

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

### **Decision notice**

**Date:** 26 July 2023

**Public Authority:** Department for Levelling Up, Housing & Communities

**Address:** Fry Building  
2 Marsham Street  
London SW1P 4DF

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

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1. The complainant requested information from the Department for Levelling Up, Housing & Communities ("DLUHC") relating to the proposed Holocaust Memorial Learning Centre.
2. The DLUHC relied on section 12 (cost limit) of FOIA to refuse the request.
3. The Commissioner's decision is that the DLUHC was entitled to refuse to comply with the request in accordance with section 12(1).
4. The Commissioner finds that the DLUHC complied with its obligations under section 16 of FOIA to offer advice and assistance.
5. The Commissioner does not require any steps to be taken by DLUHC.

#### **Request and response**

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6. On 24 March 2023, the complainant made the following request for information:  
  
""Please would you send me all the documents and correspondence including emails relation to the description and plans of the content of the proposed Holocaust Memorial Learning Centre obtained by the Department, including the description and plans of the content in each room, in the date range 21 July 2022 to 14 March 2023.""
7. The DLUHC responded on 25 April 2023. It relied on section 12 of FOIA to refuse the request, and subsequently provided the outcome of an

internal review on 7 June 2023, which upheld its position as regards section 12 of FOIA.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 8 June 2023 to complain about the way their request for information had been handled.
11. The Commissioner wrote to the DLUHC for its submissions in respect of this case and, in its response, the DLUHC maintained its position as regards section 12 of FOIA as the basis upon which the request was refused.
12. Therefore, the Commissioner considers the scope of this case to be to determine if the DLUHC has correctly cited section 12(1) of FOIA. The Commissioner has also considered whether the DLUHC met its obligation to offer advice and assistance, under section 16 of FOIA.

## **Reasons for decision**

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### **Section 12 – cost of compliance**

13. 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”).
14. 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. The DLUHC relied on section 12(1) in this case.
15. The appropriate limit is set in the Fees Regulations at £600 for central government, legislative bodies, and the armed forces and at £450 for all other public authorities. The appropriate limit for the DLUHC is £600.
16. 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 DLUHC.
17. 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.
18. 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.
19. 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. It is worth noting that if one part of a request triggers the section 12 exemption, then that will apply to the entirety of the request and there is no requirement for the Commissioner to consider any other exemptions cited by the public authority.
20. 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?**

21. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner expects the DLUHC to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
22. In its submission to the Commissioner, the DLUHC explained, by way of background, that the establishment of a new UK Holocaust Memorial and Learning Centre (“HMLC”) was one of the recommendations from the Prime Minister’s Holocaust Commission’s review of Holocaust commemoration and education and the DLUHC leads for the Government on delivering the HMLC. The UK Holocaust Memorial

Foundation ("UKHMF") was set up in 2015 to provide independent advice to the DLUHC Ministers on a wide range of issues including the design, implementation/construction and operation of the HMLC and the development and presentation of its learning content.

23. The DLUHC explained to the Commissioner that it had undertaken a sampling exercise looking at all emails and documents over a 10-day period from the HMLC content team. Across the team for the 10-day period there were 236 emails and approximately 50 documents which would potentially fall in scope of the request.
24. Using this data, the DLUHC extrapolated that the number of emails and documents over the requested period 21 July 2022 to 14 March 2023 (236 days) could be in the region of 5,457 emails and 1,180 documents.
25. The DLUHC explained that, during the sampling exercise, it had taken a member of the team 3 hours to go through 137 emails and that, therefore, it would take roughly 119 hours to go through the estimated 5,475 emails potentially in scope.
26. The Commissioner considers that, even if the estimate provided by the DLUHC were cut by half, the work involved in identifying emails alone in scope of the request would still exceed the 24-hour limit.
27. It is the Commissioner's view that the DLUHC estimated reasonably that it would take more than the 24 hours / £600 limit to provide the information requested. The DLUHC 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**

28. 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 practice<sup>1</sup> in providing advice and assistance, it will have complied with section 16(1).
29. The Commissioner notes that in its initial response to the complainant on 25 April 2023, the DLUHC advised the complainant as follows:

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

“It may be helpful to explain that your request is very broad, and to be sure that we retrieved all information in scope would require extensive searches. The question of what the Holocaust Memorial Learning Centre should include has generated a very large volume of documents and emails and to retrieve and extract nearly nine months’ worth of information would require a significant deployment of staff resource.

It may be that we can provide you with some information within this appropriate limit, if you are able to narrow the scope of your request. For example, you could restrict your request to one document type or provide a narrowed timeframe for your request. If you do so, your request will be handled as a new request under the appropriate legislation.”

30. The Commissioner also notes that the DLUHC is currently dealing with a further request from the complainant for the same information with a narrowed timeframe.
31. The Commissioner is therefore satisfied that the DLUHC met its obligations under section 16 of FOIA.

## **Right of appeal**

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32. 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)

33. 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.
34. 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**