

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 April 2024

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

Decision (including any steps ordered)

1. The complainant has requested information about the impact of changes to the National Minimum Wage on certain social issues. The Home Office said it did not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the Home Office does not hold the requested information.
3. The Commissioner does not require any steps as a result of this decision.

Request and response

4. On 18 August 2023, the complainant wrote to the Home Office and requested information in the following terms:

"Under the Freedom of Information Act, I would like to request the following information:

- (1) A summary and any available details of past or planned work regarding the impact of changes to the National Minimum Wage on the prevalence of illegal immigration to/in the UK.

- (2) A summary and any available details of past or planned work regarding the impact of changes to the National Minimum Wage on the prevalence of modern slavery and human trafficking in the UK.
 - (3) A summary and any available details of past or planned work regarding the impact of changes to the National Minimum Wage on the prevalence and usage of illegal drugs and alcohol in the UK."
5. The Home Office responded on 7 September 2023. It said it did not hold the requested information. It suggested that the Department for Business and Trade might hold information falling within the scope of the request.
 6. The complainant requested an internal review on 8 September 2023, stating that he believed the subject matter of the request fell within the Home Office's jurisdiction. He clarified that "I also am not solely interested in 'rigorous' or 'thorough' work but would also be interested in basic, cursory or rudimentary explorations if the former is not available."
 7. The Home Office provided the outcome of the internal review on 29 November 2023. It said the relevant business areas had confirmed that the Home Office did not hold any information falling within scope of the request.

Scope of the case

8. The complainant contacted the Commissioner on 29 November 2023 to complain about the way his request for information had been handled. He was sceptical that the Home Office did not hold any information falling within the request's scope. He also expressed concern about the length of time it took to conduct the internal review.
9. The analysis below considers whether, on the balance of probabilities, the Home Office holds information falling within the scope of the request. The Commissioner has considered the time taken to conduct the internal review under "Other matters".

Reasons for decision

Section 1 – Information held

10. The Home Office says that it does not hold the requested information. The complainant disagrees.
11. Where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant

believes may be held, the Commissioner applies the civil standard of 'the balance of probabilities'.

12. This means the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request. In deciding where the balance of probabilities lies, the Commissioner will consider the evidence and arguments of both parties, as well as any other pertinent information.
13. The complainant has not offered any evidence which indicates that the Home Office does hold the information he has asked for. Rather, he has expressed the view that, as immigration, human trafficking and drug use are policy areas falling within the Home Office's remit, it should hold information on the impact on them caused by changes to the National Minimum Wage.
14. The issue for the Commissioner to consider here is whether the requested information **is** held by the Home Office. It is not whether it **should be** held by the Home Office. On this point, the Commissioner is mindful of the comments made by the Information Tribunal in the case of Johnson / MoJ (EA2006/0085)¹, that FOIA:

"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".
15. The Home Office explained to the Commissioner that the request was handled by the FOI Team in its Public Safety Group (PSG) as a cross-cutting request, i.e. one that potentially covered more than one business area of the Home Office.
16. The PSG FOI team liaised with the FOI representatives and Heads of Unit for the following business areas:
 - Immigration Enforcement (regarding the impact of changes to the National Minimum Wage on the prevalence of illegal immigration to/in the UK);
 - Drugs Misuse Unit (regarding the impact of changes to the National Minimum Wage on the prevalence and usage of illegal drugs);

