



Government Legal Department

Litigation Group
One Kemble Street
London
WC2B 4TS

T 020 7210 3000

DX 123242 Kingsway 6

www.gov.uk/gld

Your ref:

Our ref: Z1708545/JHF/B5

9 May 2017

ICO & DEFRA

Appeal No: EA/2017/0030

I write further to the above matter, appealing the decision of the Information Commissioner.

Please note that my client filed a response to the appeal on Friday 28 April 2017. While my client remains of the view that the original refusal decision was correct, for the reasons set out in the response, my client wishes to put forward a possible resolution for this matter, without the need for it to proceed to determination by the Tribunal.

The Original Position

As you are aware, my client's original refusal relied on s12 of the Freedom of Information Act 2000 ("FOIA") which exempts the public authority from the obligation to comply with the request if authority estimates that the cost of complying with the request would exceed the appropriate limit. In this case, the appropriate limit is set at a cost of £600, based on a notional £25 hourly rate.

In our response to the Information Commissioner dated 12 September 2016, my client assessed the work required to fulfil your request as being in excess of 27 hours. For convenience, I attach a copy of this letter which sets out how this estimate was reached.

The Current Position

In recent months, and after your request was handled, a new business requirement has been identified from within my client's business that necessitated the development team building a new reporting tool. This is now in use, and it is considered that it will assist in fulfilling your request, and will reduce the run time for the work. There have also been a number of upgrades which have enhanced performance of our systems.

None of these factors applied at the time that your request was received by us. However, if an identical request were now re-submitted, the two combined mean that our estimate of time to comply with the request would now fall from 27 hours to 20.5 hours, which is within the appropriate limit. In short: if you were to re-submit your request now (and providing of course it was in identical terms), the changes we have made to our systems would mean that the provisions of s.12 FOIA would not apply. Given this, your appeal against our previous use

Lee John-Charles - Head of Division

Gary Howard - Deputy Director, Team Leader Litigation B5



of section 12 (which we maintain was correct at the time) would now serve no purpose to you and / or would be redundant. If your current appeal succeeded, the effect would be that the Tribunal would order my client to reconsider your request but not applying section 12 – and that is precisely what we are now prepared to do in light of the changed circumstances above.

Proposal

While, therefore, my client stands by the original decision, and takes that view that the original time estimate was correct on the basis of the facilities available to it at the time, it accepts that the reason for refusal of your original decision would no longer apply if you were now to re-submit your request (in exactly the same terms as your original request on 9 May 2016). In order to avoid further and wholly unnecessary expenditure of time on the part of the parties, my client therefore proposes the following solution;

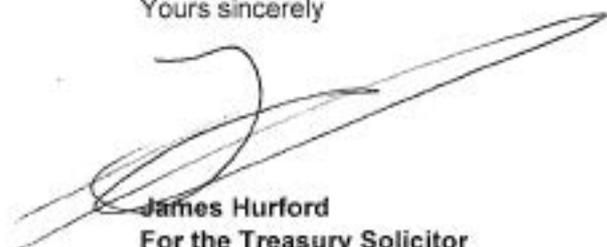
1. You agree to withdraw the current appeal EA/2017/0030;
2. We agree not to apply section 12 to your request if you re-submit it in identical terms to that which was submitted on 9 May 2016. In that event, your request will be reconsidered within the usual FOIA timescale of 20 working days.

As explained above, this solution would give you the remedy you are seeking, without the need for further time and expense in connection with the present appeal.

I enclose a draft consent order for your consideration. If you are content with this proposal, I would be grateful if you could sign it and return a scanned copy to me for lodging at the Tribunal.

Please contact me if you wish to discuss this matter further.

Yours sincerely



James Hurford
For the Treasury Solicitor

D 02072101464
F 02072103001
E james.hurford@governmentlegal.gov.uk

Cc First Tier Tribunal; Information Commissioner

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