

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 May 2015

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

#### Decision (including any steps ordered)

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1. The complainant requested information relating to litigation he had taken against the Home Office. The Home Office stated that it did not hold some of this information. In relation to other parts of the request it now states that it should have asked the complainant to clarify his request.
2. The Commissioner's decision is that the Home Office stated correctly that it did not hold some of the information requested. However, the Commissioner has also found that the Home Office breached section 16(1) of the FOIA through a failure to comply with its duty to provide advice and assistance and section 17(5) by failing to specify in correspondence with the complainant a provision that it later cited.

#### Request and response

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3. On 16 September 2014, the complainant wrote to the Home Office and requested information in the following terms:

*"(1) The resource time and cost spent on legal expenses in relation to my case (no 2200128/2014) between January 2010 and October 2012.  
(2) The number of internal resources involved – please specify the department involved and the number of internal resources per department – and the internal costs incurred in relation to my case (2200128/2014) between January 2010 and October 2012.  
(3) The resource time and costs spent on legal expenses in relation to my case (no 2200128/2014) from October 2010 to date.*

*(4) The number of internal resources involved – please specify the department involved and the number of internal resources per department – and the internal costs incurred in relation to my case (2200128/2014) from October 2012 to date.*

*(5) The resource time and legal expenses incurred by or paid to Tsols in relation to case (no 2200128/2014).*

*(6) The resource time and legal expenses paid to Tsols' Counsel, Robert Moretto in relation to case (no 2200128/2014).*

*(7) The resource time and costs incurred for the completion of the two medical assessment and reports procured from Prof Hanspal and David Baker in relation to case no 2200128/2014, inc, separately any expenses paid to Somek & Associates.*

*(8) The resources time and costs incurred by Tsols in respect of drafting the instructions for Prof Hanspal and David Baker.*

*(9) The resources time and costs incurred for the redaction of the bundle of documents disclosed under SAR ref SA13593 and confirmation of the number of resources involved in it".*

4. The Home Office responded substantively on 20 October 2014. It stated that requests (1) and (3) to (8) were refused under the exemption provided by section 42(1) (legal professional privilege) of the FOIA and that no information falling within the scope of requests (2) and (9) was held.
5. The complainant responded on 27 October 2014 and requested an internal review. The Home Office responded on 24 November 2014 with the outcome of the review. The conclusion of this was that the previous response was upheld, with the exception of request (4) in relation to which the Home Office now stated that no information was held.

## **Scope of the case**

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6. The complainant contacted the Commissioner on 10 December 2014 to complain about the response to his information request. At this stage the complainant indicated that he did not agree that section 42(1) had been cited correctly or that the Home Office was correct in stating that it did not hold some of the information he had requested.
7. During the investigation of this case, the position of the Home Office changed. In relation to requests (1), (3) and (5) to (8), where it had previously stated that it held information falling within the scope of these requests, but that this information was exempt under section 42(1), it now stated that it had not established prior to the citing of section 42(1) whether it did hold information falling within the scope of those requests. Its position was now that it would exceed the cost limit

to establish whether it did hold information falling within the scope of those requests and so section 12(2) of the FOIA applied.

8. However, the Home Office also stated that it had been supplied with this information by Treasury Solicitors (TSOL) as part of its preparation for responding to the Commissioner's correspondence about this case. This meant that, whilst its position was that at the time of the request section 12(2) applied, it now held this information in a format that meant it could be disclosed without exceeding the cost limit.
9. As the Home Office had now stated that this information could be accessed within the cost limit, the complainant was notified that an investigation would not be carried out as to whether section 12(2) applied at the time that the request was made as this would not have been a proportionate use of the Commissioner's limited resources.
10. Following this the complainant confirmed that he wished the Commissioner to issue a decision notice that covered the remaining issues in this case, which were whether the Home Office was correct in stating that it did not hold any information falling within the scope of requests (2), (4) and (9), and any procedural breaches of the FOIA through the handling of the requests.

