

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 September 2013

Public Authority: Foreign & Commonwealth Office
Address: Overseas Territories Directorate
WH.2.31 King Charles Street
London

Decision (including any steps ordered)

1. The complainant has requested information about the Pitcairn Constitution. The Foreign & Commonwealth Office cited section 12.
2. The Commissioner's decision is that the Foreign & Commonwealth Office has applied section 12 appropriately.
3. The Commissioner does not require the Foreign & Commonwealth Office to take any steps.

Background

4. The complainant is representing 12 people from Pitcairn Island who are making a submission to the UN Decolonization Committee. The complainant has explained that all of the information will assist this submission.

Request and response

5. On 21 December 2012, the complainant wrote to the Foreign & Commonwealth Office (FCO) and requested information about the Pitcairn Constitution – (please see annex 1 for the full request).
6. The FCO responded on 18 January 2013. It disclosed some information and withheld some under section 12.
7. Following an internal review, the FCO wrote to the complainant on 5 March 2013 upholding its application of section 12. The FCO also advised

the complainant that the only way he could narrow his request to bring it within the appropriate cost limit, was by significantly reducing the number of subjects on which he wished to search for data, whilst at the same time restricting the number of years he wished to have searched. The FCO suggested that a 10-year period on one subject would bring his request within the cost limit.

Scope of the case

8. The complainant contacted the Commissioner on 22 March 2013 to complain about the way his request for information had been handled. The complainant stated that the FCO was using section 12 to avoid disclosing information which would help Pitcairn islanders exercise rights of self-determination guaranteed by the UN Charter.
9. The complainant also complained that the FCO should have considered each question as a separate FOIA request and therefore there should have been twelve cost limits rather than one.
10. The Commissioner will consider whether the FCO has applied section 12 appropriately.

Reasons for decision

11. Section 12(1) provides:

"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".

12. The cost limit is set in The Freedom of Information and Data Protection (Appropriate Limit & Fees) Regulations 2004 SI No 3244 (the fees regulations) at £600 for central government departments and £450 for all other public authorities. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour; therefore section 12(1) effectively imposes a time limit of 24 hours for central government departments.
13. When estimating whether compliance with a request would exceed the appropriate limit, regulation 4(3) states that an authority can take into account the costs it reasonably expects to incur when:
 - 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 from a document containing it.
14. The Commissioner has considered the complainant's point that there were twelve separate requests and therefore there should have been twelve separate cost limits, as opposed to the one request claimed by the FCO.
 15. Regulation 5 of the fees regulations states that with regard to the aggregation of requests, a public authority can include the costs of complying with two or more requests if certain conditions are met, which require the requests to be:
 - made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
 - made for the same or similar information; and
 - received by the public authority within any period of 60 consecutive working days.
 16. The Commissioner notes that the complainant has explained that the requested information will be used by 12 people whom he is representing in order to make a submission to the UN Decolonisation Committee.
 17. Having considered the requests, the Commissioner is satisfied that they have been made by one person, albeit acting on behalf of 12 others acting in concert. He is also satisfied that the requests were for similar information, in this case information about the Pitcairn Constitution, and were received by the FCO within 60 consecutive working days, in this case on the same day.
 18. The Commissioner is therefore satisfied that the FCO was correct to treat the twelve requests as one request for the purposes of section 12.
 19. The FCO explained that its retrievals section holds relevant information that is over three years old. The retrievals section estimated that there would be between 35-40 relevant files to examine, and that each file contained approximately 250 pages and would take approximately one hour to assess.
 20. Furthermore, the FCO explained that this estimate did not include files from its Human Rights and Democracy Department which, given the complainant's questions on various issues, would also need to be scrutinised.

21. The FCO also explained that, as the 35-40 files alone took the complainant considerably over the costs threshold, it had not requested a further examination of other relevant files or more recent information.
22. The Commissioner asked the FCO to carry out a sampling exercise regarding the amount of pages in its retrievals section files. The FCO confirmed that its retrievals section had looked at four random Pitcairn historic cases from within the search period. It explained that one file contained 159 pages, the second contained 223 pages, the third contained 250 pages and the fourth contained 240 pages. The FCO explained that this worked out at an average of 218 pages each, which would still be over the cost limit.
23. The Commissioner is satisfied that the FCO was correct to treat the twelve requests as one under regulation 5 as explained in paragraph 17. He is also satisfied that the FCO has been able to explain that compliance with this request would exceed the £600 cost limit. Therefore, the Commissioner considers that the FCO is not required to comply with the request.

