

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 15 December 2016

**Public Authority:** Ministry of Justice

**Address:** 102 Petty France  
London  
SW1H 9AJ

#### **Decision (including any steps ordered)**

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1. The complainant requested information about restraint and confiscation orders made under the Proceeds of Crime Act 2002 (POCA).
2. The Ministry of Justice (MoJ) said it did not hold the requested information relating to restraint orders. It also denied holding the requested information relating to confiscation orders citing section 11(5)(c) of the FOIA (the dataset provisions).
3. The Commissioner's decision is that the MoJ did not cite section 11 correctly and that it breached section 16 of the FOIA by failing to provide advice and assistance to the complainant about his request.
4. The Commissioner requires the MoJ to take the following steps to ensure compliance with the legislation:
  - issue a fresh response in accordance with its obligations under section 1 of the FOIA; and
  - provide the complainant with advice and assistance in accordance with its obligations under section 16 of the FOIA.
5. 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 Act and may be dealt with as a contempt of court.

## Background

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6. The FOIA includes specific provisions relating to one type of information, namely 'datasets'<sup>1</sup>. This term is defined in section 11(5) of the FOIA. The dataset provisions are in section 11 (means by which communication to be made), section 11A (release of datasets for re-use), section 11B (power to charge fees in relation to release of datasets for re-use), section 19 (publication schemes) and section 45 (Secretary of State's Code of Practice); the term 'dataset' has also been added to the list of definitions in section 84.

## Request and response

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7. On 22 March 2016 the complainant made the following request for information about restraint and confiscation orders made under the Proceeds of Crime Act 2002 (POCA):

*"I am writing to request information under the Freedom of Information Act 2000, in particular (but not exclusively) under the dataset provisions of Section 11, 19 and 45 of the Act.*

*1) Please either confirm or deny whether a dataset or datasets are held which record information about confiscation orders obtained under the Proceeds of Crime Act 2002?*

*2) Please either confirm or deny whether a dataset or datasets are held which record information about restraint orders obtained under the Proceeds of Crime Act 2002?*

*3) If a confirmation to Q1 or Q2 above, please disclose those datasets.*

*4) Page 9 of HMCTS' Trust Statement 2014-15 records the value of unrecovered assets which are overseas at £9,052,000.*

*[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/446101/hmcts-trust-statement-2014-15.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/446101/hmcts-trust-statement-2014-15.pdf)*

*However, the following page goes on to state:*

*In addition to the values shown in the above table there are confiscation orders included in the "remaining confiscation order*

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1151/datasets-foi-guidance.pdf>

*balance" category where a proportion of the assets are considered to be hidden or overseas. As a result, the full value of confiscation orders in this category is unlikely to be fully enforceable.*

*Page 9 records the value of Remaining confiscation order balance as £749,294,000*

*a) What proportion of assets subject to confiscation orders which are included in the "remaining confiscation order balance" are considered to be hidden or overseas?*

*b) What does "hidden" and "overseas" mean in this context?*

*c) Please provide copies of datasets held on this topic.*

*Please disclose this information in a re-usable, machine-readable format, such as an Excel file, as per the dataset provisions of the Act".*

8. The MoJ wrote to the complainant on 30 March 2016. In that correspondence, the MoJ sought clarification from him about parts (3) and (4c) of the request.
9. In response, the complainant told the MoJ:

*"As you will note from the wording of my request, my request is for information about restraint and confiscation orders made under POCA.....There is no timescale for this request....."*
10. Having been provided with that clarification, the MoJ responded on 21 April 2016. The MoJ confirmed that it held information relating to part (1) of the request – confiscation orders. However, it refused to provide that information citing section 12(1) of the FOIA (cost of compliance). It advised that it might be able to answer a refined request within the cost limit. However it told him that it could not guarantee that a refined request would fall within the cost limit and that some information, such as personal data, may be exempt under the FOIA.
11. The MoJ denied holding the information requested at part (2) of the request – information relating to restraint orders. No reference was made to part (4) of the request.
12. The complainant requested an internal review on 22 April 2016. Regarding part (1) of the request, he disputed the MoJ's application of section 12. He asked the MoJ for advice about the nature of the information it confirmed it held. He also asked the MoJ to provide a response to part (4).
13. The MoJ provided an internal review on 11 May 2016 in which it revised its position with regard to parts (1) and (4) of the request: the parts of

the request relating to information about confiscation orders obtained under the Proceeds of Crime Act 2002.

14. Referring to section 11(5)(c) of the FOIA, it concluded that the MoJ did not hold information within the scope of those parts of the request. No reference was made to the complainant's request for advice.

## **Scope of the case**

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15. The complainant contacted the Commissioner on 19 May 2016 to complain about the way his request for information had been handled.
16. He disputed the MoJ's handling of those parts of the request relating to confiscation orders, including its failure to provide advice. He told the Commissioner:

*"They have given a false 'not held' response at internal review in that my request was for the 'dataset or datasets' not 'one dataset' (as they have taken my request to be for). They have not supplied the Section 16 advice I explicitly requested...."*

17. The Commissioner is mindful of the wording of the request in this case and the clarification the complainant provided in respect of the information he was seeking.
18. She also notes that the complainant said that he was "*writing to request information*" under the FOIA "*in particular (but not exclusively) under the dataset provisions...*".
19. In that respect she accepts that, in making his request for information, the complainant expressed a preference to receive that information in a re-usable form.
20. The analysis below considers whether the MoJ correctly relied on section 11 in relation to the requested information about confiscation orders.
21. The Commissioner also considered whether the MoJ fulfilled its obligations under section 16.