## **Reasons for decision**

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### **Section 1**

11. Section 1(1)(a) of the FOIA provides that a public authority in receipt of an information request is required to respond confirming or denying whether it holds the requested information. Complying with this section requires a public authority to establish accurately whether it holds information falling within the scope of the request.
12. In this case that Home Office has stated that it does not hold information falling within the scope of requests (2), (4) and (9) and the complainant has asked the Commissioner to investigate whether the Home Office is correct in this regard. If the Home Office has stated incorrectly that it does not hold this information, this would represent a breach of section 1(1)(a).
13. The requirement for the Commissioner here is to reach a decision as to whether the Home Office was correct on the balance of probabilities in stating that it did not hold information falling within the scope of requests (2), (4) and (9). In forming a conclusion on this point the Commissioner has relied on the explanation provided by the Home

Office as to why it should not be expected that it would have held this information.

14. The explanation given by the Home Office as to why it did not hold this information was that it does not require staff to record the time that they spend on each task. This meant that it held no record of the staff resources spent on the tasks referred to in the complainant's requests.
15. The counter-reasoning that the complainant cited was that he believed that this information would be recorded on a Home Office system known as "Adelphi". However, in response to that point the Home Office stated that this system is a database for HR functions in the Home Office, used, for example, for recording sickness absence and leave requests. This system is not used, however, to record how much time staff members have spent on particular tasks.
16. The Commissioner notes that in general within a large majority of work places employees will have a variety of tasks to perform, which will be detailed in their job description or exist as a less formal expectation. In very few work places, however, would a record be kept of the time spent by employees on each task. Also, whilst any large employer can be expected to have an HR IT system, such a system would not generally record the time spent by individual employees on each task.
17. The Commissioner therefore accepts that the Home Office does not record details of the work undertaken by each of its staff members in the manner suggested by the complainant. The Commissioner is furthermore aware of no evidence that this information is held in any other location.
18. For these reasons, the conclusion of the Commissioner is that, on the balance of probabilities, the Home Office was correct and in compliance with section 1(1)(a) of the FOIA in stating that it did not hold the information described in requests (2), (4) and (9).

## **Section 16**

19. Section 16(1) of the FOIA provides that a public authority is under a duty to provide advice and assistance to any person who has made or is intending to make a request to it. Where a public authority finds that a request is not sufficiently clear to enable it to identify what has been requested, this duty to provide advice and assistance means that the public authority is obliged to exercise section 1(3) of the FOIA and seek clarification from the requester.
20. In this case, when the Home Office contacted the complainant to inform him of the change in position described above at paragraphs 7 and 8, it stated that clarification should have been sought of the requests in

relation to which section 42(1) was cited. In failing to seek that clarification, the Commissioner finds that the Home Office did not comply with its duty to provide advice and assistance to the complainant.

21. The complainant has since stated that he has made fresh information requests to the Home Office. As those requests have already been made, the Commissioner has not included a specific step in this notice to seek clarification in relation to the requests set out above. However, when responding to the complainant's fresh requests, the Home Office should be mindful of this decision and ensure that it does take whatever action is necessary to comply with its duty to provide advice and assistance.

### **Section 17**

22. Section 17(5) provides that where section 12 is relied upon a public authority must notify the requester that this provision is cited within 20 working days of receipt of the request. In failing to notify the complainant in this case that it was relying on section 12(2) until it did so during the Commissioner's investigation, the Home Office breached the requirement of section 17(5).

### **Other matters**

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23. As well as the specific breaches of the FOIA recorded above, the Commissioner would also note his general view that these requests were poorly dealt with. The citing of an exemption from the section 1(1)(b) obligation to disclose information should only follow it having been established what information falling within the scope of the request is held. The Home Office erred in this respect in this case, which is surprising given the resources available to it and its extensive experience of dealing with information requests.
24. Also surprising is that the statement that the information in relation to which section 42(1) was cited was held was repeated by a Minister in response to the complainant's MP contacting the Home Office. This suggests that this Minister was incorrectly briefed and led to believe that it had been established that information falling within the scope of the request was held.
25. The Home Office has an opportunity to remedy these issues by dealing with the complainant's more recent information requests to a higher standard – it should ensure it does so. A record of the issues that have arisen in this case has been made by the ICO and may be revisited should evidence from other cases suggest that this is necessary.

## Right of appeal

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26. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

27. 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.
28. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**