

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 July 2019

Public Authority: Probation Board Northern Ireland

Address: 80/90 North Street,
Belfast
BT1 1LD

Decision (including any steps ordered)

1. The complainant has requested information from the Probation Board Northern Ireland ('PBNI') relating to the transfer of offenders from Northern Ireland to England and Wales. The PBNI disclosed some information to the complainant, stated that it did not hold information in relation to part of the complainant's request, and applied section 12(1) of the FOIA in relation to the other part of the request.
2. The Commissioner's decision is that the PBNI has correctly applied section 12(1) of the FOIA to the complainant's request and therefore requires no steps to be taken. In respect of the information not held, the Commissioner's decision is that, on the balance of probabilities, the PBNI does not hold any further information within the scope of the relevant part of the complainant's request other than that which has already been provided to him.

Request and response

3. The complainant on 15 September 2017 made a request to the PBNI for information in the following terms:-
 1. How many offenders have transferred to Northern Ireland from England & Wales on a restricted transfer basis to be managed by PBNI in the last 10 years?
 2. How many of these offenders were born in Northern Ireland?
 3. How many of these offenders had children born in Northern Ireland?
 4. What's the religious background of all these offenders?
 5. How many restricted transfer offenders have broken their licence conditions and been recalled back to prison in the last 10 years?
 6. How many of these were returned to prisons in England & Wales after they broke their licence conditions in Northern Ireland and recalled to prison, in the last 10 years?
 7. What's the percentage of Catholics that work for the PBNI?
 8. What's the percentage of Protestant males that work for the PBNI?
4. The complainant's request consisted of 8 questions. The PBNI responded to the complainant on 25 September 2017, stating that it did not hold information in relation to Questions 3, 4 and 6 of his request, and that it held partial information in relation to Questions 1, 2 and 5. The PBNI disclosed information to the complainant in relation to Questions 7 and 8 of his request.
5. The PBNI refused to disclose the requested information it held in relation to Questions 1, 2 and 5, as it estimated that the cost of complying with the complainant's request would exceed the appropriate cost limit under section 12(1) of the FOIA.
6. The complainant requested an internal review of the PBNI's decision on 6 October 2017, to which the PBNI provided a response on 10 October. The reviewer upheld the original decision.
7. The complainant remained dissatisfied with the PBNI's response to his request and requested a further review. This was carried out and the result sent to the complainant on 4 December 2017. The review upheld the original decision. The complainant then sought a further review on

11 December 2017, which was carried out and the result provided to him on 24 January 2018.

Scope of the case

8. The complainant has had ongoing correspondence with the Commissioner regarding his request, and contacted the Commissioner on 31 January 2019 to complain about the way his request for information had been handled.
9. The Commissioner has considered the PBNI's handling of the complainant's request, in particular its application of section 12(1) of the FOIA.

Reasons for decision

Section 12 – cost exceeds appropriate limit

10. Section 12 of the FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
11. The Freedom of Information and Data Protection (Appropriate Limit and Fees) regulations 2004 ("the Fees Regulations") sets the appropriate limit at £450 for the PBNI.
12. A public authority can estimate the cost of complying with a request using a figure of £25 per hour of staff time for work undertaken to comply with a request in accordance with the appropriate limit set out above. This equates to 18 hours of staff time. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider time taken in:
 - (a) determining whether it holds the information;
 - (b) locating a document containing the information;
 - (c) retrieving a document containing the information, and
 - (d) extracting the information from a document containing it.
13. Information Tribunal decisions have made it clear that an estimate for the purposes of section 12 has to be 'reasonable' which means that it is not sufficient for a public authority to simply assert that the appropriate cost limit has been met; rather, the estimate should be realistic, sensible and supported by cogent evidence.

14. In evidence as to whether it has correctly applied section 12 of the FOIA in this case, the PBNI provided a detailed estimate of the time/cost it would take for it to provide the information to the complainant.
15. The PBNI advised that, in respect of Questions, 1, 2 and 5 above, the specific information sought by the complainant is not held by it in an easily retrievable format. The PBNI's electronic case management system does not have the functionality to enable the specific information to be identified automatically. In order to retrieve the information sought, this would require the PBNI to review each referral and/or each Pre-Sentence report (PSR). The PBNI produces between 5000 and 7000 PSRs annually. It supervises over 4000 offenders at any given time. To review even one month's reports (approximately 500) alone, allowing a conservative estimate of 15 minutes to review and extract relevant information would equate to 125 hours work.
16. The PBNI informed the Commissioner that all operational records are held within PBNI's electronic case management system (PIMS). It is not an EDRMS (electronic document records management system) and has limited search functions. It stated that it is currently introducing a new case management system which may make, storing and retrieving information in the future easier.
17. The PBNI stated that the information requested may or may not be held. It may be included in a Court Report (Pre-sentence report) or on documents linked to a referral. Documents are stored on PIMS as attachments, which cannot be searched electronically. At the time of the request the PBNI had 4000 active referrals on PIMS. It prepares between 5000 and 7000 reports for court annually.
18. Without the identification of the 'restricted transfer' persons the PBNI cannot trace their recalls, e.g. a PSR under the heading 'The offender in his life setting' may state specifically that the individual was born in Northern Ireland, or it may not. It may refer to a Northern Ireland address and state that the person has lived there all their life, but that does not necessarily mean that the person was born in Northern Ireland. The PBNI cannot identify specifically 'restricted transfers' as these will be contained with the overall transfers from Great Britain? (GB) held on PIMS. Transfers from GB cannot be accurately extracted as they are not always identified as such. Transfers may also include those from Scotland and the Republic of Ireland.
19. The PBNI's statisticians (at that time), given their role, and daily interrogation of the system had the most knowledge about the content of PIMS and were able to advise immediately that the information sought was not held in an easily retrievable format when the PBNI did

