limit.
41. In its substantive response to the request on 18 July 2019, the MOJ told the complainant:

"Although we cannot answer your request at the moment, we may be able to answer a refined request within the cost limit. You may wish to consider, for example, reducing the volume of your request, and or specifying a narrow period of time. Please be aware that we cannot guarantee at this stage that a refined request will fall within the FOIA cost limit, or that other exemptions will not apply."

42. In light of the above, the Commissioner is satisfied that the MOJ has complied with its advice and assistance obligations in accordance with section 16 of FOIA.

Part two of the request

43. The MOJ's response to part two of the request is as set out in paragraph 12 of this notice.

44. The Commissioner's cost guidance¹ states:

"As a matter of good practice, public authorities should avoid providing the information found as a result of its searching and claiming section 12 for the remainder of the information. It is accepted that this is often done with the intention of being helpful but it ultimately denies the requestor the right to express a preference as to which part or parts of the request they may wish to receive which can be provided under the appropriate limit.

In practice, as soon as a public authority becomes aware that it intends to rely on section 12, it makes sense for it to stop searching for the requested information and inform the complainant. This avoids any further and unnecessary work for the public authority as it does not need to provide any information at all if section 12 is engaged."

45. In this case, as the Commissioner has found that section 12(1) is engaged for part one of the request, the MOJ was not obliged to answer part two, although she notes that it chose to do so.
46. In the Commissioner's view, whilst noting that the MOJ wished to assist the complainant, responding to other parts of the request when it was not required to do so contributed to the further questions raised at internal review.

Other matters

47. From the Commissioner's reading of the complainant's grounds of complaint, and the points (a) to (e) raised by him in his internal review, the Commissioner has reviewed the MOJ's internal review response (the details of which are set out in paragraph 15 above) as requested by him.
48. Given that the MOJ was not obliged to comply with the request once it had identified that section 12(1) was engaged for part of it, the Commissioner has not considered points (a) to (e) any further. However, the fuller explanation in this decision notice about what information is held, and how it is held, should hopefully aid the complainant's understanding. Further information about the application
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¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

Reference: FS50876139



of the cost limit to requests can be found on the Commissioner's website, as per the link in paragraph 44 above.

Right of appeal

49. 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@justice.gov.uk

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

50. 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.

51. 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

**Carolyn Howes
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