

The Campaign for Freedom of Information

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Penny Baab
Monitoring and Assessment Team
UK Statistics Authority



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Dear Ms Baab,

Freedom of information statistics

Thank you for your enquiry about our views of the Ministry of Justice's freedom of information statistics.

We are concerned about the quality of the statistics describing the delays by central government bodies in dealing with requests under the FOI Act or the Environmental Information Regulations (EIRs). These are described in Tables 7 and 9 of the MOJ's 2008 Annual Report on the Operation of the FOI Act.

Public interest extensions

Public authorities must respond to requests within 20 working days. An extension, until "such time as is reasonable in the circumstances" is permitted where an authority is considering citing an FOI exemption to which the Act's public interest test applies. The Information Commissioner has advised that authorities should nevertheless aim to deal with requests involving the public interest test within the normal 20 working day period. Where an extension is needed, the ICO says it should not exceed a further 20 working days. [ICO, *Freedom of Information Good Practice Guidance No. 4*, 22.2.07]

The length of the public interest extensions taken by central government bodies are described in Table 9 of the MOJ's 2008 Annual Report. This shows the total number of cases where an extension was taken and the number of cases in which the extension was: less than 5 days, 6-10 days, 11-15 days, 16-20 days, 21-30 days, 31-40 days and more than 40 days. However, no further information is provided about those cases taking more than 40 days.

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Government departments took extensions of more than 40 working days - more than double the ICO's maximum level - in 267 cases in 2008, that is in 21.5% of all completed cases involving a public interest extension. Yet for this large group of the most severely delayed cases no indication is given of the length of the extensions. It is not clear how many involved delays of weeks, months or even years. The failure to monitor the most serious delays helps to obscure the extent of the problem and undermine efforts to address it. Authorities have an incentive to improve the speed of their response to requests where the extension is up to 40 working days, as such improvements will be reflected in the statistics. But they may have little incentive to address the worst cases. If, for example, a department reduced the time taken to complete the most delayed cases from, say, 8 months to 4 months, this would have no impact on the statistics, since these cases will still fall into the "more than 40 working days" group.

Internal reviews

The same pattern can be found in the statistics relating to internal reviews. A dissatisfied requester cannot normally complain to the Information Commissioner until the authority has reviewed the disputed decision. The ICO recommends that these internal reviews should normally be completed within 20 working days and should never exceed 40 working days. [*ICO, FOI Good Practice Guidance No. 5, V. 1, February 2007*]

The actual time taken on internal review by government departments is shown in Table 7 of the 2008 report. This gives the number of reviews taking 10 days or less, 11-20 days, 21-40 days, 41-60 days and more than 60 days. Again there is no further information on the final, most serious group, although this contains more than 19% of all completed reviews (114/588). We do not know how many of these exceeded the 60 working day mark by a few days and how many by months or even years. This is not fanciful: one internal review, by the National Offender Management Service, is known to have taken 29 months. [*ICO, Practice Recommendation FPR0179447.*] This inadequate monitoring again protects the worst cases from scrutiny and pressure to improve.

Both Table 7 and Table 9 are subject to a further major defect. Both refer to the number of requests made during 2008 whose outcome was known by February 2009. The MOJ has confirmed to us that those cases completed *after* February each year have not been included in the following year's statistics either but have simply been excluded from the monitoring altogether. We regard this as completely unacceptable. Some of these cases may involve delays of, say, 3 months (eg those requests made in December 2008 which had not been answered by February 2009), which is itself a substantial delay. However, others may be far more serious, eg requests made in January 2008 and still not answered by February 2009.

To allow nearly 20% of all internal reviews, and almost the same proportion of those cases involving a public interest extension, to be excluded from the

published statistics is a fundamental and unacceptable failure of the monitoring arrangements.

A bizarre consequence is that an apparent improvement in the statistics could be achieved by increasing the number of cases that are so badly delayed that they are not included in the statistics at all.

We highlighted these problems in a report which we published in July 2009 "Delays in Investigation Freedom of Information Complaints" (<http://www.cfoi.org.uk/pdf/foidelaysreport.pdf>) We understand that the MOJ has recently been reviewing its FOI statistics and hope that these shortcomings will now be addressed.

Finally, your note asks how satisfied we are with the way the MOJ has engaged with us over these issues: we have always found them helpful.

Yours sincerely,

Maurice Frankel
Director