



# Ministry of **JUSTICE**

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**Our Reference: 82534**

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30 May 2013

## **Freedom of Information Request**

Dear Ms Jennings,

Thank you for your letter of Tuesday 30<sup>th</sup> April 2013, in which you asked for the following information from the Ministry of Justice (MoJ):

1. How have you calculated that paying legal aid providers only if permission for judicial review is granted will result in civil legal aid providers receiving approximately £1 million per annum less?
2. Of the 515 cases in 2011/12 that ended after permission was refused without recording a substantial benefit to the client (see paragraphs 3.66 to 3.68 in the consultation document), what was the aggregate costs to the legal aid fund of these cases?
3. Of the 330 cases in 2011/2012 that ended after permission was refused but a benefit to the client was recorded (see paragraphs 3.66 to 3.68 in the consultation document), how many of these cases made a claim against the fund in CLAIM1? How many of these cases made a claim against the fund in form CLAIM2?
4. Please provide a copy of any information considered and written material produced (including but not limited to reports, minutes, notes memos, email etc) by the MOJ in the preparation of the Impact Assessment and Equalities Impact Assessment (Annex K).
5. In how many civil judicial review cases in each of the last three years (the years to be divided in whatever way the data is most readily accessible) did the court certify paper applications for permission as being Totally Without Merit? Please give any breakdown if known between those of such cases that were classified by the courts as “immigration and Asylum” and those that were categorised as “Other [categories of judicial review case]”?

Your request has been handled under the Freedom of Information Act 2000 (FOIA).

I can confirm that the Ministry of Justice holds some of the information that you have asked for. However, because the cost of complying with your request would exceed the limit set by the FOIA, I am afraid that on this occasion I will not be taking your request further. The law allows us to decline to answer FOIA requests when we estimate that it would cost us more than £600 (equivalent to 3½ working days' worth

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of work, calculated at £25 per hour) to identify, locate, extract, and then provide the information that has been asked for.

You can find out more about Section 12(1) by reading the extract from the Act and some guidance points we consider when applying this exemption, attached at the end of this letter.

You can also find more information by reading the full text of the Act, available at <http://www.legislation.gov.uk/ukpga/2000/36/section/12>.

Although we cannot answer your request at the moment, we might be able to answer a refined request within the cost limit. Therefore, you may wish to consider refining your request. The greatest estimated cost stems from part 4 of your request. In order to provide you with this information, every official involved with the Impact Assessment and Equalities Impact Assessment, would need to conduct a search of their emails and files going back a number of months. Following consultation with the staff involved, it is estimated that this would entail about 15 staff, each spending an estimated average of between 2 and 3 hours looking through their emails and files to locate all of the information.

Although I have refused your request under s. 12(1); and, as such, I am not obliged under the FOIA to provide any information, I do provide some information on a discretionary basis outside of our obligations under the FOIA, which I believe that you might find useful.

In particular, you asked what was the aggregate cost to the legal aid fund of the 515 cases in 2011/12 that ended after permission was refused without recording a substantial benefit to the client. The aggregate cost to the Legal Aid fund of these cases was £1.68 million, which includes disbursements and VAT.

You also asked of the 330 cases in 2011/2012 that ended after permission was refused but a benefit to the client was recorded, how many of these cases made a claim against the fund in CLAIM1 and how many of these cases made a claim against the fund in form CLAIM2. 330 included a CLAIM1 claim, and 34 included a CLAIM2 claim.

Finally, you asked how many civil judicial review cases in each of the last three years (the years to be divided in whatever way the data is most readily accessible) did the court certify paper applications for permission as being Totally Without Merit, broken-down, if possible, between those cases that were classified by the courts as "immigration and Asylum" and those that were categorised as "Other [categories of judicial review case]" The information you have requested is not held going back three years. However, officials in HMCTS did confirm that they do hold data on paper applications considered between 01/10/2012 and 03/04/2013 and confirmed that 1,264 were declared Totally Without Merit, of which 1,170 were for immigration and asylum and 94 were for other categories.

I am sorry that on this occasion I have not been able to answer your request in full, but I do hope that the information that I have provided on a discretionary basis is of use to you. You have the right to appeal our decision if you think it is incorrect. Details can be found in the 'How to Appeal' section attached at the end of this letter.

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### Disclosure Log

You can also view information that the Ministry of Justice has disclosed in response to previous Freedom of Information requests. Responses are anonymised and published on our on-line disclosure log which can be found on the MoJ website:

<http://www.justice.gov.uk/information-access-rights/foi-requests/latest-moj-disclosure-log>

The published information is categorised by subject area and in alphabetical order.

I will also email a copy of this letter to your email address as supplied:  
[c.jennings@publiclawproject.org.uk](mailto:c.jennings@publiclawproject.org.uk).

Yours sincerely,

**MATTHEW GEWAN**

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## How to Appeal

### Internal Review

If you are not satisfied with this response, you have the right to an internal review. The handling of your request will be looked at by someone who was not responsible for the original case, and they will make a decision as to whether we answered your request correctly.

If you would like to request a review, please write or send an email to the Data Access and Compliance Unit within two months of the date of this letter, at the following address:

Data Access and Compliance Unit (10.34),  
Information & Communications Directorate,  
Ministry of Justice,  
102 Petty France,  
London  
SW1H 9AJ

E-mail: [data.access@justice.gsi.gov.uk](mailto:data.access@justice.gsi.gov.uk)

### Information Commissioner's Office

If you remain dissatisfied after an internal review decision, you have the right to apply to the Information Commissioner's Office. The Commissioner is an independent regulator who has the power to direct us to respond to your request differently, if he considers that we have handled it incorrectly.

You can contact the Information Commissioner's Office at the following address:

Information Commissioner's Office,  
Wycliffe House,  
Water Lane,  
Wilmslow,  
Cheshire  
SK9 5AF

Internet address: [https://www.ico.gov.uk/Global/contact\\_us.aspx](https://www.ico.gov.uk/Global/contact_us.aspx)

## **ADDITIONAL INFORMATION ABOUT SECTION 12(1)**

We have provided below additional information about Section 12 of the Freedom of Information Act. We have included some extracts from the legislation, as well as some of the guidance we use when applying it. We hope you find this information useful.

### **The legislation**

#### **Section 1: Right of Access to information held by public authorities**

- (1) Any person making a request for information to a public authority is entitled—
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
  - (b) if that is the case, to have that information communicated to him.

#### **Section 12: Cost of compliance exceeds appropriate limit**

(1) 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.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

### **Guidance**

#### **The appropriate limit**

The 'appropriate limit', for the purposes of section 12 of the Freedom of Information Act has been set at:

- £600 for central government and Parliament.
- The hourly rate is set at £25 per person per hour.

The following activities may be taken into account when public authorities are estimating whether the appropriate limit has been exceeded.

- determining whether it holds the information requested

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- locating the information or documents containing the information
- retrieving such information or documents
- extracting the information from the document containing it.

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