

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 19 February 2008

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

### Summary

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The complainant asked the Home Office for information relating to work permits issued to employers. The Home Office confirmed that they were refusing to provide the information because it was not held in the required format. They qualified that, in order to comply with the request, they would need to create the information, something they were not required to do by the Act. In addition the Home Office confirmed that, in this case, the actions they would need to take to produce the information would place a "disproportionate strain on resources". The Commissioner found that the requested information was recorded in an electronic database and that, in order to locate, retrieve and extract this, the Home Office would need to write and run a report. The Commissioner does not accept that the level of difficulty involved in performing these activities has a bearing on the question of whether information is or is not held by a public authority. His decision was that the information requested is held by the Home Office and that in failing to either provide it or provide alternative reasons under the Act for not doing so, they breached section 1. Also, the Commissioner found that, in failing to provide a proper reason for refusing the request, the Home Office breached section 17(1) of the Act. The Commissioner required the Home Office to either provide the complainant with the requested information or provide valid reasons for not doing this.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. On March 19 2007, the complainant requested the following information:

(1) "I would like a list of the top 10 work permit sponsors in (a) the public sector and (b) the private sector in 2005, or calendar year 2005/6 if more convenient (i.e., the employers which obtained the most work permits for employees, including intra-company transfers), together with the number of permits obtained by each employer. Please note that my request refers to employers across the board, not to any particular sector."

(2) "Separately, I would like to know the number of work permits obtained in (a) 2005 and (b) 2006 by the following employers, all identified in the table headed "Top ten work permit sponsors 2000-2004" included in the report Work Permits and the IT Industry, commissioned by IND from the Institute for Employment Studies and completed in August 2005:

- i) TCS
- ii) Wipro UK branch
- iii) Mahindra-British Telecom
- iv) Mastek (UK)
- v) Infosys Technologies
- vi) Xansa
- vii) Accenture
- viii) Satyam Computer Services
- ix) Cognizant Technology solutions"

3. On 18 April 2007 The Home Office responded, stating that they were refusing to provide the information because:

"...the information is not held in the required format and in order to answer your request we would have to create the information, which we are not obliged to do under the Freedom of Information Act."

4. On 19 April 2007 the complainant contacted the Home Office and requested an internal review of this decision.

5. The Home Office undertook an internal review and communicated its findings to the complainant on 8 June 2007. In the internal review the Home Office confirmed that, with regard to the first element of the request, it would be necessary to produce and restructure the data held in their records, something which they considered was not a requirement under the Act. With regard to the second request element, the Home Office confirmed:

"...as this information is not routinely prepared, a report would have to be run to extract the data. Although this could be produced more easily than that requested at question 1, the FOI Act does not require the generation of information specifically for disclosure."

"After careful consideration of the way in which WPUK reached their decision, I have concluded that their response was appropriate. They do not hold the data in the required format, the Act does not require them to create it and to do so would place a disproportionate drain on resources....."

With regard to the second request element the Home Office, without prejudice, also explained that even if they were to “create” the relevant information, the nature of the information was such that they would be required to consider it against the exemptions in sections 41 and 43 of the Act.

## The Investigation

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### Scope of the case

6. On 13 June 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - The complainant stated that he accepted that the Home Office was not obliged to provide him with the information specified in the first element of his request. The Home Office’s response to the first request element will not, therefore, be considered further in this decision notice and all references to the “request” should be taken to refer solely to the second request element.
  - The complainant asked the Commissioner to adjudicate on the Home Office’s response to the second element of his request. As grounds for his complaint he stated that he disagreed with the Home Office’s definition of the activities required to comply with his request as “generating” information. In his view, this was information held by the Home Office so the relevant question was whether the cost of complying with the request fell within the cost limits set out in the Act.
  - The complainant also stated that he disagreed with the Home Office’s without prejudice indication that the exemptions in sections 41 and 43 of the Act might be relevant to his request. However, as the Home Office did not rely on these exemptions in refusing the request but confirmed under section 1 that the requested information was not held, this decision notice will not consider this matter further.
  
