

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 May 2023

Public Authority: Equality and Human Rights Commission
Arndale House
The Arndale Centre
Manchester
M4 3AQ

Decision (including any steps ordered)

1. The complainant has requested information relating to freedom of thought.
2. The EHRC refused to comply with the request, citing section 12 (cost of compliance exceeds appropriate limit).
3. The Commissioner's decision is that the EHRC was entitled to refuse the request under section 12 and there has been no breach of section 16 (advice and assistance). No steps are required.

Request and response

4. On 3 December 2022 the complainant requested:

"Please supply all and any recorded information regarding Article 18 of the UN Declaration of Human Rights, particularly its absolute aspect "Freedom of Thought" independent from freedom of speech, expression, conscience, or religion.

I would particularly like any information recorded by the EHRC which shows any measures the EHRC have taken, is taking, or will take to

defend this absolute right to freedom of thought from attempted or actual interference by the government, the public or any other entity if such a situation should ever arise or indeed has arisen. Between 3/12/2019 - 3/12/2022."

5. The EHRC responded on 4 January 2023 and explained that most of the information it held was in the public domain and was therefore exempt under section 21 (information reasonably accessible to applicant). It pointed the complainant in the direction of this information. It also disclosed the information that wasn't in the public domain.

6. The complainant requested an internal review on 5 January 2023 and stated:

"While all information is appreciated I note it is mostly within the context of life issues or religion. It should be noted that **I am specifically only interest (sic) in freedom of thought in any context or absent of context as opposed to the practicing of religion or philosophical belief, speech or communication.** So simply the act of thinking alone. I would request at review a small explanation of where the helpful extract of 15c originated from and a search for any more information concerning thought only as specified in my original request. If any new recorded information is found at review, I would request it is supplied."

7. The Commissioner has added the above emphasis because he thinks it's relevant.

8. The EHRC responded on 2 February 2023 and upheld its previous position. It also explained that:

"In the searches, carried out for the purpose of responding to your original request, the term "Freedom of Thought" was used as a search term. However, this produced such a substantial volume of returns that were potentially within the scope of your request, that it made the locating, retrieving and extracting information actually relevant to your request impossible within the appropriate cost limit (section 12).

We were able to reduce this for the purposes of your original request by refining the search term to include Article 18 as this was the primary element of your request. Unfortunately we are unable to refine it for your revised request."

Scope of the case

9. The complainant contacted the Commissioner on 18 February 2023 to complain about the way their request for information had been handled. Their complaint is 'I dispute the fact that a search for more information pertaining exactly to UN Article 18 would cost to (sic) much and even if it does the EHRC should spend the money.'
10. The Commissioner explained to the complainant that his preliminary view was that section 12 would apply and he encouraged the complainant to withdraw this complaint. They declined to do so.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

11. 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.
12. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are set out at Regulation 4(3) and are:
 - (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.
13. When citing section 12, the Commissioner expects a public authority to provide a reasonable estimate as to how long compliance with the request would take. This estimate should be based on cogent evidence, on the quickest method of gathering the requested information and usually will involve the public authority conducting a sampling exercise. For a public authority such as the EHRC, the appropriate limit is 18 hours.
14. The Commissioner understands that Article 18 talks about the right for individuals to think or believe what they want, including the right to

choose their own, and change, religious beliefs and the right to publicly or privately practice that religion, alone or with others.

15. The EHRC has explained that it thinks the complainant has actually submitted two requests. It interpreted the complainant's original request to be about 'freedom of thought' in the context of Article 18 of the Universal Declaration of Human Rights by the United Nations whilst it interpreted the revised request to relate to freedom of thought in any context.
16. Usually, when a requestor submits a revised request they are narrowing the scope of the request. However, the EHRC has explained that, in this instance, the revised request has a wider scope than the original request.
17. The EHRC has explained:

'On receipt of the Original Request, we asked our ICT department – which is responsible for our IT functions – to conduct a 'backend search'. This is a key-word search(es) of our main electronic repository and email server. We attempted a number of search terms to locate the requested information. One was for "Freedom of Thought" between 3 December 2019 and 3 December 2022. This search yielded around 3,500 results in emails alone and we were satisfied that manually searching through these would engage the section 12 exemption. Eventually, we were able to locate 337 emails and 84 files in our main repository searching for documents including both "Article 18" and "Freedom of Thought" between 3 December 2019 and 3 December 2022.'

18. The EHRC then manually sifted through these documents (337 emails and 84 files) in order to locate and extract information on freedom of thought in the context of Article 18. It took 4 hours and 30 minutes to do so. The EHRC provided the following calculation to the Commissioner, which explains how long to it took to look at one document:
 - 337 emails + 84 files = 421 documents
 - 4 hours and 30 minutes = 270 minutes = 16,200 seconds
 - 16,000 seconds / 421 documents = 38 seconds per document
19. As outlined in paragraph 17, the EHRC already knew that it held 3500 emails alone that contained the phrase freedom of thought. Therefore, it used its previous handling of the original request to provide an estimate as to how long compliance with the revised request would take:
 - 3,500 emails – 337 emails already searched = 3,163 documents

- 38 seconds x 3,163 documents = 120,194 seconds = 2,003 minutes = over 33 hours.

20. Returning to paragraph 13, the Commissioner is satisfied that the EHRC's estimate is based on cogent evidence and compliance with the revised request would exceed 18 hours. Therefore section 12 is engaged and the EHRC is not obligated to comply with it.

Section 16 – advice and assistance

21. When refusing a request under section 12, a public authority needs to offer meaningful advice and assistance to the complainant where reasonable. The aim of this advice and assistance is to help the complainant refine their request to one that the authority might be able to deal with within the appropriate limit.
22. Looking at the wording of the request, and considering the breadth of the information that the EHRC holds on the subject, the Commissioner considers that the only reasonable advice and assistance that could be offered to the complainant is to advise them to narrow the scope of their request to focus on freedom of thought in the specific context of Article 18.
23. Since this was the EHRC's interpretation of the complainant's original request, and this request was complied with and information disclosed, the Commissioner doesn't see what other advice and assistance could be offered in this instance and therefore there's been no breach of section 16.

Other matters

24. Looking at the original request and the revised request, the Commissioner thinks it's possible that they are actually the same. The Commissioner tried to get this clarity from the complainant who unfortunately didn't provide it. If this is the case, the complainant's revised request wouldn't actually be a revised request but clarity regarding their original request. This would mean that the EHRC's interpretation of the original request would be incorrect.
25. Either way, the complainant is satisfied with the information that was disclosed to them but dissatisfied that no further information would be provided in accordance with section 12. Therefore, the scope of this investigation is valid whether the EHRC's interpretation of the original request was correct or not. However, the Commissioner would urge the EHRC to be careful not to process requests based on what it thinks is being requested, rather than what is actually being requested. If it's not sure it should ask the requestor for clarity.

Right of appeal

26. 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

27. 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.
28. 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

Alice Gradwell
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