

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 January 2020

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 use of personal safety techniques in juvenile young offender institutions and secure training centres.
2. The Ministry of Justice (MoJ) refused to comply with the request on the basis that to do so would exceed the appropriate limit in costs set by section 12(1) (cost of compliance) of the FOIA.
3. The Commissioner's decision is that the MoJ correctly applied section 12(1) and found that there is no breach of section 16(1) (duty to provide advice and assistance) of the FOIA.
4. She requires no steps to be taken as a result of this decision.

Request and response

5. On 16 May 2019, the complainant wrote to the MoJ and requested information in the following terms:

"Please provide the following in respect of juvenile young offender institutions and secure training centres.

The name of each personal safety technique taught to officers working in juvenile young offender institutions and secure training centres. Please state which of these, if any, involve the deliberate infliction of pain.

The name of each personal safety technique taught to custody escort officers employed by GEOAmey to work with children. Please state which of these, if any, involve the deliberate infliction of pain.

A copy of the use of force form for the young people's estate. This is the form which must be completed whenever a personal safety technique has been employed. Please also provide the form which must be completed when an MMPR [minimising and managing physical restraint] technique is used.

The number of times each of the personal safety techniques was used on children in each of the last three years in the following institutions:

- a. Cookham Wood YOI
- b. Feltham YOI
- c. Medway STC
- d. Oakhill STC
- e. Parc YOI
- f. Rainsbrook STC
- g. Werrington YOI
- h. Wetherby YOI

Please provide the recorded reasons for the 2,397 uses of non-MMPR techniques during use of force incidents in juvenile young offender institutions and secure training centres in 2017/18.

Of the 2,397 incidents in 2017/18 where non-MMPR techniques were used on children, please state how many of these involved the use of personal safety techniques. Please provide a breakdown of the number of uses by name of personal safety technique.

Please provide the recorded reasons for the 260 uses of MMPR pain-inducing techniques in juvenile young offender institutions and secure training centres in 2017/18. Please provide a breakdown by the following institutions:

- a. Cookham Wood YOI
- b. Feltham YOI
- c. Medway STC
- d. Oakhill STC
- e. Parc YOI
- f. Rainsbrook STC
- g. Werrington YOI
- h. Wetherby YOI"

6. The MoJ responded on 10 June 2019. It confirmed it held the requested information but refused to provide it, citing the following exemption as

its basis for doing so:

- section 12(1) (cost of compliance).
7. There was further correspondence between the complainant and the MoJ after 10 June 2019.
 8. The complainant wrote to the MoJ on 3 July 2019 confirming that she was requesting an internal review of its refusal to provide the information requested on 16 May 2019.
 9. Following an internal review, the MoJ wrote to the complainant on 29 July 2019. It maintained its original position with respect to the information requested on 16 May 2019.

Scope of the case

10. The complainant contacted the Commissioner on 11 September 2019 to complain about the way her request for information had been handled.
11. She confirmed that the complaint in this case concerns part (7) of her request for information dated 16 May 2019.
12. She disputed the MoJ's application of section 12(1) of the FOIA.
13. The complainant considered that the requested information is held centrally and referred the Commissioner to the document "*Minimising and Managing Physical Restraint*"¹. She told the Commissioner:

"As previously indicated to the MoJ, the attached Minimising and Managing Physical Restraint (MMPR) safeguarding etc policy states each incident of pain-inducing restraint used on children in custodial institutions (juvenile young offender institutions and secure training centres) is reviewed by a national team within the MoJ. This means the information must be held centrally".
14. She also referred to a written answer to a Parliamentary Question about restraint techniques.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/456672/minimising-managing-physical-restraint.pdf

15. The analysis below considers the MoJ's application of section 12(1) of the FOIA to the information requested at part (7) of the request, namely:

"... the recorded reasons for the 260 uses of MMR pain-inducing techniques in juvenile young offender institutions and secure training centres in 2017/18 [broken down by institution]".

Reasons for decision

Section 12 cost of compliance exceeds appropriate limit

16. 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".

17. 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?

18. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) of the fees regulations 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.
19. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
20. The complainant disputed that it would exceed the time limit to comply with her request. Referring to a written answer to a Parliamentary Question, she argued that data on personal safety techniques is collected centrally.

