

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 June 2024

Public Authority: Information Commissioner
Address: Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Decision (including any steps ordered)

1. The complainant has requested information about complaints received concerning image rights publication violation. The Information Commissioner's Office ('the ICO') relied on section 12(2) of FOIA (cost limit) to refuse the request.
2. The Commissioner's decision is that the ICO was entitled to rely on section 12(2) to refuse the request. He also finds that the ICO met its obligations under section 16(1) of FOIA to provide advice and assistance.
3. The Commissioner does not require further steps.

Naming

4. This decision notice concerns a complaint made against the Information Commissioner ('the Commissioner'). The Commissioner is both the regulator of FOIA and a public authority subject to FOIA. He's therefore under a duty as regulator to make a formal determination of a complaint made against him as a public authority. It should be noted, however, that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this notice. In this notice the term 'ICO' is used to denote the ICO dealing with the request, and the term 'Commissioner' denotes the ICO dealing with the complaint.

Request and response

5. On 25 January 2024, the complainant wrote to the ICO and requested information in the following terms:
 - “Q1. What legal protection do UK citizens have regarding their image rights publication protection?
 - Q2. Please list all complaints lodged with you the ICO where a compliment [sic] has raised concerns relating to a violation of their image rights publication?
 - Q3. What laws are there in the UK that protect the image rights of UK citizens, such as the Communist party member highlights that must exist in China in this recent incident?”
6. The ICO responded on 30 January 2024. It advised that the first and third questions were not requests for recorded information and provided advice. For the second question, the ICO stated that it could not confirm or deny that it held the requested information within the cost limit.
7. Following an internal review, the ICO wrote to the complainant on 5 March 2024. It upheld its reliance on section 12(2) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 8 March 2024 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to determine whether the ICO was correct to rely on section 12(2) to refuse the second question of the request. The Commissioner will also consider whether the ICO met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12(2) – cost of compliance

10. Section 12(2) states that a public authority is not obliged to confirm or deny whether requested information is held if it estimates that to do so would incur costs in excess of the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).

11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the ICO is £450.
12. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, effectively imposing a time limit of 18 hours for the ICO to deal with this request.
13. A public authority can rely on section 12(2) to refuse a request, without providing a confirmation that information is (or is not) held, if the cost of determining whether information is held would, on its own, exceed the cost limit. Section 12(2) requires a public authority to estimate the cost of establishing whether the information is held rather than to formulate an exact calculation. The Commissioner considers that any estimate must be sensible, realistic and supported by cogent evidence.
14. 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.
15. 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 the FOIA.

The ICO's position

16. The ICO has explained that, although it may receive complaints concerning image use, it does not maintain a centralised list of these instances, and it is not able to electronically extract the relevant cases or correspondence from its casework management system.
17. The ICO explained that its casework management system does not have the functionality to run an electronic search for a word or phrase held in records on complaint cases. It explained that reports can be run for category fields that have been inputted on to the system, however the ICO does not have a category field for "image rights" or "image rights publication".
18. The ICO explained that a complaint case does have a searchable case summary or title which is free text of a limited number of characters and may include the nature of the complaint. However, it explained that due to the 150 character, limit, any case summary would not reflect the full content of a complaint, and would not be sufficient to determine whether it held the requested information or not. It added that the case summary field is typically used for basic identifiers, such as complainant

name, organisation name and the relevant legislation, meaning there is little or no space to add a case description.

19. The ICO stated that therefore the only way it could identify if it held any complaint cases that contain concerns about image rights publication would be to manually check the records on each case. This would entail searching the content of the correspondence provided to the ICO by the complainant.
20. The ICO stated it would have to conduct extensive manual searches to cover all complaints received in case any of these had raised the issues covered by the request. The ICO estimated that even if it only focused on, for example, data protection complaints recorded within its case management system, this covers thousands of cases within one year alone, and each case contains multiple items that would need to be searched.
21. The ICO added that even if phrases such as “image” or “image rights” are used within a complaint case, this does not necessarily mean that this is what the complaint is about. Therefore, each instance would need to be thoroughly checked.
22. The ICO explained that it holds well over 10,000 complaint cases on its current case management system for 2023 alone. It stated that even if it only took one minute per case to search 10,000 of those cases, and it is certain that some searches would take much longer than that, this would equate to over 160 hours’ worth of searching. The ICO added that this estimate does not include all the other cases and records it would have to search.

The Complainant’s position

23. The complainant has argued that their request is for basic information that is searchable on any propriety system and that it should be a simple and straightforward electronic search without the need for manual searches.

The Commissioner’s view

24. The Commissioner accepts that the limitations of the search function on the ICO’s casework management system means that the large volume of complaint cases potentially in scope of the request would need to be searched manually. He considers that the ICO has estimated reasonably that to confirm or deny whether it holds any information within the scope of the complainant’s request would exceed the appropriate cost limit by a significant margin.

25. The Commissioner acknowledges that the complainant has a clear idea of the information they want to receive and an expectation on how it could be collated. However, he notes that they do not know exactly how the ICO's casework management system captures information and what its limitations are.
26. The Commissioner therefore accepts that the ICO was correct to apply section 12(2) of FOIA to the second question of the complainant's request.

Section 16 – duty to provide advice and assistance

27. 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 practice² in providing advice and assistance, it will have complied with section 16(1).
28. The Commissioner notes that in its response to the complainant the ICO suggested that the complainant could resubmit a request about data protection complaints that includes specific parameters like date, data controller or complaint type. The ICO advised however that a refined request may still require it to check through any complaints in detail, particularly if multiple different issues are involved or where the requested search criteria do not reflect the ways it categorises and records complaint cases.
29. The Commissioner is therefore satisfied that the ICO has met its obligations under section 16 of FOIA in regard to the request.

Right of appeal

30. 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

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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