7. In the course of the investigation the Commissioner has considered the following issues:
  - With regard to the Home Office’s claim that the requested information was not held “...in the required format”, to establish which section of the Act this ground for refusal refers.
  - Whether information contained within an electronic database is held by a public authority for the purposes of the Act.

(PTO)

  - Whether the complexity of the work involved in locating and extracting requested information from an electronic database is relevant to the question of its held/not-held status.

## Chronology

8. On 10 October 2007 the Commissioner contacted the Home Office and asked them to provide further clarification of their handling of the request, specifically:
  - In terms of the Act, in what sense is the Home Office's claim that the requested information is not held in the required "format" grounds for not complying with the request?
  - If the requested information is held, albeit embedded within an electronic database, could it be located, retrieved and extracted within the confines of the "appropriate limit"<sup>1</sup>?
9. On 12 November 2007 the Home Office responded to the Commissioner's letter and confirmed that it was of the view that the requested information was not held. It clarified that the Border and Immigration Agency ("BIA") held records of 1.2 million work permit applications received since 1997 on its "Globe" database. In order to provide the figures specified in the request a new report would need to be built and run and that the degree of "searching and data manipulation required would constitute creating new information." The Home Office clarified that the time estimated to write and run such a report was "about half a day".
10. On 15 November 2007 the Commissioner wrote to the Home Office to set out why he disagreed with their conclusion that the requested information was not held. The Home Office was invited to revise their position or it was likely that a decision notice would be issued on this matter.
11. On 29 November 2007 the Home Office wrote to the Commissioner and confirmed that it upheld its view that the requested information was not held. The Home Office also confirmed that, should they have agreed with the Commissioner that the information was held, the estimated time it would take to produce the information was "about three and a half hours".

## Analysis

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### Section 1

12. The Commissioner has considered whether the information requested by the complainant is held by the Home Office.
13. The Home Office is of the view that, although they hold the constituent data identified in the request in an electronic database, the process of identifying and retrieving the relevant data constitutes information creation, something the Act does not require them to undertake. The requested information is, therefore, not held.

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<sup>1</sup> The "appropriate limit" as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

14. During the course of his investigation the Commissioner has considered some of the fundamental principles of database construction and functionality. Databases hold information in one or more tables (usually many). Tables contain records which consist of multiple fields. Query tools within the software use these linked fields to extract data from databases into reports. Even where particular requested information is not available through standard reports, query languages (such as SQL) can usually be used to combine data from multiple tables and/or databases.
15. The Commissioner notes that public authorities will often receive requests made under the Act for lists of information. In many cases this will not be information which the public authority holds as a readily available list but the constituent data parts, instead, will be held in a database. A common response to such requests is that the information is simply not held because, at the time the request is received, the public authority is not in possession of a physical list. The steps required to provide such a list, as argued by the Home Office in the case of the current complaint, is defined as a process of information "creation".
16. The Home Office provided the Commissioner with further details of the extent of the information contained within their database and the manner in which it was stored. With regard to the 1.2 million work permit applications stored on its database, there is an individual entry for each application and they are held in chronological order. For each application various types of information are recorded. The fields relevant to the request include:

"...full name of company/organisation; their address (including postcode); telephone number; fax number; email address; home many employees they have in the UK; and whether they have made another work permit application in the last five years."

The Home Office further clarified that the database:

"...neither contains figures for the number of applications received from any one organisation nor does it have a report built into it designed to generate these figures. Therefore in order to generate the requested figures an entirely new report would need to be built and then run. This task would be complicated by the fact that the database contains a number of different employer names which are in fact the same employer, which would necessitate the use of wild cards in any report. There can be two dozen different combinations of the same company name, and the person building the new report would need to analyse the different combinations of employer names making a decision as to which entries fall under a particular employer. Consequently I am of the opinion that the requested information is not currently held within this database, and would need to be created."
17. The Commissioner wishes to set on record that the Home Office, in their submissions to him, amended their reasons for not complying with the request from those stated in their initial responses to the request. Their initial view, as issued in their responses to the complainant, was that the information was not

