

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **6 August 2024**

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

Decision (including any steps ordered)

1. The Commissioner's decision is that the Ministry of Justice (MOJ) was entitled to refuse to comply with the complainant's five part request for information about Data Protection Impact Assessments under section 12(1) of FOIA. This is because the cost of complying with part 3 of the request alone would exceed the appropriate limit.
2. MOJ has now effectively addressed parts 1 and 2 of the request through this decision notice, and the Commissioner considers that part 3 of the request couldn't be meaningfully refined. However, the Commissioner's decision is that there was additional advice and assistance MOJ could have provided to the complainant in respect of parts 4 and 5. MOJ therefore didn't comply with section 16(1) of FOIA, which concerns advice and assistance.
3. The Commissioner requires MOJ to take the following step to ensure compliance with the legislation:
 - Confirm with the complainant whether it would be possible provide the information requested in parts 4 and 5 of the request within the cost limit. If it is, and the complainant confirms they want this information, provide a fresh response to these two parts.
4. MOJ must take this step within 30 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. The complainant made the following information request to MOJ on 3 March 2024:
 - “1. Can you please provide the number of Data Protection Impact Assessments conducted by the MoJ in 2023?
 2. Can you please advise if these were a full assessment or a screening?
 3. Can you please disclose a brief description of each assessment, for example the title and any reasonable explanation to assist the reader?
 4. Can you please disclose a copy of your internal guidance and the template for your assessment?
 5. Can you please disclose a copy of any training you have given to internal colleagues about assessments, for example the slides in any training session.”
6. MOJ provided a refusal notice on 18 March 2024, refusing the request under section 12(1) of FOIA. It said that it might be able to answer a refined request for questions 1 and 2 within the cost limit, although it couldn't guarantee that a narrower request would fall within the cost limit or that other exemptions wouldn't apply.
7. The complainant requested an internal review on 26 March 2024. They said that, at the very least, MOJ could provide an overview of what assessments it has conducted, with a short description, so that they could determine how searches might be focused.
8. MOJ provided an internal review on 22 April 2024. It maintained its reliance on section 12. MOJ said that the number of Data Protection Impact Assessments generated in 2023 exceeded one thousand. The cost of complying would therefore exceed the limit for a central government, set at £600.
9. MOJ explained that each Data Protection Impact Assessment (DPIA), which included both screenings and full assessments, would need to be individually examined to glean a concise description or a satisfactory explanation. Undertaking this process manually for over a thousand records would significantly exceed the aforementioned cost.
10. MOJ also noted that when section 12 applies to a portion of a request, its protocol, as guided by the Commissioner, is to decline the entire request under the cost limitation.

11. MOJ repeated that if the complainant were to refine their request, it might be able to address questions 1 and 2 within the cost constraints.

Reasons for decision

12. This reasoning covers whether MOJ is entitled to rely on section 12(1) of FOIA to refuse the request and whether there was any breach of section 16(1).
13. Section 12 of FOIA concerns the cost of complying with a request. More detail about FOIA section 12 can be found in the Commissioner's ['Decision notice support materials.'](#)
14. In cases where it's relying on section 12, under section 16(1) of FOIA if it's reasonable to do so, a public authority should offer an applicant advice and assistance to help them refine their request.
15. MOJ has provided the Commissioner with a submission. In it, MOJ has confirmed that it holds information within scope of the request but that its position remains as in its correspondence to the complainant. However, while MOJ repeated that it could possibly answer a refined request for questions 1 and 2 within the cost limit, it has also said that its Data Protection Team "could fully answer questions 4 and 5 [and] provide a redacted version of the DPIA template, the DPIA internal guidance, and internal training slides."
16. The issue appears to be part 3 of the request. But, as MOJ has indicated, in circumstances outlined under section 12(4) of FOIA¹, if it would exceed the cost limit to comply with one part of a request, a public authority isn't obliged to comply with any part of it.
17. In its submission, MOJ has provided the following time estimates associated with complying with part 3:

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-12-requests-where-the-cost-of-compliance-exceeds-the-appropriate-limit/#aggregate>

Work required	Estimated number of files/records	Time estimate
Identifying information that falls within the scope of the request	841 Screening Assessments 434 Full Assessments 1275 Total Assessments	0.2 hours
Collating a summary of 841 screening assessments to provide title and brief description of the processing involved	841 x 0.25 hours	210 hours
Obtaining business area approval for disclosure of the title and summary including whether it is accurate, appropriate to disclose due to security, commercial or policy implications. This may require further summation of the description.	841 x 0.25 hours	210 hours
Total time and costs estimate		420 hours £10,500

18. MOJ explained that it conducts a full DPIA assessment as a result of a screening assessment. Therefore, it says, a brief summary of a full assessment may not be required and has been excluded from the above calculations.
19. MOJ says it has carried out a sampling exercise based on one screening assessment which resulted in a full DPIA assessment. This involved exporting the assessment, summarising the description of the actual processing taking place, engaging with the business area that owns the processing, and amending the summation.
20. It confirmed that all MOJ DPIAs are recorded on its data protection compliance tool. MOJ says that searching the tool to identify the information within the scope is a straightforward exercise. But to comply with part 3 of the request, MOJ would need to manually summarise the context of a DPIA and consult with the business area to which the DPIA relates.
21. The Commissioner accepts that providing the number of DPIAs carried out in 2023 would be, and has been, relatively straightforward. However, the complainant has requested a summary of each

assessment. There was a minimum of 841 of these carried out in 2023. The timing estimates in the table that MOJ produced above were based on a sampling exercise and MOJ estimated that it would take 15 minutes to summarise one DPIA. Even if it took only five minutes to produce a summary, it would still take 70 hours to create summaries of the 841 screening assessments, which would still exceed the cost limit. And MOJ has said that it would then need to spend further time consulting with the relevant business area about each summary.

22. On the basis of MOJ's submission and the volume of assessments scope of the request, the Commissioner's decision is that MOJ was entitled to apply section 12(1) of FOIA to part 3 of the request. In line with section 12(4), it wasn't therefore obliged to comply with any part of the request under section 12(1).
23. A public authority's obligation under section 16(1) of FOIA has been noted above.
24. Given the volume of DPIAs in scope and the original time period the request covered, the Commissioner doesn't consider that part 3 of the request could be meaningfully refined to bring complying with it within the cost limit.
25. Regarding parts 1 and 2, in its refusal notice and internal review MOJ advised the complainant that it might be able to address a refined request for these two parts of the request. The complainant didn't submit a refined request for this information but, through its submission to the Commissioner, which has been discussed in this notice, MOJ has now effectively addressed parts 1 and 2.
26. Finally, parts 4 and 5 of the request. In its submission to the Commissioner MOJ said that it could "fully answer" parts 4 and 5. However, it didn't refer to these parts in its correspondence to the complainant when it indicated the scope of a request it might be able to comply with within the cost limit.
27. The Commissioner considers that MOJ could have provided additional advice and assistance to the complainant in respect of parts 4 and 5 of the request, as it had about parts 1 and 2. He therefore finds that MOJ therefore didn't fully comply with its obligation under section 16(1) of FOIA.

Right of appeal

28. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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