

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 November 2012

Public Authority: Ministry of Justice

Address: 102 Petty France

London

SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information from three courts about the Applied Language Solutions contract to provide interpreters. The Ministry of Justice ('MOJ') refused to provide the requested information on the basis that it had estimated that the combined cost of compliance with these three sets of requests would exceed the appropriate limit under section 12 of the FOIA.
2. The Information Commissioner has investigated and has found that the MOJ correctly relied on section 12(1) in refusing to provide the requested information. He does not require the MOJ to take any further steps.

Background

3. In August 2011, Applied Language Solutions ('ALS'), a subsidiary of the provider Capita, was awarded a five-year contract with the Ministry of Justice ('MOJ') to act as the sole supplier for providing the courts with interpreters and translation services. This contract became operational in January 2012.

Request and response

4. From the information supplied to the Information Commissioner, the complainant submitted the following requests to Lincoln Magistrates Court, Grantham Magistrates Court and Skegness Magistrates Court respectively on 1 May 2012:

"I would like to request the following information under the Freedom of Information Act 2000, concerning the interpreting service agreement under which Applied Language Solutions has been providing interpreting services to the HMCTS:

1. *How many cases have been adjourned by the court where no interpreter was provided since the ALS contract went live on 30 January 2012? What is the percentage of these cases to the overall number of cases listed which required an interpreter?*
 2. *How many cases have been cancelled by ALS where no interpreter was provided since the ALS contract went live on 30 January 2012? What is the percentage of these cases to the overall number of cases listed which required an interpreter?*
 3. *How many cases have been cancelled by the court where no interpreter was provided since the ALS contract went live on 30 January 2012? What is the percentage of these cases to the overall number of cases listed which required an interpreter?*
 4. *How many interpreters have been sent for the wrong language since the ALS contract went live on 30 January 2012?*
 5. *How many interpreters have been booked direct using the NRPSI or another language provider since the ALS contract went live on 30 January 2012? What is the percentage of these cases to the overall number of cases listed which required an interpreter?"*
5. The MOJ acknowledged receipt of the requests on 17 May 2012. The complainant wrote to the MOJ later that day to query why the MOJ had responded given that she had addressed and sent her requests to named individual courts.
6. The MOJ explained it had aggregated her requests by virtue of Regulation 5 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the 'Fees Regulations') which allow public authorities to aggregate multiple requests in circumstances where two or more requests relate to any extent, to the same or similar information. It said that as the complainant's requests had been made in the same terms to each court, it had aggregated them. It also confirmed because the MOJ has responsibility for managing

the HMCTS ('Her Majesty's Courts and Tribunals Service'), that this was why it had handled all her requests centrally.

7. On 1 June 2012 the MOJ wrote to the complainant to confirm that it held the requested information, but stated it would not be able to provide the information because to do so would exceed the cost limit set out in section 12(1) of FOIA. It explained that in accordance with regulation 5 of the Fees Regulations, it had aggregated her requests such that the estimated cost of complying with any of the requests is taken to be the estimated total cost of complying with all of them. Outside of FOIA and on a "*discretionary basis*" it advised the complainant that the MOJ had published a statistical report on the use of interpreters on 24 May 2012 and provided the relevant weblink.
8. The MOJ offered advice and assistance in accordance with section 16 of FOIA and suggested the complainant might refine her request to bring it under the cost limit. The MOJ said that the complainant may, for example, consider asking for the information over a shorter time period, but explained that due to the way in which the information is recorded, it may still exceed the cost limit.
9. Following an internal review the MOJ wrote to the complainant on 3 July 2012 upholding the original decision. It also told the complainant about a weblink via which she could find statistics on ineffective trials due to interpreter availability, published on 28 June 2012.

Scope of the case

10. The complainant contacted the Information Commissioner to complain about the way her request for information had been handled. She submitted some information for the Information Commissioner to consider in support of her view that the MOJ had inappropriately applied cost to her request. This is set out at paragraphs 31 to 35 of this notice.
11. She also asked the Information Commissioner to consider whether the MOJ was entitled to aggregate her requests.
12. The Information Commissioner has considered whether the MOJ properly applied section 12(1) of FOIA to these requests and whether it was entitled to aggregate the three sets of requests.

Reasons for decision

Section 12 – Exceeding the appropriate cost limit

13. Section 12(1) of FOIA states:

"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."

Aggregation of two or more requests

14. Section 12(4) states that:

"The Secretary of State may by regulation provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority-

(a) by more than one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any request is to be taken to be the estimated total cost of complying with all of them."

15. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') are the relevant regulations made by the Secretary of State pursuant to section 12. Regulation 5 of the Fees Regulations provides that multiple requests can be aggregated in circumstances where the two or more requests relate to any extent, to the same or similar information.

16. The Information Commissioner notes the Tribunal's view in *Ian Fitzsimmons v Information Commissioner & the Department for Culture, Media and Sport (EA/2007/0124)* that:

"The test in Regulation 5 of the Fees Regulations seems to us to be very wide; the requests need only relate to any extent to the same or similar information". (para 43)

17. In this case the MOJ aggregated three sets of requests, all of which were from the complainant, which satisfies the requirement of regulation 5 that the requests have to be made by one person, or by more than one person if acting in concert, in order to be aggregated. In addition, all of the requests aggregated by the MOJ were seeking the same information about the ALS contract albeit in relation to different magistrates' courts.

18. Regulation 5 also requires that the aggregated requests must be received by the public authority within a period of 60 consecutive working days. In this case all of the requests were made on the same day.
19. The Information Commissioner has therefore determined that the MOJ was entitled to aggregate the three sets of requests under regulation 5 of the Fees Regulations. He went on to consider whether compliance with these requests would exceed the appropriate cost limit.
20. The Fees Regulations provide that the cost limit for central government public authorities is £600. This must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours. If a public authority estimates that the time spent on complying with a request would exceed 24 hours, or £600, section 12(1) provides that the request may be refused.
21. A public authority can only take certain activities into account when assessing whether compliance with a request would exceed the cost limit. These activities are:
 - a. determining whether it holds the information;
 - b. locating a document containing the information;
 - c. retrieving a document containing the information; and
 - d. extracting the information from a document containing it.
22. The Information Commissioner asked the MOJ to provide a detailed reasonable estimate of the time taken and costs that would be incurred by providing the information falling within the scope of the request. He also asked it to provide a detailed explanation as to how it had investigated, assessed and calculated those costs.
23. The MOJ explained that it does centrally hold information on cracked and ineffective trials as provided by courts (ie where a trial does not proceed) with 'interpreters' being one of the listed reasons within that data. It said, however, that the term 'case' as used in the complainant's requests is wider than simply the trial, in that it also includes all pre and post-trial hearings relating to the case, such as case management hearings and sentencing at which interpreters are also used. The MOJ advised that it does not record adjournments resulting from non-attendance by interpreters. It said that this detail could only be discovered with a manual search of the record of each case.
24. The MOJ went on to explain that each Magistrates and Crown Court hears several hundred cases each month and confirmed that the central record of cases does not record the affiliations of interpreters and

assessed that it would take more than 3.5 days to provide the complainant with the degree of information she had requested.

25. It confirmed that there are 1500 case files in scope of the request and that it had calculated it would take approximately 125 hours to check the volume of files covered by the request at a "conservative" estimate of five minutes per case file. Based on an eight hour working day it would take over 15 working days at a total cost of £3125 for the MOJ to comply with the requests, which far exceeds the cost limit of £600 set by FOIA for central government departments. The MOJ enclosed a copy of its cost form which it had completed during its assessment which summarised the above.
26. The MOJ estimated it would take a minute to search through the 1500 case files to determine if information is held, equivalent to 25 hours at £25 per hour costing £625.
27. It said to locate a document within the 1500 case files which may contain the information would take it an estimated minute per file, equivalent to 25 hours at £25 per hour costing £625.
28. The MOJ estimated it would take a minute for it to search through 1500 case files to retrieve a document which may contain the information, equating to 25 hours at £25 per hour at a cost of £625.
29. It would take the MOJ an estimated two minutes for each of the 1500 case files to extract the information from a document containing it, and from that compile a list of cases adjourned specifically due to the non-provision of interpreter services by ALS, stating that this would equate to 50 hours at £25 per hour costing £1250.
30. It confirmed that a sampling exercise of this search had been done and that its estimate was based on the quickest method of gathering the information, which in this case was the only method available to it, being a manual search.
31. The complainant submitted some supporting information for the Information Commissioner to consider. She contended that on 21 March 2012, Mr Crispin Blunt, Parliamentary Under-Secretary of State at the MOJ, said "*The MOJ are receiving daily management from the contractor concentrating on priority areas of interpreter availability and fulfilment of bookings*" giving the relevant Hansard reference. The Information Commissioner asked the MOJ to comment on this statement.
32. In reply, the MOJ advised that the management information consists of daily and weekly fulfilment rates by venue and by language and figures on the number of bookings made, assigned at short notice and unfilled.

