

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 20 May 2014

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

### **Decision (including any steps ordered)**

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1. The complainant requested information about a sentencing report in relation to a conviction in 2009. The Ministry of Justice (MoJ) considered section 12(2) of FOIA (cost of compliance exceeds the appropriate limit) applied. During the course of the Commissioner's investigation the MoJ confirmed that the request is not sufficiently clear to confirm whether or not it holds the requested information.
2. The Commissioner requires the MoJ to take the following steps to ensure compliance with the legislation:
  - issue a fresh response to the complainant under the FOIA.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### **Request and response**

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4. On 7 October 2013 the complainant wrote to the MoJ and requested the following information under the FOIA:

*"The sentencing report of a PR who was convicted in October 2009 of various sexual offences".*

5. The MoJ sought clarification on 21 October 2013, explaining what further information it reasonably required. The MoJ told the complainant:

*"To help us ensure that we provide you with the right information, I would be grateful if you could clarify your request as to what court you believe this person was sentenced at, and if possible the more information you can give us about what documents you need and any case reference would greatly assists [sic] in our search".*

6. The complainant provided his clarification on 31 October 2013. The clarified request read:

*"The sentencing report of a PR who was convicted in October 2009 of various sexual offences, sentenced in either Sunderland or Newcastle area".*

7. The MoJ responded on 22 November 2013, neither confirming nor denying that the requested information is held. It explained:

*"We are unable to trace a case simply from the initials PR. We would need the full name to be able to carry out an accurate search".*

8. It also advised that, if held, the information could be exempt from disclosure by virtue of sections 40 (personal information) and 32 (court records) of the FOIA.

9. The MoJ sent the complainant the outcome of its internal review on 7 January 2014. It revised its position, telling the complainant:

*"The correct exemption applicable to your request is Section 12(2) of the FOIA 2000....*

*On review I have decided that there is no concrete basis to determine whether 'PR' is a combination of a fore/surname, surname only, or an acronym. Our database system requires at least a Surname or a Case Number to make detailed searches to aid the elimination process and narrow down our search criteria in order to ascertain if the information you request is held. Since you have not provided us with these basic details, I maintain at this stage that we cannot confirm if the information you require is held".*

10. It went on to explain:

*"On this occasion, we are satisfied that the cost of determining whether we hold the information would exceed the appropriate limit...".*

## Scope of the case

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11. The complainant provided the Commissioner with the relevant documentation on 26 February 2014 to complain about the way his request for information had been handled.
12. He said that, in his view, the combination of the initials PR, the fact of there being only one Crown Court in the Sunderland/Newcastle area and the nature of the case:

*"is more than enough to return a match".*

13. During the course of his investigation, the MoJ told the Commissioner:

*"It is our view that the exact scope of [the complainant's] request, even as clarified above, remains ambiguous as it was still unclear what "PR" meant".*

14. It told him that it had reconsidered the section 12(2) decision it made at internal review:

*"and have again identified that the search criteria was based upon an assumed interpretation of what 'PR' stood for, resulting in inaccurate searches for the information. Like the first response, the internal review stated it was unclear whether 'PR' is a combination of a fore/surname, surname only, or an acronym".*

15. In that respect, the MoJ confirmed what it told the complainant on 7 January 2014 – that its database requires *"at least a Surname or a Case Number to make detailed searches"*.

16. The MoJ told the Commissioner:

*"On this basis, we still do not believe that the scope of [the complainant's] request was sufficiently clarified to allow for an accurate search to enable the Department to ascertain whether or not it holds the information requested. ....a further Section 1(3) clarification response should have been issued....".*

17. Confirming that it had overturned both of its previous decisions about the application of procedural sections/exemptions, ie the initial refusal and the internal review, the MoJ told the Commissioner:

*"... it is MoJ's position that our obligations under Section 1(1) could not be fulfilled not on the basis of Section 12(2) but because of the need for further clarification under Section 1(3); a notice of which should have been issued [to the complainant]".*

18. It also told the Commissioner:

*"It is our decision that a further Section 1(3) clarification response should have been issued before answering the request in the first instance".*

19. The Commissioner considers the scope of his investigation to be the MoJ's application of sections 1 (general right of access) and 16 (advice and assistance) of FOIA to the requested information.

## **Reasons for decision**

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*Section 1 general right of access*

*Section 16 advice and assistance*

20. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:

- the duty to inform the applicant whether or not requested information is held and, if so,
- the duty to communicate that information to the applicant.

21. Section 1(3) states:

*"Where a public authority –*

*(a) reasonably requires further information in order to identify and locate the information requested, and*

*(b) has informed the applicant of that requirement,*

*the authority is not obliged to comply with subsection (1) unless it is supplied with that further information".*

22. Section 16 sets out the duty on public authorities to provide advice and assistance, as far as it is reasonable to expect the public authority to do so, to anyone who is considering, or has made, a request for information to it.

23. The Commissioner has issued guidance on interpreting and clarifying requests<sup>1</sup>. That guidance states:

*"Sometimes an authority may receive an unclear or ambiguous request where it reasonably requires further information in order to identify and locate the requested information. This will trigger its duty to provide advice and assistance and it must contact the requester within 20 working days to ask for clarification".*

24. The Commissioner acknowledges that the MoJ sought clarification from the complainant on 21 October 2013 when it explained the further information it required. He also notes that in its correspondence - under the heading "Guidance – Is the request clear and specific?" - the MoJ told the complainant:

*"If the request is unclear or vague, the public authority are obliged to provide reasonable assistance to the person who made the request.*

*This means more than simply telling them that their request is not specific enough, the public authority should take reasonable steps to provide assistance to the requester. The aim should be to assist the requester to refine their request so that it becomes specific enough for the public authority to identify the information they want".*

25. The Commissioner has considered the advice and guidance the MoJ provided to the complainant with respect to the clarification it required. He has also considered the submission the MoJ provided to him during the course of his investigation.
26. In this case, the Commissioner considers that the MoJ failed to advise the complainant properly at the first opportunity in that it failed to tell him that it required at least a surname or a case number in order to carry out a search of its database and hardcopy case files.
27. The Commissioner acknowledges that his published guidance on interpreting and clarifying requests states:

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Practical\\_application/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Practical_application/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf)

*"If, following the provision of reasonable advice and assistance, the requester is still unable to supply the required clarification, the authority will not be expected to offer advice and assistance a second time".*

28. However, in this case, the Commissioner does not consider that the advice and assistance the MoJ provided was reasonable. He therefore requires the MoJ to issue a fresh response to the complainant clearly setting out the clarification it requires in order to determine whether or not the requested information is held.

## **Other matters**

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29. In bringing his complaint to the Commissioner's attention, the complainant told the Commissioner:

*"It also appears to me that it is an inadequacy, at best, in the Courts database that has led to a lack of disclosure. .... For example, how many members of the public would be able to quote a case number? Also many cases only supply initials in there [sic] reporting; so there appears to be a real problem here in dealing with this and future cases of a similar nature".*

30. The Commissioner, whilst appreciating the complainant's frustration, is mindful of the comments made by the Information Tribunal in the case of *Johnson / MoJ* (EA2006/0085) that the FOIA:

*"does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".*

31. The Commissioner is also mindful that, following receipt of the necessary clarification to allow it to answer a request, in some cases, there will be a good reason why a public authority should not make public some, or all, of the information requested.

## Right of appeal

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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: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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**  
**Group Manager**  
**Information Commissioner's Office**  
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**Water Lane**  
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