21. Concerning its refusal to provide the requested information, by virtue of section 12(1) of the FOIA, the MoJ told the complainant:

"We explained that to identify, locate, retrieve and extract records for the cases in 2017/18 where a personal safety technique was employed as Use of Force, would require us to contact all the establishments named in your request. We explained that staff at all of these establishments would need to locate the records and that the time taken to undertake this in order to locate, retrieve and extract the information required would in terms of costs of time involved exceed the appropriate limit. Consequently, we were not obliged to comply with your request".

22. The MoJ also addressed other matters raised by the complainant regarding the requested information. It told her:

"I have received advice from the Youth Custody Service with regards to the information you have requested and they advise me that, as you have indicated, data is published and was provided in a recent Parliamentary Written Question".

23. It provided her with a link to the published data. However, it advised:

"This data gives a breakdown of the reasons under table 8.23, but only for all Use of Force Incidents together, including both non-Minimising and Managing Physical Restraint and others. It does not, give specific detail about each incident which is what you are asking for ...".

24. The MoJ explained that:

"In order to determine this level of information would mean that every use of force statement made in each recorded incident where a PIT [Pain Inducing Technique] was used, would have to be read and the circumstances pulled from these individually and recorded as such. This would be an enormous undertaking by staff at the establishments you have listed".

25. During the course of the Commissioner's investigation, the MoJ was asked to provide more detail in respect of its application of section 12.
26. In light of the complainant's view that the requested information is held centrally, the MoJ was also asked to respond regarding the MMPR report and the Parliamentary Question and Response.
27. With respect to the former, the MoJ explained to the Commissioner about the National MMPR team, its role and responsibilities.

28. In its submission to the Commissioner, the MoJ referenced the parliamentary answer referred to by the complainant. It accepted that that response states that the Youth Custody Service does collect data on the use of personal safety techniques.

29. However, the MoJ told the Commissioner:

"[The complainant's request] was very specific in asking for the 'recorded reasons for the 260 uses of MMPR pain-inducing techniques in juvenile young offender institutions...'. We have interpreted that as requesting a detailed account of each of the 260 uses. We do not collect detailed information on individual incidents centrally. In order to collect that information, we would have to consult the individual incident records held at the youth custody facilities".

30. It also confirmed what it had told the complainant about the need to look through individual case files.

31. The MoJ provided the Commissioner with details of its calculation in support of its estimate that it would take more than 24 hours to respond to part (7) of the request in this case.

32. It confirmed that a sampling exercise had not been conducted. However, In support of its estimate of the length of time it would take to review each case file, the MoJ told the Commissioner:

"An educated estimate has been made by an official familiar with this kind of technique and how details are recorded".

33. The MoJ confirmed that the estimate had been based on the quickest method of gathering the requested information.

The Commissioner's view

34. When dealing with a complaint to her under the FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, the Commissioner's role is simply to decide whether the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.

35. In essence, therefore, this case turns on whether the estimate provided by the MoJ was reasonable.

36. The Commissioner considers that a reasonable estimate is one that is *"...sensible, realistic and supported by cogent evidence"*.

37. In this case, although the MoJ told the complainant that it considered that complying with the request would exceed the cost limit, the Commissioner is disappointed to note that it failed to provide the complainant with an estimate of the actual work involved in complying with her request.
38. However, during the Commissioner's investigation, the MoJ presented arguments which focused on it having to check the records of the 260 uses of restraint across multiple young offender institutions and secure training centres and estimated that it would take 85 hours to comply with the request.
39. Even if the MoJ's estimate of the time taken per record was excessive, from the evidence she has seen during the course of her investigation, the Commissioner is satisfied that the MoJ has demonstrated that it would exceed the appropriate limit to locate, retrieve and extract the requested information.
40. Section 12(1) does therefore apply and the MoJ is not required to comply with the request.

Section 16 advice and assistance

41. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request "*so far as it would be reasonable to expect the authority to do so*".
42. In her guidance '*Requests where the cost of compliance exceeds the appropriate limit*', the Commissioner considers the provision of advice and assistance. She states:

"In cases where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:

- either indicate if it is not able to provide any information at all within the appropriate limit; or

- provide an indication of what information could be provided within the appropriate limit; and

- provide advice and assistance to enable the requestor to make a refined request".

43. 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.

44. In that respect, the Commissioner recognises that the MoJ told the complainant:

"We advised you to reduce the scope of your request, for example, asking fewer questions, identifying fewer establishments or enquire about specific types of restraint".

Right of appeal

45. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

46. 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.
47. 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

Samantha Bracegirdle
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