It said that this information also includes figures on the number of bookings made, assigned at short notice and unfilled, but does not include records of cases adjourned as requested by the complainant.

33. The MOJ stated that it therefore does not hold a central record of adjournments beyond those which lead to ineffective trials. For this reason, it would only be possible to obtain the requested information by manually searching the files of the named court to identify information in respect of all forms of trial (ie including case management hearings and sentencing hearings). It explained that this information would normally be contained as part of documents in a case file.
34. The complainant also drew the Information Commissioner's attention to other requests previously answered by the MOJ asking for information on a similar theme to her own requests. In these cases, the MOJ had provided the requested information and had not applied the cost exclusion. The Information Commissioner asked the MOJ for its view on the complainant's contention.
35. The MOJ explained that the other requests highlighted did not refer to 'adjournments' but rather numbers of assignments requiring certain languages, and further detail of the daily monitoring arrangements. It said that that in these cases it was able to gather the data requested because the information was held in a format that allowed it to be readily compiled.
36. The Information Commissioner formed a preliminary view that the MOJ was entitled to rely on section 12(1) as to search for the requested information would, in itself, exceed the appropriate limit. He wrote to the complainant on 16 October 2012 about his preliminary view and invited the complainant to consider withdrawing her complaint. The complainant declined and submitted a weblink to a Public Accounts Committee discussion about the ALS contract, highlighting the specific part of the discussion she wished the Information Commissioner to consider:

<http://www.telegraph.co.uk/news/uknews/law-and-order/9287368/MOJ-to-monitor-court-interpreters-after-one-in-ten-fail-to-turn-up-or-get-translation-wrong.html>
37. The Information Commissioner has reviewed the debate and noted that, at the specified point a question was asked whether the ALS systems pick up the fact that, for example, a trial was adjourned on Friday in Aylesbury due to the lack of an interpreter and how does that happen. It was confirmed that the MOJ receives "*weekly information*" which includes details about a particular trial, a particular court and what language was spoken such that the MOJ would know, for example, that Polish was spoken on Friday at the Old Bailey. It was then asked

whether the report picks up "*collateral information such as costs of custody*". In response to this it was explained that the MOJ does receive some additional information.

38. The Information Commissioner wrote to the MOJ on 22 October 2012 asking it some further questions in light of this discussion by the Public Accounts Committee. In reply the MOJ confirmed that it does receive a weekly report from ALS on a number of performance management criteria including (but not limited to) fulfilment of assignments, did not attend, complaints, problematic languages and problematic venues. It provided the Information Commissioner with a copy of a sample report. Whilst the MOJ had undertaken daily monitoring in the early stages of the ALS contract, it now monitors on a weekly basis.
39. The MOJ reiterated its explanation about the term 'cases' being broader than simply the trial and stated it would be possible in some cases for it to identify from the assignments data provided, that a particular trial and the particular court requiring a certain language was unfulfilled, for example, as mentioned in the evidence to the Public Accounts Committee, "Polish on Friday at the Old Bailey", but that this would not automatically result in an adjournment.
40. The MOJ said that a search of the court files would also be necessary to check whether an adjournment had occurred and, if so, the reasons for it. It explained that statistics which have been subsequently published by the MOJ relate to bookings rather than individual cases and so cannot be used to indicate the number of cancellations at the court in question as there may be multiple interpreter bookings over the course of a single case. The MOJ stated that it would not be possible to conduct this exercise without exceeding the cost limit set down by FOIA.
41. The MOJ confirmed that there is no centrally collected data which identifies interpreter failure as a reason for adjournment, although adjournments are recorded on each individual court file. It reiterated that collecting this information in order to satisfy the terms of the complainant's requests would exceed the cost limit set out in section 12(1) of FOIA.
42. In addition, the MOJ advised that because of the need to manually check individual case files, section 12(1) would still be engaged even where the requests were not aggregated.
43. On the basis of the above, the Information Commissioner is satisfied that the MOJ has correctly applied section 12(1) as compliance with the requests would exceed the appropriate cost limit.

Advice and assistance

44. If the public authority estimates the cost of determining whether the information is held as being above the appropriate limit, it is not required to conduct searches but should consider providing advice and assistance. The Information Commissioner is satisfied that the MOJ provided advice and assistance in this case in accordance with section 16 of FOIA.

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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

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