

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 September 2022

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information from the Office of the Public Guardian relating to complaints made about panel deputies. The Office of the Public Guardian ("OPG") is an executive agency of the Ministry of Justice ("the MoJ"). The MoJ refused to comply with the request citing section 12 (cost limit) of FOIA.
2. The Commissioner's decision is that the MoJ was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. The Commissioner also finds that the MoJ complied with its obligations under section 16 to offer advice and assistance.
3. The Commissioner does not require MoJ to take any steps.

Request and response

4. On 22 February 2022, the complainant made the following request for information to MoJ:

"With reference to your letter dated 21 February 2022, regarding my FOI request 220129001. Please find below a revised request for information."

This is a request under the Freedom of Information Act 2000 (FOIA), I would be grateful for your response by email.

I would be grateful if you could provide all information that you hold on the following:

How many complaints have you received about panel deputies since 01 January 2017?

How many complaints about panel deputies have been upheld since 01 January 2017?

How many panel deputies have been discharged following complaints by members of the public or family members since 01 January 2017?

What investigations are conducted on a panel deputy following a complaint made by a member of the public or a family member?

How many panel deputies have been appointed as executor to their clients who die intestate since 01 January 2017?

What protection is in place to ensure complete and accurate financial records are handed over to an executor by a panel deputy?"

5. The MoJ responded on 4 March 2022. It stated that it held information within the scope of the request, but that the cost of complying with the request would exceed the cost threshold of £600 for central government. In accordance with this finding, the MoJ issued a section 12 refusal notice in reply to the complainant's request for information. The MoJ offered the following advice and assistance to the complainant, advising that the information was not available broken down by panel deputies and suggested that the complainant could request information about complaints relating to all professional deputies instead.
6. The MoJ upheld its initial application of section 12 of FOIA via internal review on 29 March 2022.

Scope of the case

7. The complainant contacted the Commissioner on 17 April 2022 to complain about the way their request for information had been handled. The complainant disagrees with the MoJ's application of section 12 of FOIA.

8. The Commissioner considers the scope of this case to be to determine if the MoJ has correctly cited section 12(1) of FOIA in response to the request. The Commissioner has also considered whether the MoJ met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

9. 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”).
10. 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. The MoJ relied on section 12(1) in this case.
11. 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.
12. 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 MoJ.
13. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - 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.
14. 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". The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.

15. 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.
16. 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?

17. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked the MoJ to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
18. In its submission to the Commissioner, the MoJ stated that in applying section 12(1), it had aggregated the responses for the first three questions. It first explored the possibility of the information being compiled by the complaints team but found that the team did not have a separate category for "panel" deputies on their database. The complaints team have a category for "professional" deputies, and each professional deputy case would need to be checked to confirm if it was a panel deputy complaint. The MoJ also noted that sometimes initial stage complaints are dealt with and resolved locally by professional deputy supervision teams and may not have been sent to the complaints team.
19. The MoJ then looked at the possibility of the information being compiled by the OPG professional deputies team. It explained that the OPG currently have 66 panel deputies, and between them they hold 642 panel deputy cases. For the professional deputy team to answer these questions, the case manager would have to search for the client by case number on the case management system to bring up each particular file. All documents and all notes attached to the case management system would need to be reviewed to find out if there are any notes relating to a complaint. Some cases are complex and have several notes and attachments.

20. The MoJ estimated that it would take a minimum of 15 minutes per panel deputy file and these actions would have to be repeated for all 642 panel deputy cases. Therefore, the MoJ estimated the cost to answer questions 1 and 2 would be £4,012.50.
21. In terms of the third question, the MoJ identified that the OPG court applications team would have to answer this question. The court applications team record all applications to court that involve a deputy as a "deputy application". They also undertake other types of court applications, but do not record if the application includes a "panel" deputy. The court applications team estimated there were a minimum average of 350 deputyship applications since 1 January 2017 and all 350 files would have to be reviewed manually to determine if an application involved a panel deputy.
22. The MoJ explained that in order to locate the information requested, a staff member would need to review the case file, identify the deputy at the time, and then determine if this deputy was appointed as a professional or a panel deputy capacity. This would require cross checking of the order, panel deputy list and case log. To identify if the complaint was made by a family member, a staff member would need to review the investigation report in full and review the court application to determine the final application to court. It has estimated that this would take a minimum of 40 minutes per case. If the case was complex, it would require further time to liaise with different business units such as the panel deputy team, the investigations team, the supervision team, and the litigation team.
23. The MoJ outlined that the steps needed would be to identify the case from the list of 350 and locate it on the court applications database (5 minutes), review the court applications case file in full and read the case log, court applications, email folder, court orders (30 minutes), and cross reference the deputy with the panel deputy list (5 minutes) Therefore, the MoJ estimates that the cost to answer question 3 would be £5,833.33.
24. In total, the MoJ estimated that it would cost £9,845.83 to provide answers to the first three questions of the request. It believes the estimate to be reasonable and confirmed that it had carried out a sampling exercise.
25. The Commissioner considers that the MoJ estimated reasonably that it would take more than the 24 hours or £600 limit to respond to the first three questions of the request. In its detailed submissions, with reference to a thorough sampling exercise, the MOJ has demonstrated that complying with this request would significantly exceed the cost limit

under FOIA. Even were its estimates to be halved, the request would still be far in excess of the cost limit.

26. The MoJ was therefore correct to apply section 12(1) of FOIA to the complainant's request.

Section 16(1) – The duty to provide advice and assistance

27. 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 practice¹ in providing advice and assistance, it will have complied with section 16(1).
28. The Commissioner notes that the MoJ had already previously advised the complainant to refine the request and this resulted in the refined request being submitted on 22 February 2022. When responding to the refined request, the MoJ advised the complainant that the information was not available broken down by panel deputies and suggested that the complainant could request information about complaints relating to all professional deputies instead. The Commissioner is therefore satisfied that the MoJ met its obligations under section 16 of FOIA.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

29. 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

30. 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.
31. 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

Michael Lea
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