

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 December 2019

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information relating to immigration outcomes.
2. The Home Office refused to comply with the request on the basis that to do so would exceed the appropriate limit in costs set by section 12(1) (cost of compliance) of the FOIA.
3. The Commissioner's decision is that the Home Office correctly applied section 12(1) and found that there is no breach of section 16(1) (duty to provide advice and assistance) of the FOIA.
4. She requires no steps to be taken as a result of this decision.

Request and response

5. On 1 May 2019, the complainant wrote to the Home Office and requested information in the following terms:

"Please provide the total number applications and rejections (represented as separate figures) for the following immigration outcomes amongst recognised victims of trafficking since 2016:

- Discretionary leave
- Limited leave to remain
- Humanitarian protection"

6. The request was made via the 'whatdotheyknow' website.
7. The Home Office responded on 31 May 2019. It refused to provide the requested information. It cited the following exemption as its basis for doing so:
 - section 12 (cost of compliance).
8. Following an internal review, the Home Office wrote to the complainant on 12 July 2019 maintaining its original position, clarifying that section 12(1) of the FOIA applied. It also provided advice in accordance with section 16 of the FOIA.

Scope of the case

9. Following earlier correspondence with the Commissioner, on 14 October 2019 the complainant confirmed the nature of her complaint about the way her request for information had been handled.
10. She disputed the process that the Home Office considered necessary in order to respond to the request, telling the Commissioner:

"... that the methodology outlined above is needlessly laborious and that easier means of extracting the requested data have been well-documented in similar FOI responses by the Home Office".
11. She also told the Commissioner:

"I can confirm that I have not restricted my request as per the pro forma advice issued by the Home Office under Sec 16 of the Freedom of Information Act. This is because data of a highly similar nature has been disclosed as a result of other Freedom of Information requests ...".
12. During the course of her investigation, the Home Office told the Commissioner that, "due to a communication error", the original response it had provided to the complainant had quoted the incorrect method and calculations which would be used to gather the information.
13. The Home Office confirmed, however, that while its original estimate of 130 hours "was given erroneously", its revised estimate of "around 36 hours" would still exceed the appropriate limit.
14. The analysis below considers the Home Office's application of section 12(1) of the FOIA to the requested information.

15. The Commissioner has also considered whether the Home Office provided appropriate advice and assistance under section 16 of the FOIA.

Reasons for decision

Section 12 cost of compliance exceeds appropriate limit

16. Section 12(1) of the FOIA states that:

"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".

17. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours in this case.

Would complying with the request exceed the appropriate limit?

18. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) of the fees regulations states that an authority can only take into account the costs it reasonably expects to incur in:

- determining whether it holds the information;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

19. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.

20. In correspondence with the complainant, the Home Office told her:

"Taking the scope of your request we estimate there would be approximately 4000 cases that would require cross referencing to collate the information required".

21. In its submission to the Commissioner, the Home Office confirmed its view that approximately 4,000 cases were involved.

22. By way of background, the Home Office told the Commissioner that the requested information:

"... is held on the Home Office's Case Information Database (CID). This is the central live operational database in which information is held regarding all UK migrants or foreign nationals".

23. The Home Office explained the nature of the information that is held on the database. It advised, however:

"... Not all of the information held on it can be cross referenced with other fields, and some information is held in a format not easily searched – i.e. held in text fields".

24. With regard to the complainant's view that data of a similar nature had been disclosed as a result of other FOIA requests, the Home Office acknowledged that:

"... on the face of it, it may appear that the Home Office has previously responded to similar requests...".

25. However, it explained that while data on asylum claims and outcomes for victims for trafficking is already provided, data on other immigration applications and their decisions is not.

26. In support of its application of section 12 in this case, the Home Office told the Commissioner that the outcomes requested:

"...feature in a multitude of different visa and immigration cases within CID and in a multitude of variations of each outcome".

27. The Home Office advised that it does not have pre-made or regular extractions of the data within the scope of the request.

28. It explained that requests of the type under consideration in this case:

"... are very time intensive, due the sheer amount of data involved needing to be extracted from CID and then data matched".

29. It acknowledged, however, that more specific requests, for example regarding a single case outcome or a single visa type, provide a narrower aspect of the data required, which takes less time to produce and process.

30. The Home Office confirmed its view that the information requested in this case was not readily identifiable and that to check each record for matching applications and their respective outcomes would require multiple extracts from multiple data sources within CID.

31. It stated that it would take around 36 hours:

"... to write the code, apply the business rules and to extract and process the data to find the requested figures".

32. The Home Office confirmed that while the timings were estimations:

"... they are consistent with routine activity and are conservative estimates. The Department has not carried out a sampling exercise, this response is based on substantial operational experience dealing with data requests on an almost daily basis".

33. The Home Office provided the Commissioner with details of its calculation in support of its estimate that it would take more than 24 hours to respond to the request in this case.

The Commissioner's view

34. When dealing with a complaint to her under the FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, the Commissioner's role is simply to decide whether the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.

35. In essence, therefore, this case turns on whether the estimate provided by the Home Office was reasonable.

36. The Commissioner considers that a reasonable estimate is one that is *"...sensible, realistic and supported by cogent evidence"*.

37. In this case, the Home Office presented arguments which focused on it having to check approximately 4,000 cases.

38. From the evidence she has seen during the course of her investigation, the Commissioner is satisfied that the Home Office has demonstrated that it would exceed the appropriate limit to locate, retrieve and extract the requested information.

39. Section 12(1) does therefore apply and the Home Office is not required to comply with the request.

Section 16 advice and assistance

40. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request *"so far as it would be reasonable to expect the authority to do so"*.

41. In her guidance *'Requests where the cost of compliance exceeds the appropriate limit'*¹, the Commissioner considers the provision of advice and assistance. She states:

"In cases where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:

- either indicate if it is not able to provide any information at all within the appropriate limit; or*
- provide an indication of what information could be provided within the appropriate limit; and*
- provide advice and assistance to enable the requestor to make a refined request".*

42. In general, where section 12(1) is cited, in order to comply with this duty, a public authority should advise the requester as to how their request could be refined to bring it within the cost limit.

43. The Commissioner considers that the advice the Home Office initially provided to the complainant was generic advice. She accepts, however, that following the internal review, it advised the complainant with regard to limiting the scope of her request such that it may be possible to provide her with information.

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

Right of appeal

44. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

45. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Samantha Bracegirdle
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