



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(INFORMATION RIGHTS)**

**Appeal No: EA/2014/0145**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50530729  
Dated: 29 May 2014**

**Appellant: Colin Parker**

**Respondent: The Information Commissioner**

**Heard on the papers: Manchester**

**Date of Hearing: 24 October 2014**

**Before**

**Chris Hughes**

**Judge**

**and**

**Malcolm Clarke and Dave Sivers**

**Tribunal Members**

**Date of Decision: 26 October 2014**

**Date of Promulgation: 27 October 2014**

**Subject matter:**

Freedom of Information Act 2000

## **REASONS FOR DECISION**

### Introduction

1. On 1 October 2013 the Appellant in these proceedings, Mr Parker, wrote to the Office for Judicial Complaints (now the Judicial Conduct Investigations Office “JCIO” – an office of the Ministry of Justice “MOJ”) making a request under FOIA for:-

*“... information on the number of complaints arising from small claims made in the County Court and made to the Office for Judicial Complaints over the last two years and its statistical and financial analyses.”*

2. The public authority requested clarification of the meaning of the request to try to understand the ambit of the request. Mr Parker replied:-

*“The scope of my request is small claims in the County Court, the complaints to you arising therefrom, and the resulting analyses of these. I intended that my request would include contextualisation and clarification of complaints where the judge’s personal misconduct led to successful appeals”*

3. In the light of his reply the JCIO replied on 18 November 2013 explaining why it would not be supplying the information. The letter incorrectly informed Mr Parker that “the Office does not have a publication scheme”. The letter explained that there were in excess of 3800 complaints made during the relevant period and in order to extract the information each file would need to be examined individually to extract the information requested. An estimated time to examine each file of 10 minutes resulted in a cost to the MOJ well in excess of the £600 level at which the Ministry was entitled to refuse to supply information on the grounds of excessive costs. The MOJ stated: “.. we cannot even suggest you file a refined request as even reducing the time period to 1 year would not bring the figure within the cost limit.” The position was maintained on review.
4. Mr Parker complained to the Respondent in these proceedings, the Information Commissioner (“ICO”). The scope of the investigation which the

ICO carried out was how the MOJ had handled the request in terms of its reliance on the costs of compliance and how it had assisted Mr Parker.

5. During the course of the investigation the MOJ provided further information including that the records of complaints were held in paper files of varying length which would require individual searches to establish the information which Mr Parker had requested. It explained set out how it had attempted to assist Mr Parker and the limitations of what was possible in refining the field for searching while still extracting the information which Mr Parker sought. On 29 May the ICO issued his report. He found that the MOJ was entitled to rely on S12(1) (“exemption where cost of compliance exceeds appropriate limit”) and that it had provided appropriate advice and assistance to Mr Parker.
6. Mr Parker appealed to this Tribunal on 12 June. His appeal document is ten pages long and somewhat discursive; it is critical of both the ICO and the MOJ. He asserted that the ICO failed to deal with the absence of a publication scheme, that there was inadequate evidence of the costs of providing the information, inadequate evidence of support and advice. He provided a calculation which he considered demonstrated that the costs limit would not be reached. He complained that the decision notice did not deal with a letter he had subsequently written to the JCIO.
7. In his reply the ICO maintained the position set out in the decision notice. He confirmed that the MOJ had a publication scheme but that since the information requested was not published it would not have helped Mr Parker with his request and was not a matter within the Tribunal jurisdiction.

#### The questions for the Tribunal

8. The ICO made his decision on the application of s12 and s16 to the handling of the request by the JCIO of the MOJ. Mr Parker has disputed his conclusions and asserted that there was inadequate evidence for the ICO to reach those conclusions. He asserts that the duty to provide assistance was ignored by the JCIO and that the cost limit would not be breached.
9. S16(1) provides:-

*“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.”*

10. In handling the request the JCIO first attempted to clarify the request so that it could answer the question. Having done that it then explained the cost issue and the scale of the information held. It continued (letter 18/11/2013 bundle page 29/30):-

*“If following an investigation, a complaint regarding a judicial office holder was upheld, it would be very rare if this justified an appeal being lodged. Even if it were, this Office would not be made aware of any appeal being made or such outcome.*

.....

*Unfortunately we cannot even suggest you file a refined request as even reducing the time period to 1 year would not bring the figure within the cost limit.”*

11. The Tribunal is satisfied that this response was appropriate and provided appropriate assistance to Mr Parker which would enable him to better understand the nature of the information held and the difficulties in obtaining the information he wanted. The Tribunal is satisfied that the JCIO provided the assistance which it was reasonable for it to provide under s16(1); he was given the costs information which he could have used to recast his request into one which could be met within the costs limit.
12. The second issue is whether the costs limit would be reached by the request. In his appeal (bundle page 17, paragraph 9) he argued:-
- “... A one year time scale would cost approximately 2000 complaints X 10 mins which is three hundred and fifty pounds.”*
13. If this calculation was accurate then this would be a significant blow against the position of the JCIO and ICO. However it is not. 10 minutes for each complaint and 2000 complaints, gives a time commitment of 20,000 minutes which is 333 hours – not three hundred and fifty pounds. However the cost of each hour of staff time is £25. This gives a total cost of £8,333 for Mr Parker’s

request reduced to one year (using Mr Parker's figure of slightly more than half the number of complaints recorded over a two year period)..

14. The costs are far higher than the limit specified in s12. The evidence is that the time to search each paper file for this information would be significant – an estimate of 10 minutes is a reasonable estimate. The Tribunal is satisfied that the estimate provided by the MOJ is robust.

Conclusion and remedy

15. The Tribunal is therefore satisfied that the ICO's decision notice is correct in law and the appeal must fail.

16. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 26 October 2014