

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 April 2015

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

Decision (including any steps ordered)

1. The complainant requested information about compensation payments that had been made for unlawful detention during the period 2009 to 2011. The Home Office refused to disclose this information under section 12(1) of the FOIA as it estimated that the cost of compliance with the request would exceed the appropriate limit.
2. The Commissioner's decision is that the Home Office applied section 12(1) of the FOIA correctly and so it was not obliged to comply with the complainant's information request.

Request and response

3. On 20 August 2014 the complainant wrote to the Home Office and requested information in the following terms:

"I would like to request under the Freedom of Information Act the total compensation which has been paid following claims for unlawful detention.

I'd like the figure for compensation paid to individuals who have spent time in detention of all categories, due to immigration related issues.

Please provide the totals for each of the two financial years of 2009-2010 and 2010-2011."

4. The Home Office responded on 18 September 2014. It refused the request under section 12 of the FOIA as it estimated that the cost of complying with it would be excessive.
5. The complainant responded on 25 September 2014 and requested an internal review. In an undated response the Home Office confirmed that the outcome of the review was that the refusal of the request on cost grounds under section 12 of the FOIA was upheld.

Scope of the case

6. The complainant contacted the Commissioner on 28 October 2014 to complain about the refusal of his request. The complainant referred to the Home Office having been able to provide similar information for later years than those specified in the request. He also suggested that disclosure of this information would be in the public interest.
7. During the investigation of this case the complainant clarified the intended scope of his request as being for information on immigration related unlawful detention, rather than any other kind of unlawful detention.

Reasons for decision

Section 12

8. Section 12(1) of the FOIA provides that a public authority is not obliged to comply with a request if it estimates that to do so would exceed the appropriate cost limit. The cost limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations) at £600 for central government departments. The fees regulations also provide that the cost of responding to a request must be calculated at the rate of £25 per hour, which means that section 12(1) effectively provides a time limit of 24 hours per request. The fees regulations also list the tasks can be taken into account when estimating the cost of a request:
 - Determining whether the requested information is held.
 - Locating the information.
 - Retrieving the information.
 - Extracting the information from a document containing it.

9. Section 12(1) requires a public authority to estimate the cost of a request; it is not required to calculate the exact cost of the request. The question for the Commissioner here is whether the estimate made by the Home Office of the cost of this request was *reasonable*. If the Commissioner concludes that it was reasonable for the Home Office to estimate that the cost of this request would exceed the limit of £600, section 12(1) will apply and the Home Office was not obliged to comply with the complainant's information request.
10. The Commissioner would note at this point that the public interest is not relevant here. Whilst some of the exemptions in Part II of the FOIA are qualified by the public interest, section 12(1) is in Part I and is not amongst the provisions of the FOIA that are qualified by the public interest. What public interest there may be in disclosure of the information requested by the complainant is not, therefore, relevant when considering whether section 12(1) applies.
11. Turning to the reasoning provided by the Home Office as to why compliance with this request would result in exceeding the cost limit, it acknowledged that, as the complainant had referred to, it was possible for it to supply similar information to that requested in this case for later years than those specified in the request. However, it stated that it was able to do this for years since 2011-12 due to the way this information had been recorded since that time. Prior to then, the requested information was recorded in such a way that it would not be a simple task to collate that information.
12. The Home Office stated that providing the requested information for the years specified in the request would require manually reviewing the details of all cases in which compensation payments were made in the 2009-11 period. It referred the ICO to a report¹ that showed that there had been 989 potentially relevant cases where compensation was paid during that period. It stated that it would be necessary to review each of these cases to establish whether these were cases in which compensation was paid as a result of unlawful detention.
13. The Commissioner notes that this report refers only to all cases in which compensation was paid. It does not specify why compensation was paid. Therefore, nothing in this report disputes the representations from the Home Office that it would be necessary to review each case to ascertain

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257140/annual-report-10-11.pdf

whether the reason compensation was paid was due to unlawful detention.

14. The Home Office estimated that it would take an average of 30 minutes per case to check for unlawful detention cases. It supplied to the ICO a breakdown of the tasks that it would be necessary to carry out to comply with the request. The bulk of the estimate was based on the time spent reviewing the electronic and paper record of each case and possibly consulting with the relevant business area to confirm the reason why compensation was paid.
15. The Commissioner notes that the Home Office had provided clear evidence in the form of the report referred to above that there were 989 cases in which compensation was paid during the time period specified in the request. On the issue of whether it is accurate for the Home Office to state that identifying unlawful detention cases would only be possible through reviewing individual cases, the Commissioner notes that the Home Office has previously disclosed similar information to that requested by the complainant for later years. The Home Office made the point to the Commissioner that these earlier disclosures show that it is able and willing to disclose this information where it is practical to do so; it has not disclosed this information in this case as this is not practicable.
16. The Commissioner also notes that, even if the estimate of 30 minutes per case was excessive, that there were 989 possibly relevant cases means that a much shorter per case estimate would still result in the cost limit being exceeded.
17. Taking into account the evidence of the number of possibly relevant cases, the breakdown of the cost estimate supplied by the Home Office and its willingness to disclose similar information for later years, the conclusion of the Commissioner is that the cost of compliance with the complainant's request would exceed the limit of £600. Section 12(1) did, therefore, apply and the Home Office was not obliged to comply with the complainant's request.

Section 16

18. Section 16(1) provides that a public authority is under an obligation to provide advice and assistance to any person who has made an information request to it. In relation to section 12(1), this should mean that a public authority provides advice to the requester as to how their request could be refined to bring it within the cost limit.
19. In this case the Home Office referred to section 16(1) in both the refusal notice and in the internal review response. Whilst it stated that it was

unable to provide advice as to how the request could be refined, the complainant was referred to information in the public domain on a related subject matter and which the Home Office believed may be of interest to the complainant. As a result the Commissioner is satisfied that the Home Office took steps to address its obligation to provide advice and assistance and so he finds no breach of section 16(1) in this case.

Right of appeal

20. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

21. 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.
22. 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

Rachael Cragg
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