

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 May 2022

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

Decision (including any steps ordered)

1. The complainant requested information from the Home Office about the suitability of the Napier Barracks site for the purposes of providing accommodation and other services to people seeking asylum and complaints from its residents. The Home Office refused to comply with the request citing section 12(1) of the FOIA.
2. The Commissioner's decision is that the Home Office was entitled to refuse to comply with the request in accordance with section 12(1) of the FOIA. However, the Home Office has breached section 16 of FOIA (duty to provide advice and assistance) in failing to provide advice and assistance to the complainant in relation to part 2 of their request.
3. The Commissioner requires the Home Office to take the following step to ensure compliance with the legislation.
 - Provide advice and assistance to the complainant in relation to part 2 of their request by describing to the complainant the monthly data that it does receive from Migrant Help, with the intention that this may enable the complainant to submit a request relating to that information which does not exceed the cost limit.
4. The Home Office must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 12 February 2021, the complainant wrote to the Home Office and requested information in the following terms:
 - 1) "Reports made on the suitability of the Napier Barracks site for the purposes of providing accommodation and other services to people seeking asylum, whether these have been produced internally or via third-parties, and whether they were drawn up before the site opened as a centre for asylum-seeker accommodation or since. These should include, but not be limited to:
 - a) Any report produced by Public Health England on the safety of the site in light of the Covid-19 outbreak there in early 2021
 - b) Any other reports produced by Public Health England on the site
 - c) Any reports mentioning the possible existence of asbestos on the site.
 - 2) Monthly data received by the Home Office from its AIRE contractor Migrant Help regarding complaints or issues raised about the site, or the way it is being operated, or the conduct of anybody working on the site (be they working directly for the Home Office, or a contractor, or otherwise) made by 'service users' (i.e. current or former residents at Napier Barracks, or their representatives). This should date back to the first usage of the site as accommodation for asylum-seekers, which I understand was September 2020, and run up to and including the latest data available."
6. The Home Office responded on 4 May 2021. It refused the request under section 12(1) of FOIA: Exemption where cost of compliance exceeds appropriate limit.
7. Following an internal review the Home Office wrote to the complainant on 1 September 2021. It maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 13 August 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 Home Office 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 Home Office.
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 Home Office.
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:
 - i) determining whether the information is held;
 - ii) locating the information, or a document containing it;
 - iii) retrieving the information, or a document containing it; and
 - iv) 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/2007/00041*, 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 the public authority estimated reasonably that 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 Home Office's position

17. As is the practice in a case in which the public authority has cited the cost limit under section 12 of the FOIA, the Commissioner asked the Home Office to provide a detailed explanation of its estimate of the time and cost of responding to the request.
18. In its submissions to the Commissioner, the Home Office maintained its reliance on section 12(1) of the FOIA and offered an explanation for how it had calculated that the request exceeded the appropriate limit.
19. The Home Office explained that it is part 2 of the request that would mean the cost of meeting the request would exceed the cost limit of £600.
20. The Home Office explained that it does not receive monthly data meeting from Migrant Help matching the information described in the request.
21. It explained that, "information is primarily arranged by reference to the Service User, rather than by reference to an address. As such, any information request which relates to an address, must be gathered by reference to the Service Users who reside at that address, or who have previously resided there".
22. It further explained that, "Migrant Help, as the AIRE provider, are contracted to provide a range of services including acting as the Single Point of Contact for Service Users' complaints, reports of issues, requests for assistance and Service User feedback. Each of these four distinct contact types have specific contractual definitions..." and that when a Service User contacts Migrant Help in relation to one of the four contact types, that contact is recorded and sent to the appropriate party for further action, dependent on the type and content of the contact.

23. It provided examples of how this works in practice:

"For example, if a Service User contacts Migrant Help to report a property defect, that will be sent to the relevant AASC provider to take action in accordance with the relevant contractual timescales. A report of a property defect is not a Complaint within the meaning of the contract. If a Service User contacts Migrant Help to report an issue with his Asylum Support payment, that will be forwarded to the Home Office or to the Asylum Support Payments Provider, depending on the nature of the issue. If a Service User contacts Migrant Help to report a concern over behaviour of other residents, that will be reported to the relevant Accommodation Provider as a Request for Assistance."

