



**Appeal number: EA/2016/ 0205**

**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
INFORMATION RIGHTS**

**EDMUND BRUTON**

**Appellant**

**- and -**

**THE INFORMATION COMMISSIONER**

**Respondent**

**TRIBUNAL: JUDGE ALISON MCKENNA  
Ms MARION SAUNDERS  
Mr JOHN RANDALL**

**Determined on the papers, the Tribunal sitting in Chambers on 8 February 2017**

## DECISION

1. The appeal is dismissed.

## REASONS

### *Background to Appeal*

2. The Appellant made a request to the Ministry of Justice (“MoJ”) for information relating to the number of applications for early release from prison on compassionate grounds.
3. MoJ refused the information request in reliance upon s. 12 of the Freedom of Information Act 2000 (“FOIA”), because it estimated that the costs of compliance with the request would exceed the appropriate financial limit. This is set at £600 for central government departments. MoJ estimated that complying with the Appellant’s information request would cost £1,413.74.
4. The Information Commissioner issued Decision Notice FS50631241 on 3 August 2016, upholding MoJ’s reliance on s. 12 FOIA.

### *Appeal to the Tribunal*

5. The Appellant’s Notice of Appeal dated 25 August 2016 submitted that, as decisions to grant compassionate release requests are made centrally, a central record of the information must be held and it would not be necessary to ask all 117 prisons for their records, as MoJ had stated.
6. The Information Commissioner’s Response dated 21 September 2016 maintained the analysis as set out in the Decision Notice. It responded to the grounds of appeal by stating that decisions to *grant* compassionate release are taken centrally, but applications are initially made to the prison governor so that if they are refused there, they are not referred to the Public Protection Casework Section for a final decision. This means that there is a central record of applications granted but that the details of applications made are held in individual prisons. The Information Commissioner emphasised that MoJ had suggested to the Appellant that he could refine his request to one for information about compassionate releases which had been granted, rather than requesting the number of applications made, as this would reduce the time and cost involved in answering the request.
7. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The Tribunal considered an agreed open bundle of evidence comprising 48 pages, including submissions made by both parties, for which we were grateful. There was no closed material.

### *The Law*

8. A public authority may rely on s. 12 FOIA to refuse an information request where it estimates that the cost of complying with the request would exceed the limit set by Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. For MoJ, the limit is £600, estimated on the basis of £25 per hour.

9. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA, as follows:

*“If on an appeal under section 57 the Tribunal considers -*

*(a) that the notice against which the appeal is brought is not in accordance with the law, or*

*(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*

*the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.*

*On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.”*

10. We note that the burden of proof in satisfying the Tribunal that the Commissioner’s decision was wrong in law or involved an inappropriate exercise of discretion rests with the Appellant.

### *Conclusion*

11. MoJ explained to the Information Commissioner how it had reached its estimate of the costs of compliance in this case. This was that, on a conservative estimate, it would take 117 prison establishments 29 minutes each to locate and extract the information held.

12. In her Response, the Information Commissioner queried whether all of the activities included in the MoJ’s 29 minute estimate were activities which fell properly within the Fees Regulations. Although she doubted that “quality assuring data” for 10 minutes at each establishment was warranted, we note that the estimated cost was above the appropriate limit even if that part of the estimate was deducted. Without knowing what work was included in that term it is difficult us to form a view.

13. The Appellant’s appeal is made on the understanding that the information he seeks is held by MoJ centrally. This is based only on his opinion, whereas all the evidence we have seen is to the contrary. Accordingly, we are satisfied on the balance of probabilities that the Information Commissioner was correct to accept MoJ’s stated case that information about the number of applications is held in each prison, but that information about the number of compassionate releases actually

granted is held centrally. The Appellant may therefore wish to make a fresh information request in different terms. We are also satisfied that MoJ's estimate of the time and costs of complying with the Appellants request was reasonable and that it exceeded the appropriate limit so that s. 12 FOIA was correctly applied.

14. For the above reasons we are satisfied that the Decision Notice in this case is in accordance with the law and that the appeal should be dismissed.

**ALISON MCKENNA**

**DATE: 10 February 2017**

**PRINCIPAL JUDGE**

**Date Promulgated: 14 February 2017**