

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

### **Decision notice**

**Date:** 11 December 2023

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

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

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1. The complainant asked the Home Office for information about the reported removal of 'welcoming' signage, and the painting over of children's wall art, at the Kent (Asylum) Intake Unit. The Home Office refused the request, citing section 12(1) (Cost of compliance exceeds appropriate limit) of FOIA.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 12(1) of FOIA to refuse the request, and that it complied with its obligations under section 16(1) (Advice and assistance).
3. The Commissioner does not require further steps as a result of this decision.

#### **Request and response**

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4. On 4 July 2023, referring to media articles claiming that, during a visit to the Kent (Asylum) Intake Unit, the Minister of State for Immigration had instructed staff to remove 'welcoming' signage and paint over children's wall art, the complainant made the following request for information under FOIA:

"Please could you provide me with any recorded information regarding the Minister of State's instructions regarding (a) wall art / wall paintings and (b) welcome signs given on that occasion, and any e-

mails or other records thereafter regarding implementation or follow-up on the Minister's instructions.

While I appreciate that the "instructions" are likely to have been given orally at the time by the Minister, I would expect a record of the instructions to have been created in any read-out, summary or note drawn up after the Minister's visit. These should be easily available from the Ministerial Private Office and/or KIU [Kent Intake Unit] management.

Moreover, follow-up records about the implementation of the ministerial instructions are likely to have been created (including internal emails about how the instructions should be implemented, and any works orders to contractors or requests to in-house facilities staff). These should be easily available from the KIU. If there has been any 'report back' to the Private Office (by way of formal submission or otherwise) on implementation of the above instructions, please include this too."

5. The Home Office responded on 1 August 2023. It confirmed that it held information falling in scope but said it was exempt under sections 36(2)(b)(i) and (ii) (Prejudice to the effective conduct of public affairs) with the public interest favouring maintaining the exemption.
6. The complainant requested an internal review of the decision on 9 August 2023, setting out his reasons for disagreeing with the application of section 36. The Home Office provided the internal review outcome on 27 September 2023. It maintained its application of sections 36(2)(b)(i) and (ii) to withhold the information.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 28 September 2023 to complain about the way his request for information had been handled. He disagreed with the application of section 36 to refuse the request.
8. During the Commissioner's investigation, the Home Office withdrew reliance on section 36 of FOIA; instead, it applied section 12(1) to refuse the request. It advised the complainant accordingly.
9. The complainant objected to the Home Office changing the basis of its refusal. He said that the refusal notice issued in respect of section 36 implied that the Home Office had already completed the process of gathering the requested information and this was inconsistent with a

later claim that identifying and locating the information would be too costly.

10. However, following the combined cases of the Home Office v Information Commissioner (GIA/2098/2010) and DEFRA v Information Commissioner (GIA/1694/2010) in the Upper Tribunal, a public authority is able to claim a new exemption or exception either before the Commissioner or the First-tier Tribunal and both must consider any such new claims.
11. The Commissioner is only required to consider a public authority's latest position. As the Home Office withdrew reliance on section 36, the Commissioner is not required to examine its basis for saying that that exemption applied, or whether its former position was appropriately arrived at.
12. The analysis below considers the Home Office's application of section 12(1) of FOIA to refuse the request.

## **Reasons for decision**

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### **Section 12 – Cost of compliance exceeds appropriate limit**

13. Section 12(1) states that a public authority is not required to comply with a request for information if it estimates that the cost of doing so would exceed the appropriate cost limit.
14. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") at £600 for government departments such as the Home Office. The cost must be calculated at a flat rate of £25 per hour. This means that the Home Office may refuse a request for information if it estimates that it will take longer than 24 hours to comply with it.
15. When calculating the estimate, the Fees Regulations state that a public authority can only take into account the costs it reasonably expects to incur in:
  - determining whether it holds the information;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information, or a document containing it.

16. The Commissioner considers that the costs estimate must be reasonable. A reasonable estimate is one that is "...sensible, realistic and supported by cogent evidence"<sup>1</sup>.
17. 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 nevertheless a public interest in the disclosure of the information.
18. The Home Office explained to the complainant that it had applied section 12(1) because of both the breadth and depth of the request:

"In order to respond to your request for information we would firstly need to establish how many people were involved in all various aspects of the minister's instructions – including the implementation - during the period April – July 2023.

This in itself is a significant task: it is unknown how much of the information requested has been retained. It is also not entirely clear who was involved in all aspects of the instructions, implementation process, and any 'report back'. We would have to follow the trail of information from the minister's office. Because of the breadth of the request this would include multiple departments within the Home Office (and possibly external contractors).

Once reasonably confident that we have identified the key people, we would then need to request from them (and then review) all potentially relevant recorded information that each person holds, to then identify which information falls within scope of your request. Initial electronic keyword searches would be needed, and then more in-depth manual searches would be required to ensure the correct context. This demonstrates the depth of the searches that would be required to locate, retrieve and extract the information.

Because of the timeframe, the potential number of people involved, and the volumes of recorded information that would need to be reviewed, we estimate that complying with this request would exceed the appropriate limit under section 12.

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<sup>1</sup> The approach set out by the Information Tribunal in the case of Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency (EA/2007/0004, 30 October 2007)

If you were to refine your request by omitting information connected with the 'implementation' aspect of the minister's instruction, we may be able to comply with it, however it is very likely that other exemptions would apply."

19. The complainant has objected to the application of section 12, stating:

"I do not agree that it can be reasonably said that the search in question would involve more than 24 hours of work. This is because:

- (a) the Home Office will be aware who accompanied the relevant minister on his trip where he gave verbal instructions, and who would thus be most likely to hold recorded written information;
- (b) the Home Office will be aware which members of the Minister's private office have responsibility for this policy area
- (c) the Home Office will be aware which staff members at KIU would correspond and liaise with the Minister's office."

### **The Commissioner's decision**

20. The Commissioner considers that, while on the face of it, the request is a simple one, in practice, the work involved in determining exactly what information is held, and where it might be located, would be extensive. It should be borne in mind that the Home Office is under a duty to identify and locate **all** the information falling within the request's scope. It has explained to him that, in particular, locating any and all information on "...implementation or follow-up on the Minister's instructions" was likely to involve a considerable amount of work, including, but not limited to, locating all information on any procurement exercise that took place for the work ordered by the Minister.

21. Dedicated electronic searches would not necessarily find all the information within scope and so a manual review of all emails, text messages and minutes of meetings, would be required. In view of the various locations within which relevant information may be located, the work involved in doing this would be very likely to exceed the appropriate limit by some way.

22. In view of this, and mindful of his recent decision regarding a similar request for information<sup>2</sup>, the Commissioner's decision is that the Home

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<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4027512/ic-266369-v8t4.pdf>

Office estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, the Home Office was entitled to rely on section 12(1) of FOIA to refuse to comply with the request.

### **Section 16 – Advice and assistance**

23. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request where it would be reasonable to do so.
24. In general, where section 12(1) is cited, a public authority should advise the requester as to how their request could be refined to bring it within the cost limit, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be possible to provide any useful advice.
25. In this case, the Home Office has explained to the complainant that removing the requirement for information on "...implementation or follow-up on the Minister's instructions" may enable the request to be considered without exceeding the appropriate limit (although any information in scope may be subject to a non-disclosure exemption).
26. The Commissioner is, therefore, satisfied that when applying section 12(1), the Home Office complied with the requirement under section 16(1) of FOIA.

## Right of appeal

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

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

28. 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.
29. 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 .....**

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**