24. The Home Office states that the information requested described as "...complaints or issues raised about the site, or the way it is being operated, or the conduct of anybody working on the site..." would therefore include all four contact types but that not every contact from a Service User residing at a specific address would be a complaint or an issue relating to the address.

25. The Home Office confirmed that it does receive monthly data from Migrant Help relating to Complaints and Defect Reporting, however, this data does not include Feedback or Requests for Assistance. In addition it can only be filtered by current (not previous) address and does not provide the full content of the contact.

26. The Home Office's position is therefore that the monthly data that it receives from Migrant Help does not fulfil the terms of the request and it would not be possible from this data to identify if the report of the issue actually related to the property, rather than to any other aspect of the Service User's experience. It argues therefore that in order to retrieve the data that does fulfil the terms of the request it would need to interrogate a number of systems and collate data from various sources and that to do so would exceed the cost limit.

27. The Home Office explained that in order to locate, retrieve and extract information to meet part 2 of the request it would need to carry out the following steps:

- i) Creation of a list of all Service Users who have resided at Napier Barracks since the site became operational in September 2020
- ii) Search of Migrant Help's system relating to each of those Service Users since each arrived at Napier to present
- iii) Filter of records for "Complaints, Issue Reporting, Request for Assistance, Feedback" for each individual

- iv) Manual review of each record to ascertain if the contact relates to Napier site.
 - v) Collation of records into single document.
28. The Home Office estimates that step one alone, that is creating a list of all Service Users who have resided at Napier Barracks since the site became operational in September 2020, would exceed the cost limit of £600 or 24 hours.
29. It explained that, "the data relating to current and former residents of Napier barracks is not held separately and the population of the site is fluid; residents have been moved in and out of the site since it opened. As such, in order to ascertain the historic population a system search would need to be conducted to give identifying reference numbers of each resident for each day on which the site has been operational since September 2020".
30. The Home Office calculated that each day's search would take 20 minutes to complete.
31. This is based on the following estimates by the Home Office:
- 1 minute to commission
 - 2 minutes to locate the relevant record (i.e. the day's Asylum Support recipients)
 - 5 minutes to identify all Napier residents
 - 5 minutes data quality (checking no Napier residents were overlooked because of data anomalies such as incorrectly formatted postcode)
 - 5 minutes to convert raw data into format suitable for release (e.g., redact personal data etc., convert line-level to a count)
 - 2 minutes for internal validation and clearance.
32. The Home Office calculated that carrying this out for each of the 135 days between 30 September 2020 (the latest possible start date) and 12 February 2021 (the date of request) equates to 2700 minutes or 45 hours, which exceeds the limit of 24 hours.

The Commissioner's position

33. The Commissioner accepts that the Home Office is unable to easily locate the requested information due to the fact that the information is not held centrally.

34. The Commissioner accepts the Home Office's reasoning that in order to locate the information requested in part 2 of the request it would need to compile a list of all Service Users who have resided at Napier Barracks since the site became operational in September 2020. He considers the Home Office's estimate of 45 hours to compile this list to be reasonable, given this information is not centrally held.
35. The Commissioner's decision is that the Home Office estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, the Home Office was correct to apply section 12(1) of the FOIA to the request.

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

36. 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).
37. Paragraph 2.10 of the section 45 Code of Practice states:

“Where it is estimated the cost of answering a request would exceed the ‘cost limit’ beyond which the public authority is not required to answer a request (and the authority is not prepared to answer it), public authorities should provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within the costs limit.”
38. The Home Office advised the complainant that they could refine their request to bring it within the cost limit. The Home Office suggested to the complainant that they could narrow the scope of their request by reducing it to part 1 only.
39. The Commissioner considers that the Home Office should also have provided advice and assistance to the complainant regarding part 2 of their request by describing to the complainant the monthly data that it does receive from Migrant Help. He is therefore not satisfied that the Home Office met its obligations under section 16(1) of the FOIA. At paragraph 3 above it is now required to remedy this breach.

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

Right of appeal

40. 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

41. 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.
42. 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