not have a name or address for the individuals. The statisticians also advised that the information may be contained within a report or a referral but even if the PBNI could identify a GB licence (which is not the same as a GB transfer) it would not specifically identify that it was on a restricted transfer basis. Furthermore the statisticians were able to advise immediately that where information on GB transfer licences was held this would only reflect transfers where there is no equivalent legislation/order in Northern Ireland.

20. The PBNI considered whether it could supply the information from looking at just one month's reports (approximately 500). It provided what was a conservative estimate of 15 minutes to retrieve and extract relevant information. This was based on the searcher being familiar with the layout of reports and knowledgeable about what to look for. The PBNI estimated that to retrieve the information relevant to the request (assuming it was contained in the report) would take approximately 5-10 minutes depending on the length of report (this will also vary) to identify information.
21. In relation to extracting the relevant information from a document, the PBNI again reached a conservative estimate of 5 minutes on the basis of the most qualified person both technically and operationally being able to extract the relevant information accurately and quickly. The PBNI stated that a sampling exercise was not conducted in this specific case as it was satisfied, given the experience of the staff involved, had of reviewing reports for specific information in other circumstances (e.g. reviewing a PSR for redactions following an subject access request) that its estimate was fair.
22. In fact, as stated, it considered that the overall 15 minutes to review and extract the information was a conservative estimate given that some of the information requested, if contained at all, would be embedded in the report and not easily located under specific headings. The estimate was based on the only method of gathering the requested information which was to read through electronically held reports and referrals on PIMS. As documents are held as attachments on PIMS, the PBNI cannot do a search to find key information without having to open and read the contents of each one.
23. The Commissioner is satisfied that the PBNI has provided a realistic and sensible estimate of the time it would take to determine whether it holds the information and locate, retrieve, and extract the relevant information in order to respond to the complainant's request. She is therefore satisfied that the PSNI has correctly applied section 12(1) to the complainant's request.

Section 16 of the FOIA – Advice and Assistance

24. Section 16 of the FOIA imposes an obligation on public authorities to provide advice and assistance to a person making a request, so far as it is reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed to the provisions in the Code of Practice in relation to the provision of advice and assistance to bring the cost of a request under the appropriate limit. This can be found in paragraph 2.10 of the Code.
25. Following discussions with relevant colleagues in the PBNI's statistics and research department, the PBNI established that there was no refinement it could offer in order to provide the complainant with even partial information or relevant information in reduced years. The process would be the same and the time taken was calculated on the shortest time period available for information to be meaningful. It did not, therefore, believe that there was any point in advising the requester to refine his request on this occasion.
26. The PBNI did, however, provide the complainant with a link to caseload statistics on its website which included the number of recall reports written and the number recorded for GB transfers explaining a number of caveats and it also provided him with contact details to the Parole Board in England and Wales and the Prison Service whom it believed may be able to provide the complainant with more readily available information as they are ultimately responsible for restricted transfers from England and Wales to NI.
27. The Commissioner is satisfied that PBNI has complied with its obligations under section 16 of the FOIA in that it considered if it could if the request could be refined to bring it within the cost limit. It also provided assistance by providing contact details for other relevant services.
28. The Commissioner is satisfied that the PBNI has provided a realistic and sensible estimate of the time it would take to determine whether it holds the information and locate, retrieve, and extract the relevant information in order to respond to the complainant's request. She is therefore satisfied that the PBNI has correctly applied section 12(1) to the complainant's request.

Section 1(1) of the FOIA – information not held

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

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.

The complainant's position

30. The complainant believes that the PBNI holds further information beyond that which has been provided to him.

The PBNI's position

31. In relation to the information within the scope of Questions 3, 4 and 6 of the complainant's request, the PBNI has stated that it does not hold any further relevant information. It states that there are no statutory requirements for it to hold such information, that it has carried out searches of its case management system and spoken to operational colleagues to see if any further such information was held. The PBNI stated that, if such information were held, it would be held electronically.

The Commissioner's position

32. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check whether the requested information is held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.

33. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

34. The Commissioner is satisfied with the PBNI's explanations as to why it would not be expected to hold further information within the scope of the relevant parts of the complainant's request and she is satisfied that the PBNI has carried out appropriate searches to confirm its position.
35. The Commissioner's view is that, on the balance of probabilities, the PBNI does not hold further information within the scope of Questions 3, 4 and 6 of the complainant's request.

Right of appeal

36. 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

37. 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.

38. 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

Deirdre Collins

Senior Case Officer

Information Commissioner's Office

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SK9 5AF