- held “in the correct format”. Their position now is that the information simply is not held.
18. The Commissioner notes that elements of the arguments provided by the Home Office have previously been considered by other relevant authorities, namely the Information Tribunal, the European Ombudsman and the Irish Information Commissioner.
  20. In the case of *Johnson v the ICO and MOJ (EA/2006/0085)*, the Tribunal considered whether information requested by the complainant was held within an electronic database. Its conclusions were based on an assessment of three relevant factors: Firstly, the accuracy and completeness of the information recorded in the database, secondly, the relevant search options and, thirdly, the level of complexity of the search.
  21. With regard to the accuracy or completeness of the relevant information recorded in the database, the Tribunal considered the first element of the request, for:  
  
“The number of claims allocated to individual Queen’s Bench Masters for the years 2001, 2002, 2003 and 2004. “
  22. The Tribunal ruled that the information was not held because:  
  
“although the case query form does include the name of the Master to whom the case is currently assigned, this field is updated if a case is reallocated to another Master and so it only records the current Master handling the case. There is no specific field in which to record the name of the Master to whom the case was originally allocated” (paragraph 25)
  23. Although noting that the reallocation of cases is infrequent, the Tribunal concluded that it is not possible to provide an accurate record of how many cases were assigned to individual Masters in a given time period.
  24. However, the Commissioner considers that the fact that information retrieved in a query may not be accurate is not sufficient in defending the position that information is not held. The right under the Act is to recorded information, and this ruling may suggest that the right of the applicant is to be informed of the correct answer to a question, irrespective of the information which is recorded in relation to it. The Commissioner does not accept this view. Whilst this does not have a direct bearing on the complaint under consideration (this was not an argument explicitly relied upon by the Home Office) the Commissioner includes it as an example of, in his view, an erroneous characterisation of the held/not held issue, with explicit regard to information recorded in electronic databases. The remaining arguments considered by the Tribunal mirror those relied upon by the Home Office and these are set out below together with the Commissioner’s considered view, applied to the circumstances of this case.
  25. Secondly, the Tribunal further concluded that the information was not held because of the limitations of the database search screen. The MOJ witness confirmed in this regard that “it is only possible to enter a specific date or no date



- as a search reference when looking up the number of cases assigned to a Master. It is not possible to search using a period of time.” (paragraph 26).
26. The Commissioner is of the view that the relative ability of a database search facility to locate and extract requested information is not relevant to the question of whether the information is held. The fact that information cannot be simply searched, whilst suggestive of the potential difficulty involved in locating, extracting and retrieving the information, does not allow the Home Office to conclude that the requested information is not held.
  27. In the Commissioner’s view, the fact that the Home Office would need to generate a report to locate, retrieve and extract the information requested has no bearing on the question of whether the information is or is not held. The information, by the Home Office’s own account, already exists (albeit submerged within the database) so the definition of this activity as one of information “creation” is specious<sup>2</sup>.
  28. Finally, the Tribunal considered the complexity of the search required. It concluded that this was also a factor in determining whether the information was held. In this case the Tribunal stated that, “the system is case sensitive. So even if it were possible to search for the number of cases allocated to a particular Master over a particular period, the search would have to be repeated to include all possible spellings of a Master’s name.” (paragraph 28).
  29. In this case the Home Office similarly argued that the relative complexity of a search has a bearing on the held status of information recorded by a public authority. However, in the Commissioner’s view data which has been entered into a database is data which is held, irrespective of the complexity of the process required for its retrieval or extraction. Information cannot be more or less held. The attributes of the information identified in a request or the manner in which it is recorded are a secondary issue to the matter of its held or not held status.
  30. The Irish Information Commissioner’s ruling on these matters, in cases 98104, 98130 and 99024 – The Sunday Times, The Sunday Tribune and Kerryman newspapers and the Department of Education and Science, provides support for the Commissioner’s view.
  31. Here, a request was made for access to leaving certificate examination results sorted by school. The department stored the candidates’ results in association with the examination centres rather than schools, but held sufficient information to allow for the results on a school-by-school basis. In summary, the decision found that all kinds of information can be extracted from databases. In other words, many different combinations of records can be extracted. The process of accessing the records sought by the requestors is not one of “creation”, rather, the records already exist and it is just a matter of extracting them.

