

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 September 2015

Public Authority: Ministry of Justice

Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information from the Ministry of Justice (the 'MOJ') about the number of cases struck out as a result of administrative errors. The MOJ sought further clarification of the request which the complainant provided on two occasions. However, the MOJ said it requires the complainant to clarify the information she is seeking before it can respond; citing section 1(3) of FOIA.
2. The Commissioner's decision is that the MOJ has properly relied on section 1(3) of FOIA. However, as the MOJ failed to provide its response within the statutory 20 working days framework it thereby breached section 10(1) of FOIA.

Background

3. The complainant made two requests to the MOJ on consecutive days, one on 27 November 2014 which is the subject of this decision notice and relates to administrative errors, and the other on 28 November 2014, about the general handling of disabled individuals' cases.
4. In her complaint about the request of 28 November 2014, the complainant was also asked to provide further clarification. As the requests are closely linked in terms of when they were submitted and the subject matter (ie cases), the Commissioner believes this has led to some confusion on the part of both parties.

Request and response

5. On 27 November 2014 the complainant wrote to the MOJ and requested information in the following terms:

"After discussion with the Parliamentary and Health Service Ombudsman, it has been decided that information relating to the number of cases which were struck out as a result of administrative error is now required."

6. The MOJ responded late on 7 January 2015 and refused to provide the requested information. It applied section 21 of FOIA (information accessible to applicant by other means). This response references both the 27 and 28 November 2014 dates but only quotes and addresses the 28 November 2014 request.
7. The Commissioner understands that the MOJ later dropped its reliance on section 21, because it decided the request was not specific enough for it to respond to and instead required additional clarification from the complainant for both requests.
8. The Commissioner's understanding is that the MOJ initially erred in that it viewed the requests of 27 and 28 November 2014 as being the same. This is clear from its response of 7 January 2015. However, on 10 January 2015 the complainant wrote to the MOJ pointing out that the requests were different and asked it to now answer her request of 27 November 2014.

Scope of the case

9. In the absence of a response from the MOJ, the complainant first complained to the ICO on 29 January 2015. However, the MOJ subsequently responded on 9 February 2015 and stated that it required further clarification from the complainant in order to respond to her request of 27 November 2014.
10. On 9 March 2015 the Commissioner wrote to the complainant, enclosing a copy of the MOJ's letter of 9 February 2015, and reminded her of the need to clarify her request.
11. Following receipt of some additional paperwork from the complainant, the Commissioner located the complainant's clarification set out below in her letter to him of 15 March 2015:

"I request all information which is held on your computer systems and paper records, especially but not limited to, information which is held centrally. I also require as large a scope of dates as is possible to obtain on your computer systems and central records howsoever they are held and this would include email records or any type of internal record/s. In addition, this should be extended to regional offices and all local County Courts' in England and Wales. Particular emphasis should also be paid to the paper records of the Plymouth County Court as well.

I further require historical information relating to the number of complaints you have received in relation to the subject matter of the information request using the above stated parameters.

As they have not provided me with the information which I had requested from the information sources actually envisioned (as above) then I cannot possibly see how they can stipulate that this information is accessible by other means – particularly when I cannot see how this can possibly be the case when this information should only be properly accessible by MOJ staff."

12. On 25 March 2015 the Commissioner sent the above clarification to the MOJ to see whether this would enable it to answer her request. This resulted in the MOJ writing to the complainant on 17 April 2015. It advised that it still required further clarification in order to respond to her request, specifying that the complainant needed to stipulate what type of complaints she was interested in together with a time period.
13. On 5 May 2015 the complainant wrote to the MOJ expressing her dissatisfaction at its handling of her request. She included the following further clarification:

"...I wish to yet further clarify that, first and foremost, as much of the information requested over as wide a time as is possible to be accessed be obtained in respect to information held on your computer systems, emails and information which is held centrally at and within central records. This should be the starting point of my request for information and should also be the easiest information and cheapest to obtain. When I state that I require historical records – this relates to information which is of a historic nature and refers to any and all information which relates to any and all previous years which are available. Once this information has been obtained, then the searches of regional offices and courts – including the Plymouth County Court – can then be commenced and their paper records interrogated with the remaining cost constraints and I also formally request that you provide advice and assistance to enable me to yet further clarify or rephrase my requests, inform me what options would be available to me and/or ask me if you have adequately understood my requests should you so

wish if you should still remain unclear about any of the further clarification provided."

