

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 August 2016

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 (MoJ) relating to requests for early release from prison on compassionate grounds. The MoJ cited section 12 of the FOIA (cost of compliance exceeds the appropriate limit).
2. The Commissioner's decision is that the MoJ has correctly applied section 12.
3. She requires no steps to be taken as a result of this decision.

Request and response

4. On 31 December 2015 the complainant wrote to the MoJ and made the following request for information under the FOIA:

"1) How many times has Early Release on Compassionate Grounds [PSO 4700] and [PSO 6000] been: "requested/denied and granted" since 2009. And under what conditions/for what reasons?"

2) How many times has the Royal Prerogative of Mercy been granted since 2006, and how many requests made?"

3) In an Emergency Situation pertaining to Early Release on Compassionate Grounds, to who should a Governor instruct/liaise with [Is it a minister?]"

5. The MoJ responded on 31 March 2016, advising that it received the request on 15 March 2016. It confirmed that it held some of the requested information. However, it said that because the cost of complying with the request would exceed the FOIA limit, it would not be taking the request further. In that respect it cited section 12 of the FOIA (cost of compliance exceeds the appropriate limit).
6. The MoJ provided an internal review on 11 May 2016 maintaining that position. In providing the complainant with advice about how to refine his request so that it might fall inside the cost limit, the MoJ acknowledged that it had failed to provide that advice in its earlier correspondence.
7. On a discretionary basis, outside of the FOIA, the MoJ provided details in respect of part (3) of the request.

Scope of the case

8. The complainant contacted the Commissioner on 24 May 2016 to complain about the way his request for information had been handled. He disputes that it would be time-consuming for the MoJ to provide the information he has requested.
9. The analysis below considers the MoJ's application of section 12 of the FOIA to the information in the scope of parts (1) and (2) of the request.

Reasons for decision

Section 12 cost of compliance

10. 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".

11. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (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?

12. In response to the request in this case, the MoJ explained that, initially, applications for compassionate release are dealt with by individual prison establishments and then, if the criteria are met, referred to the Public Protection Casework Section (PPCS) within the National Offender Management Service for consideration. It told the complainant:

"In this instance, to provide you with the information required, we would have to ask staff in all establishments to manually search for all such applications for the years you have requested. This is because these data are not recorded centrally in a readily accessible electronic format".

13. In support of his request, the complainant told the MoJ that the data he is seeking:

"...has often been referred to as 'used infrequently'".

14. He told the MoJ that that statement gives the impression that the data must have been collated at some point.

15. The MoJ explained to the complainant:

"You asked for data from 2009 to present and any prisoner who has been in custody during that period, including those who have since been released, could have applied for early release. This means that many thousands of records would need to be checked in order to provide the information you have requested".

16. In a case such as this, the Commissioner's role is simply to decide whether or not the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.

17. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) of the fees regulations 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.

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

19. During the course of the Commissioner's investigation, the MoJ was asked to provide more detail in respect of its application of section 12 including a description of the work that would need to be undertaken in order to provide the requested information.
20. In its substantive submission, the MoJ provided the Commissioner with arguments in support of its citing of section 12. It confirmed that while requests that are granted or refused by the PPCS are recorded centrally, requests that are received and refused by individual prison establishments are not centrally recorded. The MoJ also confirmed that there are 117 prison establishments in England and Wales and that it had calculated the costs based on a best-case scenario and considered the minimum time it would take for each establishment to carry out the necessary work.
21. It told the Commissioner:

"A conservative estimate means it would take each establishment 29 minutes to locate and extract the information held. Multiply this by the 117 establishments it would take 3,393 minutes overall. At a rate of £25 per hour this would result in a total cost of £1,413.75".
22. The Commissioner recognises that there is no statutory requirement under section 17 for the refusal notice to include an estimate of the costs involved, or any other explanation of why the cost limit would be exceeded. However, in the Commissioner's view, it is beneficial to a public authority to do so because, for example, it may enable the requestor to assess the reasonableness of the estimate.
23. In this case, although the MoJ told the complainant that it considered that complying with the request would exceed the cost limit, and referred to 'many thousands of records' needing to be checked, the Commissioner is disappointed to note that it failed to provide the complainant with an estimate of the actual work involved in complying with his request.
24. In the absence of an estimate of the work involved, or a detailed explanation as to why the exemption applies, the Commissioner considers it understandable that the complainant finds the MoJ's response unsatisfactory.
25. However, from the evidence she has seen during the course of her investigation, the Commissioner is satisfied that the MoJ has now provided adequate explanations to demonstrate that it would exceed the appropriate limit to locate, retrieve and extract the requested information. Section 12(1) does therefore apply and the MoJ is not required to comply with the request.

Right of appeal

26. 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

27. 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.
28. 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
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