

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 24 March 2022

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

#### **Decision (including any steps ordered)**

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1. The complainant requested information from the Home Office relating to correspondence between the Home Office and Avon and Somerset Police. 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. He also finds that the Home Office met its obligations under section 16(1) of the FOIA to offer advice and assistance.
3. The Commissioner does not require the Home Office to take any steps.

## Request and response

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

“1) I wish to see full copies of all emails between with Avon and Somerset Police from 20/03/2021 through to 17/04/2021.

Where an email has been identified please disclose the full thread for context. Please also search draft and (where possible) deleted email folders.

Please also include any attachments.

2) Full copies of all minutes, agendas and briefing notes of meetings held with Avon and Somerset Police from 20/03/2021 through to 17/04/2021.”
5. The Home Office responded on 25 May 2021 and refused to provide the requested information citing section 12(1) (cost limit) of the FOIA.
6. On 26 May 2021, the complainant wrote to the Home Office to request an internal review.
7. Following an internal review, the Home Office wrote to the complainant on 22 September 2021. The Home Office maintained its reliance on section 12(1) of the FOIA.

## Scope of the case

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8. The complainant contacted the Commissioner on 24 September 2021 to complain about the way their request for information had been handled.
9. The Commissioner considers the scope of this case to be to determine if the Home Office has correctly cited section 12(1) of the FOIA in response to the request.

## Reasons for decision

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### 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:
  - 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 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 the requested information is not held centrally. Therefore, in order to locate and gather information within the scope of the request, it would have to manually search individual mailboxes. As the request is very broad and not limited to a particular topic or subject matter, the Home Office considers that it would have to search a large number of mailboxes.
20. To determine which business areas held information within the scope of the request, the Home Office explained that it had contacted all the major business areas within the Home Office and asked them to confirm whether they were likely to hold information within the scope of the request or had contact with Avon and Somerset Police. If any business areas did have contact with Avon and Somerset Police, the Home Office then asked that area how many staff members may have sent or received emails that fall within the scope of the request.
21. The Home Office determined that 2470 staff members may have had contact with Avon and Somerset Police during the time period specified in the request. The Home Office explained that it would have to search the mailboxes of those 2470 staff members to determine if their mailboxes contained information within the scope of the request and then extract that information.
22. The Home Office calculated that if it were to take 3 minutes to search each of the 2470 mailboxes, in total it would take approximately 123 hours to locate and extract the requested information ( $2470 \times 3 = 123$  hours). The Home Office considers this to be a conservative estimate of the time it would take to search the mailboxes.
23. When calculating at a rate of £25 per hour, the Home Office calculated that it would cost approximately £3075 to locate and extract the requested information. The Home Office confirmed that its estimate was based on the quickest method of gathering information.

### **The Commissioner's position**

24. The Commissioner accepts that Home Office is unable to easily locate the requested information due to the broad nature of the request and the fact that the information is not held centrally.
25. The Commissioner considers the Home Office's estimate of 123 hours to locate and extract the requested information to be reasonable. He agrees that the Home Office's estimate of 3 minutes to search each mailbox for information within the scope of the request is conservative.
26. Even if the Home Office was to take 1 minute to search each mailbox and extract the requested information, the cost of complying with the request would still be far in excess of the cost limit under the FOIA.
27. 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**

28. 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 practice<sup>1</sup> in providing advice and assistance, it will have complied with section 16(1).
29. 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 limiting their request to a particular issue relating to Avon and Somerset Police.
30. 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 Home Office met its obligations under section 16(1) of the FOIA.

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

## Right of appeal

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31. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

32. 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.
33. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**