14. The complainant sent further correspondence to the Commissioner about this case and her 28 November 2014 request, but failed to provide any additional clarification. The Commissioner wrote to her again on 1 and 9 June 2015 to explain that the MOJ could not answer her request without further clarification. He suggested that she telephone the MOJ, or ask someone to telephone on her behalf, to ensure that the MOJ was clear as to the information she is seeking.
15. The Commissioner understands that the complainant instead then requested an internal review on 8 June 2015, to which the MOJ responded on 29 June 2015. It maintained that the additional clarification already provided was insufficient for it to be able to respond to the request.
16. On 17 July 2015, the complainant contacted the Commissioner again to request that he issue a decision notice in this case. However, as she did not use the Commissioner's case reference number, this correspondence was not directed to the correct case, and he did not become aware of it until 18 August 2015.
17. The Commissioner wrote to the complainant advising her of this and also wrote to the MOJ asking it for any further submissions in support of its reliance on section 1(3) of FOIA.
18. In this case, the Commissioner has therefore considered whether the MOJ was reasonably entitled to require further clarification from the complainant in order to respond to her request of 27 November 2014, in accordance with section 1(3) of FOIA.

Reasons for decision

19. Section 1(1) of FOIA states that any person making an information request to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him/her.
20. Section 1(3) of FOIA states that where a public authority reasonably requires further information in order to identify and locate the information requested, and has informed the applicant of that requirement, the authority is not obliged to comply with section 1(1) unless it is supplied with that further information.

21. This case has been complicated by the submission of two similarly worded requests submitted by the complainant on two consecutive days (27 and 28 November 2014) as detailed in the 'Background' section of this notice. Much of the associated correspondence has been sent to the Commissioner by the complainant for both cases, irrespective of whether that correspondence applies to that particular request/case or not. Unfortunately, due to the way in which the complainant referenced her correspondence, this meant it was added to the wrong case which has caused unnecessary confusion.
22. Having re-examined all the correspondence on both cases the Commissioner's view is that clarification was provided by the complainant on 15 March 2015 (forwarded to the MOJ by the Commissioner on 25 March 2015) and 5 May 2015 in respect of her request of 27 November 2015.
23. He cannot find any reference to a specific time period other than "*any and all previous years*" which is extremely broad and, in his view, highly likely to engage the cost exclusion in section 12(1) of FOIA. Further, he considers that the MOJ is not in a position to answer the request as it has no focus as regards the case type(s). This is because the complainant has not outlined the specific case type(s) which she is interested in.

Conclusion

24. The Commissioner considers it reasonable that the MOJ has applied section 1(3) of FOIA in this case, in that it still requires additional clarification in terms of case type(s) and a specific time period in order to determine whether it can respond to the request.

Section 10(1) – time for compliance

25. Section 10(1) of the FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt. From the information provided to the Commissioner it is evident that the MOJ did not respond to the complainant within the statutory timeframe in respect of this request.

Other matters

26. As well as finding above that the MOJ is in breach of the FOIA, the Commissioner has also made a record of the delay in this case. This may form evidence in future enforcement action against the MOJ should evidence from other cases suggest that there are systemic issues within the MOJ that are causing delays.
27. This case has been hampered by the complainant's initial refusal to provide further clarification to the MOJ and by the confusion with the correspondence. The Commissioner notes that the MOJ would like to be able to respond to her request but is not currently able to do so. The Commissioner appreciates that some complainants may find it difficult or daunting to telephone a public authority with a view to clarifying the request, but in this case, despite two further submissions from the complainant, the MOJ still does not have the requisite clarification it needs to respond to the request. The Commissioner has suggested that the complainant could ask someone acting on her behalf to telephone the MOJ in order to resolve this current impasse.
28. This investigation has been further affected by the MOJ's delay in providing repeatedly requested clarification about the chronology of the correspondence and the MOJ's internal reference numbers, together with confirmation of the date of the internal review. Whilst the date of the internal review and the referencing issue have now been resolved, the Commissioner has still not received confirmation that the chronology of the correspondence in this notice reflects the MOJ's records which he finds very disappointing. However, in spite of this, the Commissioner is satisfied that the main issue under consideration in this notice, ie the MOJ's reliance on section 1(3) of FOIA, has been properly considered.

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@hmcts.gsi.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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF