

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 November 2024

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

Decision (including any steps ordered)

1. The complainant has requested information from the Ministry of Justice (MoJ), relating to the use of Bromine or other drugs given to children whilst in a detention centre during 1960 to 1980. The MoJ relied on section 12(2) of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that:
 - The MoJ was entitled to rely on section 12(2) of FOIA to refuse the request.
 - The MoJ complied with its section 16 obligation to offer advice and assistance.
 - The MoJ breached section 10(1) by failing to respond to the request within 20 working days.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 23 April 2024, the complainant wrote to MoJ and requested information in the following terms:

"There is evidence that Bromine along with other drugs were unknowingly give to children that were detained in detention centres during 1960 to 1980.

Under the FOIA please provide me with all applicable laws/acts/policies and procedures etc that permit this to happen.”

5. On 27 June 2024, the MoJ responded. It relied on section 12(2) of FOIA to refuse the request – a position it upheld following an internal review.

Reasons for decision

Section 12 – cost of compliance

6. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
7. Section 12(1) of the 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”).
8. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 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.
9. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours for the MoJ.
10. Where a public authority is relying on section 12(1) to refuse a request it must still confirm whether or not it holds the information. However, a public authority may rely on section 12(2) if the cost of determining whether the information is held would, on its own, exceed the appropriate limit.
11. If section 12(2) applies, the public authority does not need to confirm or deny that it holds the information.
12. A public authority does not have to make a precise calculation of the cost of establishing whether information is held; instead only an estimate is required. However, it must be a reasonable estimate. The Commissioner considers that any estimate must be sensible, realistic and supported by cogent evidence. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of determining what, if any, information is held.

13. Section 12(2) 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 confirming or denying whether any information is held.
14. Where a public authority claims that section 12(2) of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it may, if possible, be dealt with under the appropriate limit, in line with section 16 of FOIA.

The MoJ's position

15. The MoJ explained to the Commissioner that in order to determine whether it holds any policies or procedures within the scope of the request, it would be required to undertake a wide ranging search of historical records.
16. The MoJ informed the Commissioner that, on receipt of the request, it undertook internet searches using the key terms of "bromine", "bromide" and "detention centre". These searches did not locate any information relevant to the request, despite the complainant's assertion that "there is evidence that Bromine along with other drugs were unknowingly given to children that were detained in detention centres during 1960 to 1980."
17. The MoJ noted that as there is no conclusive or obvious evidence that suggests such events described above did occur, conducting searches for "applicable laws/acts/policies and procedures" would be challenging.
18. The MoJ advised that if any information relevant to the scope existed, it would have been created by the Home office. The Home Office was the department responsible for oversight of detention centres during the requested period. The MoJ stated that, whilst it was possible that information could have been transferred following its creation in 2007, it was more probable that the Home Office would have either destroyed or transferred information to the National Archives due to its age.
19. The MoJ explained that, as the request period spans over 20 years and the scope is very broad, it would be required to undertake an unfocused archive search. It added that as the requested period preceded the digital era, many records would be paper-based. Due to this, there would be no means of determining the contents of any paper files retrieved, without a lengthy manual search being undertaken.
20. The MoJ confirmed that to comply with the request, it would be required to carry out an initial review of every document held over a 20 year period which appeared to fall into the scope of the request. Once completed, a more thorough review of the documents would be required

to establish if any information contained fell into the scope of the request.

21. The MoJ informed the Commissioner that there are approximately 1150 digital files within the archives for the requested time period. The MoJ stated that, even if it was to spend a conservative estimate of 10 minutes per document, this would exceed 190 hours of work.
22. It explained that, in addition to this, a manual search of a very large, but unknown, volume of paper records would also need to be assessed. It estimated this would take approximately 24 hours of additional work. Meaning that the total amount of work would at the very least exceed 215 hours, far in excess of the cost limit.

The Commissioner's view

23. The Commissioner is satisfied that determining whether the information is held would exceed the appropriate limit.
24. The Commissioner agrees that due to the broad nature and timeframe of the request, the MoJ would be required to undertake a large amount of work just to establish whether the requested information is held. Based on the amount of digital files and the unknown amount of paper records which would necessitate a review, the Commissioner is satisfied that this work would exceed the appropriate time and cost limit.

Procedural matters

Section 16 – advice and assistance

25. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
26. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain, to the requester, how they could refine their request such that it would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.
27. In this case, the MoJ informed the requester that, due to the historical nature of the request, it was unable to provide any advice and assistance to assist the complainant in refining their request

28. The Commissioner is satisfied that the MoJ did comply with section 16 of FOIA by explaining it was unable to provide advice and assistance when dealing with this request.

Section 10 – time for compliance

29. Section 10 of the FOIA requires a public authority to respond to a request within 20 working days.
30. In this case, the complainant submitted their request for information on 6 March 2024. The MoJ did not issue its response until 27 June 2024, which far exceeds the required 20 working days.
31. For the above reason, the Commissioner finds that the MoJ breached section 10(1) of the FOIA.

Right of appeal

32. 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

33. 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.
34. 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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