

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 March 2023

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

Decision (including any steps ordered)

1. The complainant has requested guidance issued to immigration caseworkers for obtaining travel history records. Having initially relied on section 31 of FOIA (law enforcement) to withhold the requested information, the Home Office claimed a late reliance on section 12 during the Commissioner's investigation, which concerns the cost of compliance.
2. The Commissioner's decision is that the Home Office is entitled to refuse to comply with the request under section 12 of FOIA as to do so would exceed the appropriate limit. Because the Home Office has made a late claim of section 12, there has been a breach of section 16(1) and 17(5) of FOIA, which concern advice and assistance and the timeliness of the section 12 refusal.
3. The Commissioner requires the Home Office to take the following step to ensure compliance with the legislation:
 - If it has not already done so, provide the complainant with appropriate advice and assistance as to how they might refine their request, in line with its obligation under section 16(1) of FOIA.
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 the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant made the following information request to the Home Office (HO) on 6 May 2022:

“Please share the guidance issued to immigration caseworkers for obtaining travel history records.”

6. On 1 June 2022 the complainant clarified that they are seeking:

“... the current guidance issued to in-country UK caseworkers for obtaining travel history records. Please also provide previous guidance documents/previous versions of documents issued since 2004 that are no longer in use.”

7. In its correspondence to the complainant, the HO’s final position was to withhold the requested information under section 31 of FOIA, which concerns law enforcement.
8. The HO subsequently advised the Commissioner that it had revised its position and, although it is satisfied there are strong section 31 considerations, it is now relying on section 12 of FOIA to refuse to comply with the request.

Reasons for decision

9. This reasoning covers the HO’s application of section 12 of FOIA to the complainant’s request and whether there has been a breach of sections 16(1) and 17(5) of FOIA.
10. Under section 1(1)(a) of FOIA a public authority must confirm whether or not it holds information. Under section 1(1)(b) it must communicate the requested information to the applicant if it is held and is not exempt from disclosure.
11. Under section 12(1) of FOIA a public authority is not obliged to comply with section 1(1) if the authority estimates that the cost of complying would exceed the appropriate limit. This is £600 (24 hours work) for government departments such as the HO.

12. Under section 12(2) a public authority does not have to comply with section 1(1)(a) if even the cost of confirming whether or not it holds the requested information would exceed the appropriate limit.
13. Under section 16(1) a public authority relying on section 12 must provide advice and assistance to the applicant, if it is reasonable to do so, to help them refine their request to bring complying with it under the cost limit.
14. If it is relying on section 12, under section 17(5) of FOIA a public authority must provide the applicant with a refusal notice advising as such within 20 working days following the date of receipt of the request.
15. In its submission to the Commissioner, the HO has confirmed that the requested information for the period 2014 - 2022 is accessible within the FOIA cost limit. However, the HO notes that the request asks for information that covers 18 years. Upon further review, the HO says that it is clear that to identify all the records between 2004 - 2014 would be very time intensive to search.
16. The HO notes that if any part of a FOI request cannot be answered within the cost limit, then the request in its entirety falls to be refused. This approach is in line with the Commissioner's guidance. The guidance states at paragraph 32, "As a matter of good practice, public authorities should avoid providing the information found as a result of its searching and claiming section 12 for the remainder of the information. It is accepted that this is often done with the intention of being helpful, but it ultimately denies the requestor the right to express a preference as to which part or parts of the request they may wish to receive which can be provided under the appropriate limit."
17. By way of background, the HO has told the Commissioner that the information requested falls under the responsibility of UK Visas and Immigration (UKVI). UKVI was formed in 2013, the former agency being UK Border Agency (UKBA). As part of this process, the UKVI operating mandate was formed, where some of the information requested is currently held.
18. The HO does not know what information is held prior to 2014, and there is no single storage location as to where the information may be held. The HO says it has searched the current platform used to store guidance and has not been able to obtain the information covering 2004-2014. However, it cannot say, on the balance of probabilities, that it does not hold information for this period. To identify if it holds information would require extensive searches and would exceed the appropriate cost limit.

19. Given the age of the information, the HO says it could be held in both electronic or hard copy archives. The organisation has been restructured many times during the 18-year period in scope, and the IT systems have changed during that time.
20. As part of an initial analysis of the work involved, the HO has identified there are 2878 files with 'Travel' and 489 files with 'Travel History' within the easily accessible documents. There will also be many thousand held in electronic archives covering the time period of the request.
21. Even at a conservative estimate of five minutes to review each file, the appropriate limit on this work alone would be exceeded by reviewing 288 files (not including retrieval costs from the file storage facility). To review 2000 files would take approximately 166 hours.
22. Without actually carrying out this work the HO says it is impossible to judge how many hard copy files it would need to examine.
23. In addition to reviewing the archived material, officials would need to contact seven main UKVI operational areas with over 3000 members of staff, to identify if information might be held locally. Such a wide-ranging research work would be needed due to UKVI replacing UKBA in 2013. This may have resulted in changes of responsibilities and team structure. The HO says it would therefore have to do preliminary research to determine which teams are more likely to hold the information, and, once this is established, whether those teams actually hold it.
24. If the HO sampled one third of these staff, it says, it anticipates each member of staff would, conservatively, take 30 minutes per person to search their emails and personal and shared files using search terms of "travel" "histories". To carried out this task for all these staff would take approximately 500 staff hours at a cost of over £12.5K.
25. The HO confirmed that it based the estimates above on the quickest method of gathering the information.
26. Finally, the HO told the Commissioner that it intended to provide the complainant with a fresh response. It said it would advise the complainant that should they wish to submit a new request narrowing the timeframe to information post 2014 it is likely to fall within the appropriate limit. However, other exemptions, including section 31(1)(e) may still of course apply to any future request.
27. In the Commissioner's view the HO has now appropriately considered the scope of the request. He is satisfied with HO's explanation as to why complying with section 1 would exceed the appropriate limit. Namely,

because of the long period covered by the request, the volume of material in scope for the period of the request from 2014 to 2022 that would need to be reviewed, the organisational and IT changes from 2004 to 2014 and because relevant information for that period may be held in different locations and in different formats. Because the HO is not able to confirm whether it holds all the information that the complainant has requested, the Commissioner finds that the HO is entitled to rely on section 12(2) of FOIA to refuse the request.

28. The HO has advised that it intends to provide the complainant with a fresh response to their request. Because of its late claim of section 12 the Commissioner finds there has been a breach of section 16(1), as the HO has not provided the complainant with appropriate advice and assistance, and section 17(5), as the HO's section 12 refusal was not issued within 20 working days of the request.

Right of appeal

29. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF