

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 August 2024

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

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to staff structure charts and procedures for handling information requests. The Ministry of Justice ("MoJ") stated that to establish whether or not the information was held would exceed the appropriate limit, therefore citing section 12(2) of FOIA.
2. The Commissioner's decision is that the MoJ was entitled to rely on section 12(2) of FOIA to refuse the request. The Commissioner also finds that the MoJ complied with its obligations at section 16 of FOIA, by providing relevant advice and assistance to the complainant.
3. The Commissioner does not require the MoJ to take any further steps.

#### Request and response

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4. On 14 November 2023, the complainant wrote to the MoJ and requested information in the following terms:

"Dear HMC & Tribunal Service  
This is an FOIA request:

1. Please provide the full contact details of the MoJ Disclosure Team member assigned to the FTT GRC information rights section. To

- include the email address, telephone number and the customer service video link details.
2. Please also supply this staff member's manager's details in order to register an official complaint.
  3. Please supply the full staff structure chart of the MoJ disclosure team within HMC & Tribunal Service.
  4. Please also provide a staff structure chart of the FTT GRC information rights section. To include the admin dept, the Delivery Dept, the registrars and judges."
5. The MoJ responded on 27 November 2023. It explained that neither HM Courts and Tribunals Service (HMCTS) or the First Tier Tribunal General Regulatory Chamber (FTT GRC) Information Rights section have a specific Disclosure Team assigned to them, as such groups and teams do not all have their own separate Disclosure Team. The MOJ as a whole (including HMCTS, its other Executive Agencies and a large central function) uses, and is served by, its Disclosure and Library Team. Among its duties are to log, assign, track and provide advice to the whole department on FOIA and other information rights requests. Therefore, the MoJ asked the complainant to clarify if it was this central Disclosure and Library Team that they were seeking information about.
6. The complainant wrote to the MoJ on the same date, stating:
- "Your response does not correspond with the information I have been provided with by [redacted] who identified a kilo member of staff assigned to the court.
- As you would be aware from my request I am trying to identify the member of staff responsible for responding to my requests for information to date. In order to speak to them on a customer service video call or by telephone. If various members of staff have been involved to date please confirm. As I would like to speak to their line manager on a customer service video call or by telephone.
- In order to do that information needs to be supplied by the team. As only a generic email address has been supplied to date. No other form of contact details have been provided. If the team are reluctant to release the information under the FOIA I can see no harm in supplying this information personally to me.  
Please supply this information.
- I made the FOI request based on the information I received from the delivery manager. From your response you have indicated that this information from the delivery manager is not true.  
Please confirm this.

With ref to your response please supply me with a copy of the central team staff structure chart information. With its links to HMCTS.

Please provide me with the flow diagrams new staff are trained to use when receiving FOIA ,EIR ,SAR and all other Data protection requests.

If flow diagrams are not available please supply the written procedures to follow for each Type of information request that is received. Please also supply a copy of all the template responses they are trained to use.

And still outstanding from my previous request but not referenced Please also provide a staff structure chart of the FTT GRC information rights section To include the admin dept , The Delivery Dept, The registrars and judges."

7. The MoJ responded on 21 December 2023. It noted that only certain parts of the complainant's response should be handled under FOIA, with the rest better dealt with as normal course of business. Advice was provided to the complainant in relation to how to proceed with the parts of their correspondence falling outside of FOIA. The parts recognised by the MoJ as requests for recorded information under FOIA were as follows:
  - 1) "Please supply me with a copy of the central team staff structure chart information. With its links to HMCTS."
  - 2) "Please provide me with the flow diagrams new staff are trained to use when receiving FOIA ,EIR ,SAR and all other Data protection requests. If flow diagrams are not available please supply the written procedures to follow for each Type of information request that is received. Please also supply a copy of all the template responses they are trained to use."
  - 3) "Please also provide a staff structure chart of the FTT GRC information rights section To include the admin dept , The Delivery Dept, The registrars and judges."
8. The MoJ stated that it does not hold a staff structure chart that links the central Disclosure Team to HMCTS. It cited section 12(1) of FOIA in relation to flow diagrams, written procedures and template responses that new staff are trained to use when handling all types of requests for information. Finally, it disclosed a copy of a GRC organisation chart, which included redactions in accordance with section 40(2) of FOIA.
9. Following an internal review the MoJ wrote to the complainant on 15 February 2024. It stated that its previous response was in fact incorrect, therefore it amended its position. It explained that it was unable to

confirm if it holds the requested information within the appropriate cost limit, therefore it cited section 12(2) of FOIA for the request as a whole.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 22 February 2024 to complain about the way their request for information had been handled.
11. During the Commissioner's investigation the MoJ provided the complainant with a revised internal review response, to provide further clarity on why it would be unable to confirm or deny if it holds all of the requested information within the appropriate cost limit.
12. The Commissioner considers that the scope of his investigation is to determine if the MoJ was correct to rely on section 12(2) of FOIA to refuse the request.

## **Reasons for decision**

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### **Section 12 – cost of compliance exceeds appropriate limit**

13. Section 12(1) of FOIA 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" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
14. Section 12(2) of FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.
15. In other words, if the cost of establishing whether information of the description specified in the request is held would be excessive, the public authority is not required to do so.
16. The appropriate limit is set in the Fees Regulations at £600 for central government, legislative bodies, and the armed forces and at £450 for all other public authorities. The appropriate limit for the MoJ is £600.
17. The Fees Regulations also specify that the cost of complying with a request must be calculated at a flat rate of £25 per hour, meaning that section 12 effectively imposes a time limit of 24 hours for the MoJ.