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<sup>2</sup> In their submissions to the Commissioner the Home Office has confirmed that, with regard to performing the activities necessary to provide the information requested, it would take “...about three and a half hours to write a report, process the report, analyse and clean the data, export it into Excel, merge relevant data and then format it.”

32. These matters were also considered in a recent European Ombudsman ruling (Reference: 1693/2005/PB). In this case a request made to the European Commission for reports had been refused on the grounds that the information was not held. According to the European Commission's operating definitions of what constitutes held information, information contained within databases was considered held if it was retrievable via a normal search or "routine operations". Further, where requested information can be provided only after existing search parameters have been modified (modifications that would not be necessary for the performance of the Commission's tasks) said information was not considered to be held.
33. There are clear resonances here with the Home Office's position. Whilst the European Ombudsman's conclusions relate to a different jurisdiction and are not transferable, some of the general points made are relevant to the current complaint. For example, footnote 19 of the Ombudsman's decision states:
- "Relatedly, the Ombudsman recalls his position that to limit the right of access to information that can be extracted using existing search tools would risk undermining the usefulness of the right of access, because such tools will normally have been developed only with the needs of internal information management in mind."<sup>3</sup>
34. Having considered these previous rulings and the Home Office's own versions of the arguments, the Commissioner is of the view that, where an electronic database contains recorded information identified in the request, that information is held, and the public authority is under an obligation to provide it (subject to the provisions of the Act).
35. The nature of databases is such that any query of the database amounts to information retrieval or extraction rather than the creation of new information, because, simply, the information is held within the database.
36. The Commissioner considers that the writing of a report to perform these functions should, instead, be viewed as one of the activities a public authority is expected to undertake in complying with a request, rather than as a means to create information not held at the time a request is received. As the Home Office has confirmed to the Commissioner that the data identified in the request is recorded within their database, the time they take to locate, retrieve and extract this should, therefore, form part of the Home Office's calculation of their estimate of the cost of compliance under Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations").

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<sup>3</sup> Footnote 19, Decision of the European Ombudsman on complaint 1693/2005/PB against the European Commission. Viewable online here:  
<http://ombudsman.europa.eu/decision/en/051693.htm>



## The Decision

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37. The Commissioner's decision is that the Home Office did not deal with the request for information in accordance with the Act. The Commissioner has concluded that the Home Office, in failing to explicitly confirm or deny whether the requested information was held, has acted in breach of section 1(1)(a) of the Act. Also, in failing to provide a valid reason for refusing to provide the information requested the Home Office acted in breach of section 17(1) of the Act.

## Steps Required

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38. The Commissioner requires the Home Office to take the following steps to ensure compliance with the Act:
- Either provide the complainant with a copy of the requested information or issue a refusal notice in accordance with section 17(1) of the Act.
39. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Other matters

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40. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

For central government departments such as the Home Office the appropriate limit is set at £600, calculated by estimating the staff time (calculated at an hourly rate of £25) that a public authority would need to employ doing the following:

- “(a) determining whether it holds the information,
- (b) locating the information, or a document which may contain the information,
- (c) retrieving the information, or a document which may contain the information,
- and
- (d) extracting the information from a document containing it.”

In their submissions to the Commissioner the Home Office has explicitly confirmed that their estimate of the time it would take to undertake the above tasks in order to produce the information specified in the request is variously “about half a day” or “three and half hours”. This would place the cost of complying with the request within the confines of the appropriate limit. The Commissioner would, therefore, be unlikely to consider subsequent arguments from the Home Office which invoke section 12(1) of the Act as grounds for refusing the request.

## **Failure to comply**

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41. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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42. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 19<sup>th</sup> day of February 2008**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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**Section 1(1)** provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

**Section 12(1)** provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

**Section 17(1)** provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.”