

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 December 2014

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

Decision (including any steps ordered)

1. The complainant requested information relating to the purchase of halal meat and poultry products by HMP Erlestoke.
2. The Ministry of Justice (MoJ) cited section 12 of FOIA (cost of compliance exceeds the appropriate limit).
3. The Commissioner's decision is that the MoJ has correctly applied section 12. He requires no steps to be taken as a result of this decision.

Request and response

4. Following earlier correspondence, on 6 February 2014 the complainant wrote to MoJ and requested information of the following description:

"1. Copies of all invoices relating to the purchase of ALL the Halal poultry and meat products purchased by HMP Erlestoke main kitchen for consumption by prisoners from 1/7/2013 to 31/12/2013.

2. Copies of all delivery notes relating to the delivery ALL the Halal poultry and meat products purchased by HMP Erlestoke main kitchen for consumption by prisoners from 1/7/2013 to 31/12/2013".

5. MoJ responded on 18 March 2014. It confirmed that it holds the requested information. However, it refused to provide it citing section 12 of FOIA (cost of compliance exceeds the appropriate limit) as its basis

for doing so. It advised the complainant that he may wish to reduce the timeframe of his request to a period of one month.

6. The complainant requested an internal review on 28 April 2014, the timeframe of the request remaining the same. It appears that MoJ has no record of receiving that correspondence. MoJ did, however, receive a further request for internal review dated 9 June 2014.
7. MoJ sent the complainant the outcome of its internal review on 9 July 2014. It upheld its original position regarding section 12 of FOIA.

Scope of the case

8. The complainant provided the Commissioner with the relevant documentation on 12 September 2014 to complain about the way his request for information had been handled. He explained his interest in the requested information and said that, in his view, MoJ is overstating the time to locate and extract the requested information.
9. In further correspondence, he explained why he did not reduce the timeframe of his request for information, as suggested by MoJ.
10. While he accepts that the complainant may have personal reasons for wanting access to the requested information, in a case such as this the Commissioner's role is simply to decide whether or not the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.
11. The Commissioner considers the scope of his investigation to be whether MoJ is entitled to rely on section 12 as a basis for refusing to provide the requested information.

Reasons for decision

Section 12 cost of compliance

12. Section 12(1) of the FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit".

13. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. 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 in this case.

Would complying with the request exceed the appropriate limit?

14. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
15. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
16. In response to his request for information, MoJ confirmed that a central record of all invoices and delivery notes is held at HMP Erlestoke, recording every item that has been ordered and delivered. However, it explained that it would require a member of staff to search through the records, extracting the relevant ones, in order to provide the information the complainant had requested. It went on to say:

"Just to give you some indication of the scale of such a task, HMP Erlestoke receive on average seven invoices per week, consisting of a number of pages recording hundreds of items (Halal and non-Halal products)".
17. It estimated that the overall work involved would exceed the time period and the cost limit as specified in section 12.
18. In its internal review correspondence, MoJ provided a more detailed estimate of the effort involved to satisfy the request. It explained that if HMP Erlestoke receives approximately 14 invoices and delivery notes each week:

".. this equates to 364 multi-page documents (14 documents x 26 weeks) ... and each document contains hundreds of items".
19. MoJ estimated that it would cost over £1500 to provide the requested information.
20. During the course of the Commissioner's investigation, the MoJ was asked to provide more detail in respect of its application of section 12.

21. In its substantive response, MoJ confirmed that HMP Erlestoke receives an average of 14 multi-page invoices and delivery notes each week. In other words, approximately 364 multi-page individual documents would have been received over the six month period identified within the request (14 documents x 26 weeks = 182 pairs of delivery note/invoice documents).
22. MoJ explained how the delivery notes are manually stored and why that makes searching for each delivery note time consuming. It said that invoices are stored electronically and that they can be downloaded by entering the invoice number into the system once it had been obtained from the equivalent hard copy delivery note.
23. In providing him with a detailed estimate of the time/cost taken to provide the information falling within the scope of the request, MoJ told the Commissioner:

"The cost estimate provided to [the complainant] is based on the time it would take to locate and retrieve the relevant delivery notes from archive stores, identify the Halal items recorded on each note, download the accompanying invoice from the electronic system (using the invoice number recorded on the delivery note) and then identify the Halal items on the invoice. We estimate that it would take approximately 60 hours to complete these actions for the 364 multi-page documents covered by the request, based on a conservative estimate of 20 minutes to carry out the process above for each pair of documents (20 minutes x 182 pairs of documents)".

24. MoJ also confirmed that a sampling of the search had been done and that the estimate was based on the quickest method of gathering the information.
25. MoJ recognised that, in providing the complainant with its estimate of the effort involved in satisfying his request:

"it may have been helpful to provide him with this more detailed explanation that it would in fact take 20 minutes to carry out the required actions for a pair of documents (delivery note and invoice)".

26. From the evidence he has seen during the course of his investigation, and having had the opportunity to view sample invoice and delivery documents, the Commissioner is satisfied that MoJ has provided adequate explanations to demonstrate that it would exceed the appropriate limit to locate, retrieve and extract the requested information. Section 12(1) does therefore apply and MoJ is not required to comply with the request.

Section 16 advice and guidance

27. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. In general where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit.
28. In this case, the Commissioner acknowledges that MoJ advised the complainant that it should be able to identify, locate and extract the requested information for a shorter time period, namely one month. Notwithstanding that, it also said that it could not guarantee that a refined request would not engage one of the other exemptions within the FOIA.
29. During the course of the Commissioner's investigation, MoJ revised that timeframe. It told the Commissioner:

"However, after our investigation, and as a further help and assistance, I can confirm that we may be able to consider [the complainant]'s request should he wish to refine it for a period of two months".
30. The Commissioner notes, however, that the MoJ continued to advise that if a refined request was to be received, it could not guarantee that another exemption under the FOIA would not be engaged.
31. From the evidence he has seen, the Commissioner is satisfied that advice and assistance was provided to the complainant. He therefore finds that MoJ complied with section 16(1).

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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.

Signed

Jon Manners
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