¹<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i90/Johnson.pdf>

- Neighbourhood Crime Unit (regarding the impact of changes to the National Minimum Wage on the prevalence and usage of alcohol in the UK); and
 - Modern Slavery Unit (regarding the impact of changes to the National Minimum Wage on the prevalence of modern slavery and human trafficking in the UK).
17. Each area confirmed that no information falling within the scope of the request was held.
18. During the Commissioner's investigation they were consulted again, and, additionally, the Home Office's Migration and Borders Group was also consulted. Again, each confirmed that they did not hold information falling within scope of the request. They also confirmed that they knew such work had never been undertaken.
19. The Commissioner asked the Home Office about the searches it conducted when responding to the request. The Home Office explained:
- "The policy officials I have contacted directly and the Head of Unit in each area would be expected to know whether their unit had ever carried out work on the impact of changes to the National Minimum Wage on the policy areas for which they have responsibility and certainly whether they planned to carry out such work. Any information within scope would by definition be relatively recent, given that the National Minimum Wage came into effect on 1 April 1999 and the impact of any changes would not be felt until some years later.
- There are circumstances in which searches for information within scope of a request are appropriate or essential and circumstances in which they are not, because there is no reason to believe that relevant information is held. We consider that this case falls into the latter category, because officials who know their policy area can reasonably be expected to know whether work on the effect of changes to the National Minimum Wage has ever been undertaken or is contemplated."
20. Nevertheless, the Home Office said it had carried out a search of manual files, explaining that had work been carried out in the first 10 years following the introduction of the National Minimum Wage, it would likely be held manually. Using the search term 'National Minimum Wage' it identified 17 manual files. Of these, 11 had either been transferred to other government departments or had been destroyed. The Home Office said it was satisfied that the remaining six files contained no information falling in scope.
21. Summarising its position, the Home Office said:

"We do not agree with [the complainant's] contention that there is any reason to believe that the Home Office would hold information within scope. Certainly there is no evidence to suggest that this is so. The National Minimum Wage and changes to it have never been Home Office policy areas. Given the many factors influencing the prevalence and usage of illegal drugs and alcohol, the prevalence of modern slavery and human trafficking and, especially, levels of immigration whether legal or illegal, it would seem on the face of it highly unlikely that changes to the National Minimum Wage would be a significant influence. Even if they were, the National Minimum Wage and changes to it are now well established and it is difficult to see how any such causal effect could influence Home Office policy in these areas, so there is no obvious business need for such work. In any event, we have been assured by those closest to the relevant policy areas that no such work has been carried out or is contemplated."

The Commissioner's decision

22. The Commissioner notes that the complainant considers the Home Office must hold information within scope of the request as he believes it relates to matters falling within its remit. While specific policy issues relating directly to immigration, modern slavery and drug abuse do fall within its remit, the Commissioner acknowledges that policy responsibility for the National Minimum Wage itself does not lie with the Home Office. As it stated, there is therefore "no obvious business need for such work".
23. The Commissioner is satisfied that the Home Office has conducted reasonable enquiries for information falling within scope of the request. The various Heads of Unit who were consulted would have the requisite knowledge of their policy areas and of any relevant work, had it been carried out. They have each confirmed that no research or evaluation work of the type the complainant specifies, has been conducted, or contemplated, by the Home Office.
24. The Commissioner also considers that the Home Office used an appropriate and relevant term when searching manually held information and he notes no relevant information was identified.
25. The Commissioner is not required to prove beyond doubt that the Home Office does or does not hold any relevant information. He is only required to make a decision based on the civil standard of the "balance of probabilities".
26. Having considered the explanations provided by the Home Office, and in view of the lack of evidence provided by the complainant to the contrary, the Commissioner accepts the Home Office's position that, on the balance of probabilities, it does not hold any recorded information

falling within the scope of the request. As such, the Commissioner is satisfied that the Home Office complied with section 1(1) of FOIA when responding to the request.

Other matters

27. Although they do not form part of this notice, the Commissioner wishes to highlight the following matters of concern.

Internal review

28. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather, they are matters of good practice which are addressed in the Code of Practice issued under section 45 of FOIA.
29. The Code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
30. In this case, the Home Office took 58 working days to complete the internal review, which exceeds the Commissioner's recommended 40 working day maximum. It has explained that this was largely due to resource issues.
31. The Commissioner has made a record of the Home Office's late provision of the internal review, for monitoring purposes.

Right of appeal

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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.

Samantha Bracegirdle
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