

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 October 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 allegations of child sexual abuse in and around the Palace of Westminster. The Home Office stated that it was unable to establish whether it held this information within the cost limit and refused the request under section 12(2) of the FOIA.
2. The Commissioner's decision is that the Home Office cited section 12(2) correctly and so it was not obliged to confirm or deny whether it held the requested information. The Commissioner also found, however, that the Home Office breached section 17(5) of the FOIA by failing to respond to the request within 20 working days of receipt.

### Request and response

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3. On 11 March 2015, the complainant wrote to the Home Office and requested information in the following terms:

*"Please note that I am only interested in information which relates to the period 11 June 1983 to 2 September 1985.*

*(i) During the aforementioned period did Leon Brittan the then Home Secretary exchange correspondence and communications with any of the following individuals which related to an alleged paedophile ring operating in and around the Palace of Westminster and or more general allegations of child sex abuse. The correspondence and communications will include but will not be limited to a dossier of information compiled by the late Geoffrey Dickens MP. If the answer is*

*yes can you please supply copies of this correspondence and communications. Please do include those correspondence and communications written on behalf of Mr Brittan by his own private office. Please also include any relevant transcripts of telephone conversations between Mr Brittan and any of the individuals.*

*Margaret Thatcher, the then Prime Minister and or her private secretary.*

*Robert Armstrong, who was Cabinet Secretary.*

*Bernard Ingham, Mrs Thatcher's Press Secretary.*

*Brian Cubbon, former Permanent Secretary of the Home Office.*

*Sir Thomas Hetherington, the Director of Public Prosecutions.*

*Sir Kenneth Newman, Commissioner of the Metropolitan Police Force.*

*(ii) During the aforementioned period did Leon Brittan the then Home Secretary exchange correspondence and communications with any other member of the Home Office's ministerial team which related to an alleged paedophile ring operating in around the Palace of Westminster and or more general allegations of child sex abuse. The correspondence and communications will include but not be limited to a dossier of information compiled by the late Geoffrey Dickens MP. If the answer is yes can you please provide a copy of these correspondence and communications. Please also include those correspondence and communications written on behalf of Mr Brittan by his own private office. I am interested in receiving both sides of the correspondence and communications. Please also include any relevant telephone transcripts.*

*(iii) Has the Home Office recovered the aforementioned missing dossier compiled by Mr Dickens. If it has could it please provide a copy. Does the Home Office hold documentation authorising the destruction of the aforementioned documentation. If so can it please provide a copy of this documentation."*

4. The Home Office responded on 21 April 2015, more than 20 working days from receipt of the request. In response to requests (i) and (ii), it stated that it was unable to establish whether this information was held within the cost limit and refused the requests under section 12(2) of the FOIA. In response to request (iii) it stated that the requested information was not held.

5. The complainant responded on 21 April 2015 and requested an internal review. The complainant specified the refusal of requests (i) and (ii) on cost grounds and the late response as the basis for his review request.
6. The Home Office responded with the outcome of the review on 2 June 2015. It acknowledged that the FOIA had been breached through the late response, but upheld the refusal of requests (i) and (ii) under section 12(2).

## **Scope of the case**

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7. The complainant contacted the Commissioner on 2 June 2015 to complain about the refusal of his information requests. The complainant did not accept that it would exceed the cost limit for the Home Office to confirm or deny whether the requested information was held and reasoned that the Home Office would have already collated much of the information he had requested due to the investigations that had been carried out relating to allegations of historic child sexual abuse.
8. In line with the issues raised by the complainant when he requested an internal review and when contacting the ICO to make his complaint, the analysis below covers the late refusal notice and the citing of section 12(2) in response to requests (i) and (ii).

## **Reasons for decision**

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### **Section 17**

9. Section 17(5) requires that a response that refuses a request under section 12 must be sent within 20 working days of receipt of the request. In failing to respond to the complainant's request within 20 working days of receipt in this case, the Home Office breached section 17(5) of the FOIA.

