

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 October 2022

Public Authority: UK Health Security Agency
(Executive Agency of the Department of Health & Social Care)

Address: Nobel House
17 Smith Square
London
SW1P 3JR

Decision (including any steps ordered)

1. The complainant requested information from the Department of Health & Social Care ("DHSC") relating to a round table meeting held with PCR test providers. DHSC refused to comply with the request citing section 12 (cost limit) of FOIA. Although the request was initially made to DHSC, the UK Health Security Agency ("UKHSA") has taken over the handling of this request as the subject matter now falls within its remit.
2. The Commissioner's decision is that UKHSA was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. The Commissioner also finds that UKHSA complied with its obligations under section 16 to offer advice and assistance.
3. The Commissioner does not require UKHSA to take any steps.

Request and response

4. On 19 October 2021, the complainant made the following request for information to DHSC (UKHSA):

"Dear Department of Health and Social Care,

I am a Solicitor specialising in Competition Law.

It has been reported that the Department recently hosted a round table of "reputable" PCR test providers to discuss how to deal with "cowboy firms".

<https://travelweekly.co.uk/news/air/trav...>

Such a meeting between competitors (to discuss future plans and the exclusion of other market operators) has the potential to be unlawful by its very object under the Competition Act 1998.

I therefore make this formal request under the Freedom of information Act for:

- all documents, files, notes, communications, whether electronic or hard-copy relating to this Round Table, including for the avoidance of doubt hand-written notes
 - copies of any agenda, summary or electronic recording of that meeting (whether in Zoom or any other system of video conferencing).
 - any follow-up communications to PCR providers following that meeting."
5. UKHSA responded on 15 November 2021. It stated that it held information within the scope of the request, but that the cost of complying with the request would exceed the cost threshold of £600 for central government. In accordance with this finding, UKHSA issued a section 12 refusal notice in reply to the complainant's request for information. UKHSA offered the following advice and assistance to the complainant, suggesting that a revised request for just the core documents, (agenda, notes and meeting summary), would fall within the cost limit.
 6. UKHSA upheld its initial application of section 12 of FOIA via internal review on 21 April 2022.

Scope of the case

7. The complainant contacted the Commissioner on 28 March 2022 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of this case to be to determine if UKHSA has correctly cited section 12(1) of FOIA in response to the request. The Commissioner has also considered whether UKHSA met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

9. Section 12(1) of 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 limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
10. Section 12(2) of FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. UKHSA relied on section 12(1) in this case.
11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for UKHSA is £600.
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 UKHSA.
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 in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, 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 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 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 FOIA.

Would the cost of compliance exceed the appropriate limit?

17. The Commissioner asked UKHSA to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
18. In its submission to the Commissioner, UKHSA stated that in applying section 12(1), the scope of the request is so broad, encompassing information held digitally and manually, that there is no one single source of data which could be searched to ensure that it had an exhaustive list of all documents within scope.
19. UKHSA explained that as there were no search terms that it could guarantee would cover the entire range of potentially relevant materials, the emails and folders would need to be searched manually. In assessing the time taken to do a manual search of all emails that could be relevant, it considered the inbox sizes of everyone involved or due to attend the roundtable. Due to the large number of attendees and people involved in the organisation of the meeting, it estimated 3500 total electronic files during that period, and estimated the time for a manual search of one minute per email/file. This was an aggregate – some would be much shorter but some would involve reading through a large chain so would take considerably longer.
20. UKHSA calculated that it would take around 68 hours and cost approximately £1,719 to identify and compile the requested information. The necessity to conduct manual searches is the primary factor in this request exceeding the cost limit under FOIA.
21. The Commissioner considers that UKHSA estimated reasonably that it would take more than the 24 hours or £600 limit to respond to the

request. UKHSA was therefore correct to apply section 12(1) of FOIA to the complainant's request.

Section 16(1) – The duty to provide advice and assistance

22. Section 16(1) of 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).
23. The Commissioner notes that UKHSA had suggested a way that the complainant could narrow the scope of the request by concentrating on the core documents connected to the roundtable meeting. The Commissioner is therefore satisfied that UKHSA met its obligations under section 16 of FOIA.

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

Right of appeal

24. 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

25. 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.
26. 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

Michael Lea
Team Manager
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