

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 September 2014

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested copies of correspondence which mentioned the Howard League for Penal reform over a 20-month period. The Ministry of Justice (the 'MOJ') responded and said that determining whether any information was held would exceed the cost limit (section 12(2)) of the FOIA.
2. The Commissioner considers that section 12(2) of the FOIA was applied correctly in this case. However, the MOJ breached section 10(1) of the FOIA as it did not respond to the request within 20 working days. By failing to provide adequate advice and assistance, the MOJ also breached section 16(1) of the FOIA. The Commissioner requires no remedial steps to be taken.

Request and response

3. On 1 May 2014 the complainant wrote to the MOJ and requested information in the following terms:

"Could you provide me with copies of all correspondence, including emails, meeting minutes or notes from or to the Secretary of State, ministers and special advisers at the Ministry of Justice that mentions the Howard League for Penal Reform, between the dates of 4th September 2012 and 30th April 2014."

4. The MOJ responded on 4 June 2014. It stated that it was unable to confirm whether the MOJ held the requested information because the

cost of determining whether it was held would exceed the cost limit (section 12(2) of FOIA). The reply explained that a manual search would be required to establish whether information was held in scope of the request. A guidance note in relation to section 12 (2) was included at the end of the request.

5. Following an internal review the MOJ wrote to the complainant on 31 July 2014. It maintained its original position, but provided further details about how the requested information would be stored.

Scope of the case

6. The complainant contacted the Commissioner on 31 July 2014 to complain about the way her request for information had been handled.
7. The Commissioner has considered whether the MOJ properly applied the cost exclusion to the request.

Reasons for decision

Section 12 – the cost limit

8. Section 12(1) states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
9. Section 12(2) states that subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.
10. In this case, the public authority estimates that it would exceed the appropriate limit to confirm whether or not the requested information is held. In other words, it is citing section 12(2).
11. The appropriate limit in this case is £600, as laid out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”). This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours’ work.
12. When estimating whether confirming or denying whether it holds the requested information would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in determining whether it holds the information. The estimate must be

reasonable in the circumstances of the case. It is not necessary to provide a precise calculation.

13. The Commissioner notes that the initial request asked for "all correspondence" (which may have included hard copy correspondence in the search) but the internal review request clarified the scope of the request to cover only information held electronically. The MOJ confirmed that its internal review had reconsidered the cost calculation based on the new parameters of the request.
14. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
 - *determining whether the information is held;*
 - *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.*
15. In order to outline the scale of the search required, the MOJ told the Commissioner it had broken down the cost of providing information to the complainant into different categories, as shown below. It confirmed that the processes described were the quickest methods available to locate any information and that they only concern calculations made to "*determine or locate the information is held*". The categories are as follows.

Correspondence

16. The MOJ has a correspondence handling and processing system on which copies of correspondence to Ministers and their responses are logged. The system includes a "search function" which can search the correspondence held by the following characteristics:
 - reference number of the correspondence;
 - the date it was sent, received or recorded;
 - the addressee;
 - the signatory; and,
 - the subject.
17. The subject for this purpose is defined by a member of the Department's correspondence support team who logs the correspondence on the system, and will often mirror the subject heading of the letter or email.

Most correspondence is received in hard or scanned copy and therefore saved in PDF format.

18. In terms of the limitations of this search, the complainant's parameter that the information requested names the "Howard League for Penal Reform", means that although it would be possible to search the subject title of the correspondence system for this wording, this would only generate items where that term had been entered as the subject. This may not be the case for all correspondence; for example, if the Howard League submitted correspondence in relation to one of their campaigns, the correspondence could be logged under a title relevant to that campaign, rather than the organisation which sent it. The Howard League correspond with the MOJ in relation to a wide range of issues concerning their campaigns and in relation to prison issues more generally.
19. Additionally, it is also worth noting that the correspondence team which handles the incoming correspondence, deals with a large volume of correspondence and often "skim read" letters and make a quick decision on the content, and assign the title accordingly.
20. The search functions also mean that it would not be possible to determine whether the body of the text in all correspondence between the specified dates contains that term. The search functions will only consider the input data as described above, it cannot scan the PDF electronic copy of the correspondence. Therefore, if a title has been chosen which does not mention the Howard League, or they are not listed as the addressee, a manual search of individual records would be necessary to identify whether there is information held.

Calculation and sample exercise in relation to correspondence

21. The MOJ considered a sample taken between 1 March 2014 and 30 April 2014, in which it logged 2,545 items on to the correspondence system. This did not include the "general queries" email inbox (the MOJ's main public email contact address) which had received 1,800 emails in 12 hours on that day.
22. A calculation was made on the basis that approximately 1,250 pieces of correspondence are received per month; approximately 25,000 pieces of correspondence would therefore be logged in the 20 months between 4 September 2012 and 30 April 2014 (the period in question). The MOJ estimated that it would take a member of staff an hour to read approximately 60 pieces of correspondence and check for reference to the Howard League for Penal Reform (within either the PDF attachment or the record). It further noted that it may be the case that some pieces

of correspondence could take considerably longer to check, which would push the estimated cost up even further.

23. Therefore to check 25,000 would take 416 hours. This easily exceeds the ceiling cost of £600.

Emails

24. Each Minister has a private office consisting of a number of private secretaries and diary secretaries. Each private secretary and diary secretary has their own email account, through which they can receive correspondence, emails and advice for the attention of the Minister. The search functions on the email system allow a search to be made of both the title and the body of the email itself, but not any attachments.
25. Therefore, a search for the term 'Howard League for Penal Reform' could be made of all of the inboxes of the Ministers, Private Offices and Special Advisers, and this would generate a list of results where that term appeared in the subject or body of the email. However, to complete the search for "all correspondence" as outlined in the request, a manual search would also have to be made to ensure that all references had been found as is not possible to search the body of all attachments using search terms.

Calculation and sample exercise in relation to emails

26. Using a conservative estimate of 200 emails per Minister's office and Special Adviser per day, over the request period of 429 days (not including weekends), the MOJ estimated that each email would take at least 30 seconds to read. Based on five Ministers being in post for the entire period in question, and Lord Faulks being in post for 95 days of the request period, this would equate to 309,800 minutes. This would exceed the cost limit threshold.
27. The estimate of 200 emails per Minister's office per day was made by members of the Secretary of State's private office team based on their own experience. It was verified by taking a sample of one private secretary who received at least 2838 emails in April 2014 and 3687 emails in March 2014; averages of 129 and 175 per day (excluding weekends) respectively. When multiplied by the number of private secretaries in each office, an estimate of 200 emails per office per day remains conservative.

Meeting minutes and notes

28. Meeting minutes and notes are all sent by Ministers' private offices by email. Therefore, they would be captured by the method described above and incorporated in this cost.

Conclusion

29. Based on the above detailed submissions, the Commissioner accepts that to ascertain whether or not the information is held would in itself exceed the appropriate limit in this case.

Section 16 – advice and assistance

30. Section 16 places a duty on a public authority to provide advice and assistance to someone making an information request, including helping an applicant refine a request so that it can be answered within the appropriate costs limit.
31. In this case, the MOJ did not provide a breakdown of costs until the internal review stage, where it outlined in detail the constraints of its correspondence system and email search functions, together with the volumes of correspondence received. The MOJ highlighted that, as she is part of a main stakeholder with personal experience of dealing with the MOJ, it considered that the complainant had been given sufficient guidance in order for her to narrow or redefine her request.
32. The Commissioner's view is that it was not helpful to the complainant to wait until the internal review stage to clarify why it could not respond to the request under the cost limit.
33. The Commissioner therefore considers that the public authority has not met its duty to provide relevant advice and assistance. However, its failure to provide adequate advice and assistance does not invalidate the MOJ's cost estimate.

Section 10 – time for compliance

34. Section 10 of FOIA allows a public authority 20 working days from receipt of the request to respond. In this case, however, the MOJ failed to respond to the complainant's request within 20 working days breaching section 10(1) of FOIA.

Other matters

35. With regard to the duty to provide advice and assistance for future requests, the Commissioner would remind the MOJ to either indicate that no information can be provided within the cost limit, or to provide an indication of what information could be provided within the appropriate limit; and to provide advice and assistance to enable the requestor to make a refined request.
36. The Commissioner has made a record of the delay in this case. This may form evidence in future enforcement action against the MOJ should other cases suggest that there are systemic issues within the MOJ that are causing delays.

Right of appeal

37. 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

38. 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.
39. 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
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