## **Reasons for decision**

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*Section 11 means by which communication to be made*

22. Section 11 is about how a public authority should provide information that it is releasing under the FOIA. It is relevant when a public authority has identified information it is going to provide in response to a request

made under the FOIA. If the public authority is not providing the information (because to comply with the request would exceed the appropriate limit or the request is vexatious or repeated, or the information is exempt under one of the provisions in Part II of the FOIA) then section 11 is not relevant.

23. The FOIA includes specific provisions relating to datasets in sections 11, 11A, 11B and 19.
24. The Commissioner's guidance on datasets<sup>2</sup> states:

*"...before applying section 11, the public authority must first have decided what information should be released and what, if any, is exempt under a FOIA exemption, as it would do with any FOIA request".*

25. If the public authority is not providing the information (because to comply with the request would exceed the appropriate limit or the request is vexatious or repeated, or the information is exempt under one of the provisions in Part II of the FOIA) then section 11 is not relevant.

#### *The MoJ's view*

26. In correspondence with the complainant, the MoJ explained the searches it had undertaken for the requested information, as a result of which it confirmed:

*"... that the MoJ does not hold one identifiable dataset relating to confiscation orders obtained under the Proceeds of Crime Act 2002".*

27. It also told him:

*"... In order to disclose the information you have requested under Q1 and Q4 the MoJ would be required to review the data it does hold, undertake further investigatory work into each data entry, and then alter the dataset(s) to ensure only those entries which relate to Proceeds of Crime Act 2002 and/or 'hidden' or 'overseas' assets were disclosed. As this would breach section 11(5)(c) of the FOIA, the data is not considered a dataset for FOIA purposes.*

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1151/datasets-foi-guidance.pdf>

*.... I now confirm that the MoJ does not hold the information that you have requested. It may help if I clarify that the information being requested is not held by MoJ because there is no legal or business requirement for MoJ to do so".*

28. During the course of the Commissioner's investigation, the MoJ was asked to provide further information in support of its handling of this request for information and its application of section 11.

29. In its submission, the MoJ told the Commissioner:

*"...the request was refused under section 12(1) as question one engaged the cost limit.....The subsequent IR overturned this decision and confirmed the information at questions one and four is not held".*

30. It further explained:

*"In accordance with the guidance on section 11 we can confirm that MoJ do not hold the information within the scope of the request nor does it form part of a dataset is so far as it does not meet the criteria at section 11(5)(c)".*

#### *The Commissioner's view*

31. The Commissioner acknowledges that the request in this case refers to the dataset provisions.

32. However, the dataset provisions do not provide any additional right to obtain information that is not otherwise accessible under the FOIA. They are about providing the information in a re-usable form and making it available for re-use, if it is a dataset.

33. The Commissioner's guidance on section 11 of the FOIA<sup>3</sup> states that section 11:

*"...places certain duties on a public authority as regards how they provide information in response to a FOIA request".*

34. Therefore, when considering a request for information, a public authority must first determine whether it holds the requested information and, if held, whether it is exempt from disclosure.

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1163/means-of-communicating-information-foia-guidance.pdf>

35. From the evidence she has seen, the Commissioner considers that the MoJ's submissions in this case are to do with format rather than what should be disclosed. She is not satisfied that the MoJ has first identified what releasable information, if any, it held which fell within the scope of the request.
36. She therefore finds that the MoJ did not cite section 11 correctly.

*Section 16 duty to provide advice and assistance*

37. Section 16 of the FOIA states that a public authority has a duty to provide advice and assistance to requesters "*so far as it would be reasonable to expect the authority to do so*".
38. The Commissioner notes that, having received its refusal notice, the requester sought advice and assistance from the MoJ when he requested a review of its decision. With regard to the MoJ having told him that there are "*hundreds of fields and categories of data held*", he asked the MoJ:

*"Please advise what each field of data is called and what it contains".*

39. From the evidence she has seen, no such advice was provided.
40. In the course of her investigation, the Commissioner asked the MoJ to explain what advice and guidance it had given to the complainant. The MoJ was silent on that point.
41. The purpose of section 16 is to ensure that a public authority communicates with an applicant to find out what information they want and how they can obtain it.
42. In the circumstances of this case, it is the Commissioner's position that the MoJ could and should have provided advice and assistance to the complainant, for example by clarifying the nature of the information sought and/or corresponding with the requester as to whether they can provide the information in another form that would be acceptable.
43. Accordingly the Commissioner considers that the MoJ breached section 16(1) of the FOIA by failing to give appropriate advice and assistance to the complainant.

## Right of appeal

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44. 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)

45. 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.
46. 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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