Right of appeal

24. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

25. 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.
26. 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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Appendix 1

'In the context of the Constitutional challenge now before the Appeal Court of Pitcairn it became apparent that the Government of the UK said to the UN Committee Against Torture ("CAT") in 1998¹:

II. GENERAL REVIEW OF POLICY TOWARDS THE OVERSEAS TERRITORIES

163. *The Committee will wish to be aware of the outcome of a recent and comprehensive review of the United Kingdom Government's policy towards the Overseas Territories. As a consequence of this review, the United Kingdom Government proposes to modernize its relationship with the territories, offering a stronger and better partnership which will be based on trust and mutual respect and **which will reflect the following four clear principles: self-determination; self-government;** the United Kingdom's responsibilities to the territories and their responsibilities to the United Kingdom; and the United Kingdom's commitment to help the territories develop economically and to assist them in emergencies.*

[Bold added]

In Barclay Lord Collins states²:

45. *There is no issue on this appeal about jurisdiction to determine the legality of the decisions of the Committee and the Privy Council. Wyn Williams J held in the Administrative Court [\[2008\] 3 WLR 867](#), paras 98-102, and the respondents accepted in the Court of Appeal [\[2009\] 2 WLR 1205](#) (see Pill LJ at paras 19-21) that to the extent that the Reform Law is in breach of Convention rights, then the appellants are entitled to appropriate relief in these proceedings. **That is because the respondents expressly advised Her Majesty the Queen to approve the Reform Law on the ground that it did not involve any breach of the obligations of the United Kingdom under the Convention.** It will, however, be necessary to revert to the question of jurisdiction because of the appellants' contention that the courts of*

¹ *Committee Against Torture, Consideration of reports submitted by States Parties under article 19 of the Convention, United Kingdom of Great Britain and Northern Ireland and Dependent Territories, U.N. Doc. CAT/C/44/Add.1 (1998).*

² *Barclay & Ors, R (on the application of) v Secretary of State for Justice & Ors (Rev 1) [2010] UKHRR 86, [2010] 1 AC 464, [2009] UKSC 9, [2010] HRLR 10, [2009] 3 WLR 1270.*

this country also have jurisdiction to grant relief on the basis that the respondents were acting as public authorities for the purposes of section 6 of the Human Rights Act 1998 when recommending the Order in Council by which the Reform Law was given Royal Assent.

In that context, what advice did Her Majesty, or Her Local Representative, the Governor, receive since the 1988 CAT report, as to:

A. Breach of any obligations of an International treaty (particularly the ECHR, ICCPR, ICESCR, or the UN Charter) prior to or after making the Order-in-Council, 2010 No 244, the Pitcairn Constitution Order:

Request by [named person] for 1988-2006, [named person] for 2007-2008, [named person] for 2010-2012.

B. What advice, including any form of paper (e.g. Green, White, Discussion) or other documents, or any other form of written material including electronically generated copy has there been in respect on the topic of self-determination including self-government for Pitcairn, especially as to an independently elected legislative chamber, or a more Island based judicial system.

Request by [named person] (Green, White or discussion), [named person] the balance.

Please supply copies of the material preferably by email, and/or by providing a web link to publicly available documents. The request does not include economic social or cultural development except in relation to creation of Courts or the Judiciary.

C. Please supply the final and any draft copies of advice or other commentary given as to the proposed Order-in-Council, the Pitcairn Constitution Order.

Request by [named person] for final advice [named person], for draft advice.

D. What plans, if any, are there for the future self-determination, and self-government of the Islands?

Request by [named person] 1988-2008, [named person] 2009-2012

E. Was any consideration given to a judicial system such as that applying in any of the Channel Islands.³

Request by [named person].

F. Any information relating to the Constitution given to the UN Human Rights Committee, or UN Decolonisation Committee.

Request by [named person] for UN Human Rights Committee, [named person] for Decolonisation Committee.

Should my client's request be burdensome, I am open to suggestion as to how to assist you to more efficiently provide the documents or prime documents should anyone exceed the 3 day provision, or more generally.

In the event that any one request exceeds 3 days and another does not, as each person has a common interest as well as a separate interest, in the all the information, please transfer any excess over three days to the next applicant, in the Order, as set out.

Should the total workload exceed 36 hours please advise.'

³ See Timothy Hanson, *Jurats as Adjudicators in the Channel Islands and the Importance of Lay Participation*, 39 *Comm. L. World Rev.* 250, 2010. Annexed.