

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 November 2023

Public Authority: Home Office
Address: 2 Marsham Street
London
S1P 4DF

Decision

1. The complainant has requested information relating to contracts awarded by the National Asylum Support Service (NASS) to dispersal accommodation providers in the 2000/2001 financial year.
2. The Commissioner's decision is that the Home Office has correctly relied upon section 12(2) of FOIA to refuse to comply with the request. He also finds no breach of section 16(1).
3. The Commissioner finds that the Home Office breached section 17(1) of FOIA as it did not provide its refusal notice within 20 working days.
4. The Commissioner does not require any further steps as a result of this decision notice.

Request and response

5. On 9 March 2023 the complainant requested information of the following description:

"I'm seeking information regarding contracts awarded by the National Asylum Support Service to dispersal accommodation providers in the 2000/01 financial year. For each contract, please provide the following information:

Name of accommodation provider

Contract value

Date awarded"

6. The Home Office responded to the request on 17 May 2023 stating that it was unable to confirm whether it held the requested information as it would exceed the appropriate limit, citing section 12(2) of FOIA.
7. On 20 June 2023 the Home Office provided an internal review in which it upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 22 June 2023 to complain about the way his request for information had been handled. He disagreed with the Home Office's application of section 12(2) to the request.
9. The Commissioner considers that the scope of his investigation is to consider the Home Office's application of section 12(2) of FOIA.

Reasons for decision

Section 12(2) cost of compliance

10. This reasoning covers the Home Office's reliance on section 12(2) of FOIA to refuse the request and whether there was a breach of section 16(1).
11. Under section 1(1) of FOIA, a public authority must confirm whether it holds information that has been requested.
12. However, under section 12(2) a public authority is not required to comply with section 1(1) if the cost of establishing whether or not it holds the requested information would exceed the appropriate cost limit. This is set at £600 (24 hours work at £25 per hour) in the case of the Home Office.

The Home Office's position

13. In its submission to the Commissioner, the Home Office stated that the key reason why it is unable to comply is because of the age of the information requested. It explained that as the request is for information from the period 2000-2001, records dating from this time (and earlier) would be in the form of physical paper records, rather than in electronic or digital format.

14. The Home Office stated that searching for records from this period would be a manual task in order to identify and locate any information falling within scope of the request and it is this searching which would exceed the appropriate limit.
15. The Home Office confirmed the following during the Commissioner's investigation:

"Records of paper files can only be searched by their file titles, rather than specific documents or contents contained within and in order to comply with this request, an official would need to complete the following steps:

 1. Undertake an initial electronic (keyword) search of all potentially relevant paper files
 2. Review all search results to identify which entries/files may contain information relevant to the request.
 3. The files are stored in boxes (some on-site, others off-site) so any potentially relevant files held in boxes need to be identified and then recalled.
 4. An official would then need to search the potentially-relevant paper file that they had identified as potentially containing any relevant information which falls within scope of the request. The files vary in size but on average we estimate (conservatively) that it would take 10 minutes to review each file."
16. The Home Office went on to explain that the total number of paper records estimated to be searched is 430 and therefore 430 x 10 minutes per file would be 4300 minutes or 71.6 hours.
17. During the investigation the Commissioner asked the Home Office how it came to the number of 430 files and 10 minutes for the estimated time taken to search. The Home Office responded clarifying that the estimated number of 430 files is based on its initial search of its electronic database of paper files using various keywords such as "NASS" (National Asylum Support Service) and "Contract" relevant to the wording of the request.
18. The Home Office also clarified that the estimated time of 10 minutes is based on the time taken to conduct a manual search of all the paper documents in each file to identify and locate any relevant information in scope. It explained that while some paper files are likely to contain few documents, so a search may only take a few minutes, other files will hold more documents and so will take longer to search and therefore 10 minutes is an average estimate.

The Commissioner's view

19. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. The question for the Commissioner here is whether the cost estimate by the Home Office was reasonable. If it was, then section 12(2) was engaged and the Home Office was not obliged to confirm or deny whether the requested information was held.
20. The Commissioner has considered the Home Office's arguments and is satisfied that it has demonstrated, reasonably, how confirming whether or not it holds the information requested would exceed the 24 hours threshold.
21. The Commissioner is therefore satisfied that the Home Office was entitled to rely on section 12(2) of FOIA to refuse the complainant's request.

Section 16 Advice and assistance

22. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section, it will be taken to have complied with its obligations.
23. In its internal review the Home Office explained to the complainant that it is difficult to suggest how the request could be narrowed to bring it within the cost limit.
24. In its submission to the Commissioner the Home Office explained that the only possible way in which it might be able to comply with the request is if the complainant was to ask for more recent data.
25. The Commissioner understands that this advice provided by the Home Office may not be helpful to the complainant to locate information that satisfies his interests. However, the Commissioner accepts that due to the time period of the information requested and the format in which the information is stored, it is difficult for the Home Office to advise how to refine the request. As such, the Commissioner is satisfied that there was no breach of section 16(1) of FOIA.

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

Michael Lea
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