

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 26 February 2020

Public Authority: House of Commons
Address: London
SW1A 0AA

Decision (including any steps ordered)

1. The complainant requested a list of the companies and organisations that have been issued with parliamentary passes. The House of Commons refused the request on the basis that compliance would exceed the cost limit at section 12 of the FOIA.
2. The Commissioner's decision is that the House of Commons was entitled to refuse the request in reliance on section 12 of the FOIA. No further steps are required.

Request and response

3. The complainant made a number of requests to the House of Commons regarding details of which companies and organisations currently hold parliamentary passes. The House of Commons advised the complainant that its database contained details of approximately 15,200 organisations. It explained that it was unable to produce a list of current passholders because of the way the information was held.
4. The complainant submitted the request that is the subject of this complaint to the House of Commons on 20 November 2018:

Could you please then disclose this full list of 15,200 organisations to me, on the understanding these are organisations that have ever held passes, rather than those that currently do?
5. The House of Commons responded on 21 November 2018. It confirmed that it held the information, refusing the request on cost grounds and citing section 12 of the FOIA.

6. The complainant requested an internal review on 22 November 2018, and the House of Commons communicated the outcome of that review to him on 8 January 2019. The House of Commons upheld its reliance on section 12 and suggested that the complainant consider submitting a refined request. For example it suggested that the complainant could request information relating to a particular organisation.

Scope of the case

7. On 16 January 2019 the complainant wrote to the Commissioner to complain about the House of Commons' response to his request. The complainant noted the House of Commons' suggestion that he refine his request, however he clarified that he wished to understand the range of organisations who have been given passes, rather than individual organisations.
8. Moreover the complainant did not accept the explanation provided by the House of Commons. He considered it unlikely that any database would not allow the exporting or extraction of the requested information.

Reasons for decision

Section 12: cost limit

9. Section 12(1) of the FOIA provides that a public authority is not obliged to comply with a request for information if the authority estimates that complying with the request would exceed the appropriate limit, known as the cost limit. A public authority may rely on section 12 in respect of the duty to confirm or deny that the requested information is held, or the duty to communicate information to the applicant.
10. Section 12 of the FOIA should be considered with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken in:
 - (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it.

11. Regulation 4(4) states that the authority should calculate the cost of complying with a request by multiplying the time estimated by £25 per hour. If the authority considers that complying with the request would therefore cost more than the appropriate limit, it is not obliged to comply with the request. In the case of the House of Commons the appropriate limit is £600, which equates to 24 hours.
12. The House of Commons explained to the complainant, and to the Commissioner, that the database was designed to hold information about vetted individuals rather than organisations or companies. This meant that the information held on the system was organised by individual rather than company, and records were updated on an individual basis.
13. The House of Commons further explained that it was technically unable to run a report of all passholders. In order to comply with the request, it would need to run a large number of manual reports, each of which would be limited to ten results. Therefore the House of Commons would need to run approximately 1500 searches, which it calculated would greatly exceed the 24 hour limit.
14. The House of Commons provided the Commissioner with screenshots of the database to demonstrate how information was accessed on an individual basis. It set out that information about companies or organisations was linked to an individual record and was not searchable as a field in its own right. It also provided the results of a sample search as described above, ie returning ten results.
15. The Commissioner accepts that the House of Commons would need to run just over 1500 manual searches, and in order to fall within the cost limit each search would need to take under one minute to complete. Having examined the screenshots and explanation provided by the House of Commons the Commissioner accepts that each search would take more than one minute to complete. Accordingly she accepts the House of Commons' position that it is unable to export the requested information from the database within the 24 hour cost limit.
16. The complainant maintained that the House of Commons ought to be able to obtain the requested information. He said that he had never come across a database that would not allow data to be exported. The House of Commons clarified that it was technically possible to

export information from the database, but it did not have the necessary technical expertise in-house.

17. Consequently the Commissioner asked the House of Commons whether it had enquired if the external company responsible for maintaining the database could run a search to produce the requested information. The House of Commons stated that the external company was only contracted to maintain the physical elements of the system, and had no contractual obligation to carry out other services. The House of Commons' position was that the FOIA did not require it to ask the external company to carry out services that were outside of its contractual obligations.
18. The Commissioner understands that the database was set up to hold individual records relating to individual record holders. The House of Commons can run appropriate reports according to its business needs, but the House of Commons says it has no business requirement to extract the specific information requested by the complainant. The Commissioner therefore accepts that the House of Commons would need to undertake additional steps in order to comply with the request.
19. The Commissioner has published guidance on section 12¹ which says that a public authority may expect to incur costs other than those relating to staff time when carrying out the permitted activities. The key to deciding whether or not these costs can be included in the estimate is whether it would be reasonable to include those charges.
20. However in this case the House of Commons did not provide evidence of expected costs. Rather it declined to obtain a quotation from the external company and claimed that it could not be required to do so under the FOIA.
21. The Commissioner is satisfied that the House of Commons is unable to extract the requested information from the database without substantially exceeding the cost limit at section 12. She is also satisfied that the House of Commons is not obliged to ask a third party to undertake additional work in order to extract the information. Therefore the Commissioner finds that the House of

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

Commons was entitled to refuse the request in reliance on section 12 of the FOIA.

Other matters

22. Although it does not form part of the decision, the Commissioner wishes to comment on the circumstances of the case.
23. The Commissioner is disappointed that the House of Commons declined to ask the external company for a quotation to extract the requested information. In addition to the arguments set out above the House of Commons also set out that the database contained personal data, and the external company would have no lawful basis for processing the personal data in compliance with the General Data Protection Regulation (the GDPR).
24. The Commissioner is of the opinion that public authorities in similar circumstances should, as a matter of good practice, explore the scope for sourcing expertise that may enable compliance with a request. Whether this is reasonable will depend on the circumstances of the case, but in any event the Commissioner acknowledges that it is a matter of good practice rather than a legal requirement.
25. Secondly, to the extent to which the external company would be processing personal data, it would be likely to be acting as a processor rather than a controller under the GDPR. Since a processor acts only according to the instructions of the controller, it is unlikely that the external company would contravene the requirements of the GDPR in collating information on behalf of a public authority.
26. The Commissioner also wishes to point out that, even if section 12 were not engaged, some of the information contained in the database is likely to be sensitive. Much of it will be personal data, ie relating to identifiable living individuals. Consequently, had the House of Commons been able to extract the requested information, it may have decided to refuse the request in reliance on one or more exemption under the FOIA. Therefore the Commissioner cannot say whether the complainant would have been entitled to access the requested information, had section 12 not been engaged.

Right of appeal

27. 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 123 4504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

28. 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.

29. 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

**Sarah O’Cathain
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