18. Regulation 4(3) of the Fees Regulations sets out that a public authority seeking to rely on section 12(2), can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities:
  - determining whether the information is held.
19. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”.
20. The task for the Commissioner here is to determine whether the cost estimate provided to him by the MoJ during his investigation was reasonable. If it was, then section 12(2) was engaged, and the MoJ was not obliged to confirm or deny whether the requested information was held.
21. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information. It is worth noting that if one part of a request triggers the section 12 exemption, then that will apply to the entirety of the request and there is no requirement for the Commissioner to consider any other exemptions cited by the public authority.
22. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

**Would the cost of compliance exceed the appropriate limit?**

23. As is standard practice in a case in which the public authority has cited the cost limit under section 12(2) of FOIA, the Commissioner asked the MoJ to provide a detailed estimate of the time/cost required to confirm or deny whether it holds information within scope of the request.
24. In its submission to the Commissioner, the MoJ explained that the request for information is wide in scope and is seeking multiple different types of documents (such as staff structure charts, procedures, training materials, templates, etc.), which would involve the MoJ having to contact numerous business units to determine what information is held.

25. The MoJ further explained that as a whole (including HMCTS, its other Executive Agencies and a large central function) it uses, and is served by, the Disclosure and Library Team for FOI, EIR and non-prisoner SAR requests. The responses for these requests are drafted by the relevant business unit within the MoJ. However, all other Data Protection requests are handled by relevant business areas across the MoJ. For instance, Branston Operations have oversight of prisoner and ex-prisoner SARs, SSCL process staff SARs and the Data Protection Team have oversight of personal data breaches and data protection individual rights requests, e.g. Rectification, Erasure, Restriction, Portability, Objection, and not being subject to automated decision-making, but again the relevant business unit handle the breach or request and work with the Data Protection Team.
26. The MoJ detailed that there are many different stages to dealing with FOI, EIR, SAR and Data Protection requests (e.g. checking the validity, logging of both electronic and hard copy requests, assignment, etc.). Each business unit manages its own records and has its own methods of storing information, and some business units may hold information specific to that business unit only, to assist with handling of the different types of information requests they may receive.
27. To provide an idea of the number of different teams the MoJ may be required to consult with to determine if they hold information within the scope of the request, the MoJ provided a link to its 'Organogram of Staff Roles & Salaries'<sup>1</sup>. This confirms that there are over 170 teams within the MoJ. If the MoJ narrowed that down to only consider MoJ HQ and HMCTS alone, which would appear sufficient to cover the complainant's interests, it would still include over 120 teams.
28. As a sampling exercise, the Disclosure and Library Team carried out a search of its own records in order to give an indication of the work that may be required from each team across MoJ HQ and HMCTS in order to determine if the requested information is held. For the time taken to consider if any information within the scope of the request may be held, and to conduct appropriate searches of electronic and manual records, the MoJ reached an estimate of 25 minutes, equating to 0.42 hours or £10.42.
29. Based on the above sampling exercise for one team alone, the MoJ went on to produce an estimate for the time/cost to contact all 120+ teams to determine if they hold any information within the scope of the request.

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<sup>1</sup> [Organogram of Staff Roles & Salaries - data.gov.uk](https://data.gov.uk/dataset/organogram-of-staff-roles-salaries)

The MoJ took the reasonable approach of reducing the 25 minutes required for the searches of the Disclosure and Library Team's records, down to 15 minutes per team for its overall estimate, to account for variances between business units. It also allowed a small reasonable addition of 30 minutes for collating the relevant contact details for all 120+ teams and contacting them to ask if they hold relevant information. Therefore, the MoJ's total estimate for determining if the requested information is held is 1830 minutes, which equates to 30.5 hours or £762.50.

30. The MoJ also confirmed that these estimates are based on the quickest methods of determining if the requested information is held.
31. The Commissioner accepts that the large number of teams that would need to conduct searches in order to properly determine if the requested information is held in this case, mean that the MoJ has estimated reasonably that to confirm or deny whether it holds information within the scope of the complainant's request would exceed the appropriate cost limit.
32. The Commissioner therefore finds that the MoJ was correct to apply section 12(2) of FOIA to the request.

### **Section 16 – the duty to provide advice and assistance**

33. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice<sup>2</sup> in providing advice and assistance, it will have complied with section 16(1).
34. In the MoJ's initial response on 27 November 2023, it advised the complainant that the groups and teams they had specified in their initial request do not all have their own separate Disclosure Teams, and that the MoJ is served by its central Disclosure and Library Team. It also offered to continue to process the request for information about that central team if the complainant wished.
35. In its next response to the complainant on 21 December 2023, the MoJ explained that FOIA is not always the most appropriate correspondence regime, such as when one wishes to make a complaint, and advised

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<sup>2</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

them of the correct avenue for submitting complaints regarding both HMCTS and the MoJ.

36. In its internal review on 15 February 2024, the MoJ advised that there is no central MoJ database or other system into which a search can be entered and all results extracted in one operation. However, it stated that it may be able to comply with a refined request, for example, reducing the volume of information within the scope of the request by asking for information from a specific named team.
37. The Commissioner is satisfied that the MoJ consistently provided relevant advice and assistance to the complainant at each opportunity. He therefore finds that the MoJ has complied with its obligations under section 16 of FOIA.



## Right of appeal

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38. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Cressida Woodall**  
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**Information Commissioner's Office**  
**Wycliffe House**  
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