

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 August 2015

**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 relating to the number of barring orders made in a specified time period.
2. The 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.

#### Background

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4. Barring Orders are outlined in Section 91(14) of the Children Act 1989<sup>1</sup>, which states:

*"On disposing of any application for an order under this Act, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court."*

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/1989/41/section/91>

## Request and response

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5. On 3 April 2015, using the *whatdotheyknow* website, the complainant made the following request for information under the FOIA:  
  
*"please provide a statistic, showing the number of Section 91 (14) barring orders made out annually since 2008".*
6. MoJ responded on 30 April 2015. It confirmed it holds the requested information but refused to provide it, citing section 12 (cost of compliance exceeds appropriate limit) as its basis for doing so.
7. The complainant expressed dissatisfaction with that response on 1 May 2015. In her correspondence she narrowed the scope of her request to barring orders made in the English Family Courts in the last five years.
8. MoJ sent her the outcome of its internal review on 29 May 2015, upholding its original position.
9. Also on 1 May 2015, via the *whatdotheyknow* website, the complainant made a new request for information:  
  
*"please could you provide the number of section 91 (14) barring orders made in Family Courts during the last 5 years".*
10. MoJ responded on 29 May 2015. It confirmed it holds the requested information but refused to provide it, citing section 12 (cost of compliance exceeds appropriate limit) as its basis for doing so.

## Scope of the case

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11. The complainant provided the Commissioner with the relevant documentation on 20 June 2015 to complain about the way her requests for information had been handled.
12. She disputes that, despite narrowing the scope of her request, it is too expensive to retrieve the requested information about the number of section 91 barring orders in Family Courts.
13. The analysis below considers MoJ's application of section 12 FOIA to the requested information relating to the number of Section 91 (14) Barring Orders made in the Family courts in the last five years.

## Reasons for decision

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### *Section 12 cost of compliance*

14. 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".*

15. 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?*

16. 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.

17. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.

18. In response to her request for information, MoJ explained to the complainant that information on barring orders is not recorded on the central case management system: it is only available from the paper case files held at the court. It advised that, in order to provide her with the requested information, it would be required to extract and look at thousands of Children Act case files to determine, for each individual case, whether a barring order was made.

19. In support of its application of section 12 FOIA, MoJ told the complainant:

*"It may help if I explain that there are more than 250,000 Children Act case files stored at around 200 courts across the country. We have estimated that it would take one person at least 10 minutes to identify, retrieve and collate information from each of the records.*

*This would lead to an estimated total time of over 40,000 hours to complete this request".*

20. MoJ also told the complainant:

*"For 2014 alone there were over 73,000 Children Act cases completed in English and Welsh family courts".*

21. During the course of the Commissioner's investigation, the MoJ was asked to provide more detail in respect of its application of section 12. In its substantive response, MoJ told the Commissioner:

*"Information on Barring orders are held on case files – the files maintained locally by the courts. It is not recorded or held centrally by the MoJ.*

*There are 171 court locations sitting for the single family court in England and Wales, of which 151 are in England".*

22. MoJ also confirmed its estimate of the time/cost taken to provide the information falling within the scope of the request. In that respect, it told the Commissioner that the estimate:

*"... is based on a conservative estimate of the average amount of time needed to identify, locate and read through a court case file in order to extract the information required. The estimate was agreed with colleagues who have previously worked in courts.*

*In light of the above it would take the MoJ 41666.67 hours to process the request. That is calculated by the estimated number of files, 250,000, multiplied by the estimated time taken to manually check each file, ten minutes".*

23. The Commissioner acknowledges that the complainant has questioned why the information she is seeking cannot be retrieved through electronic means. She told the Commissioner:

*"the Ministry of Justice can retrieve similar data (e.g. number of all family cases per year), its all stored electronically".*

24. However, from the evidence he has seen during the course of his investigation, the Commissioner is satisfied that MoJ has provided adequate explanations to demonstrate - in light of the format in which the information is held - 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.

## Other matters

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### *Section 16 advice and guidance*

25. 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, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
26. In this case, the Commissioner acknowledges that MoJ told the complainant:

*"Although we cannot answer your request at the moment, we might be able to answer a refined request within the cost limit. You may wish to consider, for example, reducing the number of files to look at by limiting your request to a smaller area and/or a shorter time scale. Please be aware that we cannot guarantee at this stage that a refined request will fall within the FOIA cost limit. There is also a chance that, if it is within the cost limit, one of the other exemptions in the FOIA will apply".*

27. 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**

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

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. 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.
30. 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**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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