### **Section 12**

10. The Home Office cited section 12(2) in response to requests (i) and (ii). This section provides 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. In other words, if the cost of establishing whether the requested information is held would be excessive, the public authority is not required to do so.
11. The appropriate limit is set at £600 for central government departments by the Freedom of Information and Data Protection (Appropriate Limit

and Fees) Regulations 2004 (the fees regulations). The fees regulations also provide that a cost estimate must be calculated at the rate of £25 per hour, giving an effective time limit of 24 hours.

12. Section 12(2) requires a public authority to estimate the cost of complying with a request, rather than to formulate an exact calculation. The question for the Commissioner here is whether the cost estimate by the Home Office is reasonable. If it is, then section 12(2) is engaged and the Home Office was not obliged to comply with the request.
13. The estimate made by the Home Office was based on the timeframe specified in the request meaning that any relevant information that was held would be in paper form. It stated that the "*correspondence files*" within which information within the scope of the request may once have been held would no longer be retained. It would, therefore, be necessary for it to search in "*a great many*" other paper files that possibly could hold information within the scope of the request.
14. The Home Office explained that it would be necessary to search in numerous paper files as their titles give only a broad idea of their contents. It stated that this meant that the only means to establish whether these files hold information within the scope of the request would be to search their contents.
15. On the time that this would take, the Home Office referred to there being "*up to*" 10,000 files dating from the 1980s. It estimated that reviewing the contents of each one for information within the scope of the request would take an approximate average of one hour. The estimate of the Home Office was, therefore, vastly in excess of the cost limit.
16. As to whether the Commissioner considers this estimate to be reasonable, he does have reservations about this. First, the estimate was based on searching files covering the whole of the 1980s, whereas the request specifies a much shorter time period. Whilst the Commissioner accepts that it is possible that files dating from reasonably close to, but outside, the exact timeframe specified in the request may contain information within the scope of the request, he is not convinced that it would be necessary for the timeframe of the search to cover the whole of the 1980s.
17. On the issue of whether an average of one hour per file is reasonable, the Commissioner has been provided with no evidence in support of this. He does not, for example, have any representations about the volume of the contents of an average file, nor precisely what tasks reviewing a file would entail.

18. However, his view is also that these reservations are immaterial when the volume of information that the Home Office states it would be necessary to review is taken into account. Even if the timeframe that the search focussed on and the average time to review each file were drastically reduced, the time taken in establishing whether the requested information was held would still be very far in excess of the cost limit.
19. The more important question in this case is, therefore, whether the Home Office was correct in stating that this work would be necessary in order to comply with the request, or whether there may have been an alternative and less time consuming method. This was the reasoning of the complainant, who argued that the information he requested would have been collated previously as part of the work already carried out relating to this subject matter, such as the Wanless-Whittam review<sup>1</sup>.
20. Clearly, having refused the request under section 12(2), the position of the Home Office is that the requested information has not been collated previously. This includes information located by the Wanless-Whittam review. The complainant was also advised in response to his request (iii) that no information was held relating to the "Dickens Dossier".
21. The Commissioner's view is that there is no evidence that the specific information requested by the complainant in this case has been collated previously, nor even that it has been established previously that this information exists. Whilst the Commissioner notes the previous work that has been undertaken relating to this subject matter, this does not in itself amount to an indication that the requested information must have been gathered previously.
22. The information available to the Commissioner is the representations by the Home Office on the volume of paper files that it would be necessary to review in order to establish whether the requested information is held, and the absence of evidence suggesting that this information has been collated previously, or even its existence confirmed. On the basis of this information, the conclusion of the Commissioner is that it would have exceeded the cost limit for the Home Office to have established whether it held the requested information, and so to have issued a confirmation or denial in response to the request. His finding is, therefore, that section 12(2) did apply and so the Home Office was not obliged to confirm or deny whether it held the requested information.

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<sup>1</sup> <https://www.gov.uk/government/publications/the-peter-wanless-and-richard-whittam-qa-review>

## **Section 16**

23. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. In general where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
24. In this case the Home Office addressed its section 16(1) duty by advising the complainant that a refined request may not engage the cost limit. The Commissioner also recognises that this is a case where providing useful advice was difficult given how far in excess of the cost limit the estimate made by the Home Office was.

## **Other matters**

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25. As well as the finding above that the Home Office breached section 17(5) by failing to respond to the request within 20 working days, the Commissioner has made a separate record of that breach. This issue 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 .....**

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