

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 May 2016

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

Decision (including any steps ordered)

1. The complainant asked for information relating to visa applications. The Home Office stated that it was unable to establish whether it held this information within the cost limit and therefore refused the request under section 12(2) (costs) 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.

Request and response

3. On 23 December 2014, the complainant wrote to the Home Office and requested information in the following terms:
"details of all UK registered companies in which successful applicants for Tier 1 (investor) visas have invested share or loan capital. Please provide company names, company numbers, amount invested, date of investment and nationality of investor from May 2010 to the time that the request is answered."
4. The Home Office responded on 13 January 2015. It stated that it does not record details of any visa applicant's investments.
5. On the 15 January 2015 the complainant asked for specific guidance in regards to refining his request. The Home Office responded to the complainant's request for guidance on the 2 February 2015 stating that

it does not normally provide such highly specific information as part of the advice and assistance under section 16 of the FOIA.

6. On the 2 February 2015 the complainant made a request for an internal review of the Home Office's response dated 13 January 2015.
7. On the 8 April 2015 the Home Office responded to the complainant's request for internal review stating that the original response was incorrect and should not have stated that the requested information was not held. Instead, the Home Office stated that it was unable to confirm or deny within the cost limit whether it held information within the scope of the request, hence it relied on section 12(2) (costs) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on the 25 March 2015 initially to complain about the time taken for the Home Office to respond to his request for internal review.
9. After intervention by the Commissioner the Home Office responded to the request for internal review. Following receipt of the outcome of the internal review, the complainant contacted the ICO again and confirmed that he wished the Commissioner to investigate the refusal of his request on cost grounds.

Background

10. The complainant's request for information refers to Tier 1 (Investor) visa applications. The Tier 1 (Investor) visa is designed for high net worth individuals who want to relocate themselves and their family to the UK. Only a few hundred of these visas are granted per year.

Reasons for decision

Section 12(2)

11. 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.

12. 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.
13. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. The question for the Commissioner here is whether the cost estimate by the Home Office was reasonable. If it was, then section 12(2) is engaged and the Home Office was not obliged to confirm or deny whether the requested information was held.
14. The Home Office provided a breakdown of the estimated time it would take for it to search for the requested information. It explained that from 1 May 2010 to 24 February 2015 UK Visas and Immigration (UKVI) approved 1590 applications for investor visas and that it would require each individual application to be assessed in order to extract the information.
15. The Home Office explained that information about Tier 1 (Investor) visa applicant's investments would only be entered manually on their system and that this would be dependent on individual caseworkers inputting this information in "*additional notes*" at the time the application was made and it is not the case that this section is completed in every case. Therefore, the Home Office would need to check for additional notes in each case to determine whether the information is held.
16. The fees regulations state that a public authority can only take into account the costs it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - 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.
17. The Commissioner accepts that the requested information is not recorded in visa applications as a matter of course and hence that it would be necessary in relation to each application to check whether there were "*additional notes*" that include the requested information. The Commissioner also accepts that this task would be covered by the fees regulations.

18. In its submission to the Commissioner, the Home Office explained that the estimated time taken to search each of the 1590 records would be five minutes and in some cases may take longer depending on the clarity of the notes. .
19. The Commissioner has no basis to question the figure of 1590 records. As to whether he accepts the estimate of five minutes per record, he notes that even if this was reduced considerably to one minute per record, the total cost of the request would still exceed the limit. The Commissioner accepts that an estimate of between one and five minutes per record is reasonable.
20. For these reasons, the Commissioner concludes that the Home Office estimated reasonably that it would exceed the cost limit for it to confirm or deny whether it held the requested information. Section 12(2) was, therefore, cited correctly and the Home Office was not obliged to confirm or deny whether it held the information requested by the complainant.

Section 16

21. Section 16(1) of the FOIA provides that all public authorities are under a duty to provide advice and assistance to any person who has made or who intends to make an information request to it. The Commissioner's published guidance on section 12 sets out the following minimum advice and assistance that a public authority should provide to a requester when refusing a request on cost grounds.
 - Either indicate if it is not able to provide any information at all within the appropriate limit; or
 - provide an indication of what information could be provided within the appropriate limit; and
 - provide advice and assistance to enable the requester to make a refined request.
22. In the Home Office's internal review decision it stated that it could not offer any advice and assistance on how the request could be refined. Whilst this advice was not helpful to the complainant in terms of offering a route of access to the information he sought, the Commissioner accepts that the Home Office met the minimum requirement for compliance with section 16.

Right of appeal

23. 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>

24. 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.
25. 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

Ben Tomes
Senior Case Officer
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