

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 May 2022

Public Authority: The Department for Levelling Up, Housing and Communities

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested from the Department for Levelling Up, Housing and Communities (DLUHC) information relating to advice received by the DLUHC from the Civil Service regarding Town Deals.
2. The Commissioner's decision is that the DLUHC was entitled to refuse to comply with the request in accordance with section 12(1) of the FOIA. He also finds that the DLUHC met its obligations under section 16(1) of the FOIA to offer advice and assistance.
3. The Commissioner does not require the DLUHC to take any steps.

Request and response

4. On 25 April 2021, the complainant wrote to the DLUHC and requested information in the following terms:

“I wish to see full copies of all advice received from the civil service regarding the town deals/new town deals.”
5. The DLUHC responded on 21 May 2021 and refused to provide the requested information citing section 12 (cost limit) of the FOIA as its basis for doing so.
6. On 26 May 2021, the complainant wrote to the DLUHC to request an internal review.
7. Following an internal review, the DLUHC wrote to the complainant on 13 July 2021. It maintained its reliance on section 12 of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 13 July 2021 to complain about the way his request for information had been handled.
9. The scope of this case and the following analysis is to determine if the DLUHC has correctly cited section 12(1) of the FOIA in response to the request.

Reasons for decision

Section 12 – cost of compliance

10. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit.
11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for central government public authorities such as the DLUHC.
12. 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 for the DLUHC.

13. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - 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.
14. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/00041*, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
15. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under the FOIA to consider whether there is a public interest in the disclosure of the information.
16. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

The DLUHC’s position

17. As is the practice in a case in which the public authority had cited the cost limit under section 12 of the FOIA, the Commissioner asked the DLUHC to provide a detailed explanation of its estimate of the time and cost of responding to the request.
18. In its initial response to the request and its internal review response the DLUHC did not specify which subsection of section 12 of the FOIA it was relying on to refuse the complainant’s request.
19. However, in its submissions to the Commissioner, the DLUHC confirmed that it was relying on section 12(1) of the FOIA to refuse the request and offered an explanation for how it had calculated that the request exceeded the appropriate limit.

20. The DLUHC stated that it was relying on section 12(1) as whilst it can confirm that it holds some information within the scope of the request, to determine precisely what information it holds within the scope of the request would exceed the appropriate limit.

21. In order to determine what information it holds within the scope of the request, the DLUHC explained that it would need to engage with the following nine teams:

Delivery
Policy design
Strategy
Permanent Secretary's Office
Private Office
Legal
Press Office
Portfolio Office
Area teams

22. With regards to the Delivery team, the DLUHC explained that in order to determine what information that team holds, it would have to search two filing systems containing approximately 12,500 items. The DLUHC estimated that it would take between two and five minutes to assess whether each item fell within the scope of the request. This estimate was based on previous sampling exercises for similar requests.

23. Therefore, the DLUHC calculated that it would take between 417 hours (12,500 items x 2 minutes = 417 hours) and 1042 hours (12,500 items x 5 minutes = 1042 hours) to determine what information the Delivery team holds within the scope of the request.

24. The DLUHC considers that it would have to search every folder containing information relating to Town Deals to determine what information was held by the Delivery team. As 'advice' is a broad term, the DLUHC considers that the search could not be limited to the folders most likely to contain advice about Town Deals as this may result in some information within the scope of the request being missed. Furthermore, the DLUHC explained that the length of time the Town Deals Fund has been running means that some historic items are not filed in an obvious location.

25. In addition to searching the Delivery teams filing systems for information within the scope of the request, the DLUHC explained that it would also need to search the Delivery team's emails for further information.

26. The DLUHC confirmed that it had carried out a sampling exercise of a policy official's sent items for information within the scope of the request. This returned a total of 3000 emails sent within the last 12 months relating to Town deals. The DLUHC calculated that if it were to take 2 minutes to review each of the 3000 emails, in total, it would take 100 hours to search the emails for the requested information (3000 emails x 2 minutes = 100 hours).
27. The DLUHC explained that Delivery team consists of 15 team members. Therefore, it estimated that it would take approximately 1500 hours to search all of the Delivery team's emails for information within the scope of the request (15 team members x 100 hours = 1500 hours).
28. In total, the DLUHC estimated that it would take between 1917 and 2542 hours to search for information within the scope of the request held by the Delivery team.
29. The DLUHC explained that once it had conducted its search of the Delivery team's files and emails for information within the scope of the request, the process would have to be repeated for the other eight teams which may hold information within the scope of the request.
30. In its submissions to the Commissioner, the DLUHC acknowledged that the other eight teams may not hold as much information, relating to Town Deals, as the Delivery team. However, it explained that even if it were to half the number of documents and emails it would have to search for each team, it would still take approximately 959 hours to search each team's documents and emails for the requested information.
31. In total, the DLUHC's calculated that it would take approximately 9585 hours to comply with the request ((959 hours x 8 = 7668 hours) + 1917 hours = 9585 hours). The DLUHC's stated that this estimate does not include the time it would take to retrieve and extract the requested information once it had been located.

The Commissioner's position

32. The Commissioner considers the DLUHC's estimate of 9598 hours to determine precisely what information it holds within the scope of the request and locate that information to be reasonable. Even if the cost estimate provided by the DLUHC was halved, it would still be significantly over the appropriate limit under FOIA.
33. The Commissioner's decision is that the DLUHC estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, the DLUHC was correct to apply section 12(1) of the FOIA to the request.

Section 16 – advice and assistance

34. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
35. In its initial response to the request, the DLUHC advised the complainant that they could submit a new request with a reduced scope. The DLUHC suggested to the complainant that they could narrow the scope of their request by limiting it to particular time period.
36. In its internal review response, the DLUHC suggested to the complainant that they could reduce the scope of their request by limiting their request to a three month time period. The DLUHC also advised the complainant to be more specific about the type of advice they were seeking or to request information relating to a narrower subject matter.
37. The Commissioner considers that this was an appropriate response in the circumstances given the broad scope of the original request. He is therefore satisfied that the DLUHC met its obligations under section 16(1) of the FOIA.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

38. 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

39. 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.
40. 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

Ben Tomes
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF