

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 February 2016

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

Decision (including any steps ordered)

1. The complainants requested information relating to an increase in the fee for a particular type of visa. The Home Office refused the request on cost grounds under section 12(1) of the FOIA.
2. The Commissioner's decision is that the Home Office cited section 12(1) correctly and so it was not obliged to comply with the request. He also finds, however, that the Home Office failed to comply with the requirement of section 16(1) of the FOIA in that it did not provide advice to the complainants on how their request could be refined to bring it within the cost limit. It is now required to write to the complainant providing this advice.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
 - Write to the complainants with advice on how their request could be refined to bring it within the cost limit.
4. The Home Office must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 3 August 2015 the complainants wrote to the Home Office and requested information in the following terms:

"I see that the visa application fees were as planned increased on 6 April 2015. The fee at £2,141 for 'Settlement - other dependent relative' strikes me as particularly high.

Could you please provide the reasoning and information on what led to this increase, including statistics, copies of emails, letters, reviews, reports (i.e all communications) which justify this yet further increase by £159.

That is, what is the rationale and reason behind the fee for this category?"

6. The Home Office responded on 25 August 2015. It stated that the request was refused on cost grounds under section 12(1) of the FOIA.
7. The complainants responded on the same date and requested an internal review. The Home Office responded with the outcome of the review on 21 October 2015. The refusal of the request under section 12(1) was upheld, although the complainants were referred to some relevant information available in the public domain.

Scope of the case

8. The complainants contacted the Commissioner on 23 October 2015 to complain about the refusal of their information request. The complainants indicated that they did not agree with the refusal of their request under section 12(1).

Reasons for decision

Section 12

9. Section 12(1) provides that a public authority is not obliged to comply with a request where it estimates that the cost of doing so would exceed the appropriate limit, which for the Home Office is £600. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "fees regulations") provide that the cost of a request must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours. The fees regulations also specify the tasks that can be taken into account when forming a cost estimate as follows:
 - Determining whether the requested information is held.

- Locating the information, or a document which may contain the information.
 - Retrieving the information, or a document which may contain the information.
 - Extracting the information from a document containing it.
10. A public authority is required to estimate the cost of a request, rather than form an exact calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by the Home Office was reasonable; if it estimated reasonably that the cost of compliance with the request would exceed the limit of £600, section 12(1) applied and it was not obliged to comply with the request.
 11. Turning to the reasoning of the Home Office in this case, its reasoning was based on the time that it would take to identify emails falling within the scope of the request, albeit that other types of correspondence may well exist. The Home Office stated that an automated search could be carried out, but that this would not identify only emails that were within the scope of the request. Instead, it would identify emails broadly on the subject matter of visa fees and it would then be necessary to check each email returned by the search to verify whether they were within the scope of the request. Its explanation as to why it would not be possible to carry out an automated search that would return only emails within the scope of the request was that the *"search facility was not sophisticated enough"*.
 12. Its time estimate was then based on the time that would be spent reviewing emails to ascertain whether they were within the scope of the request. In order to reach an estimate it stated that an automated search had been carried out using the search term *"visa settlement"*. The request did not specify a timeframe, but the Home Office applied a timeframe of the dates between the previous increase and the date of the most recent fee increase, which the Commissioner agrees was reasonable in order to capture all information falling within the scope of the request.
 13. According to the Home Office, this search returned 1,064 emails. It stated that it would then be necessary to read each of these emails, including in some cases attachments, to verify whether they were within the scope of the request.
 14. It estimated an average of two minutes per email to verify whether an email was within the scope of the request, which it described as a *"conservative estimate"*. That gives a total estimate of approximately 35 hours to comply with the request. The Home Office also stated that this

was only one of the tasks that it would be necessary to carry out and that additional work to this would also be required.

15. Turning to the Commissioner's view on this cost estimate, he notes that the request specifies all communications, and in particular emails, so it is clear that time would need to be spent on identifying emails that are within the scope of the request. The Commissioner also accepts that the tasks described by the Home Office are within those specified in the fees regulations. The remaining issues are whether the Commissioner accepts the reasoning of the Home Office as to why it would not be possible to carry out an automated search that would return only emails within the scope of the request, the figure that the Home Office has quoted for the emails returned by the automated search and the estimate of an average of two minutes per email.
16. On the issue of why it would not be possible to carry out an automated search that would return only information within the scope of the request, the Home Office stated that exercises to recalculate visa fees are carried out concurrently for several different types of visa. This meant that it would be unlikely that the heading of an email would contain the title of the specific type of visa that the request was for; *"Settlement - other dependent relative"*. The Home Office also stated that the content of a relevant email may also not contain that wording as the information relevant to that visa type could be contained within an email attachment. The Commissioner accepts these representations from the Home Office as to why it would not be possible to carry out an automated search that would return only information within the scope of the request, and so also accepts that it would be necessary to spend time reviewing the content of materials that were returned by an automated search in order to locate relevant information.
17. On the issue of whether the Commissioner accepts the figure given by the Home Office for the numbers of emails returned by an automated search – 1,064 – the Commissioner has no basis on which to dispute that figure and so does not.
18. The final issue is whether he accepts the estimate of two minutes per email to verify whether it and any relevant attachments are within the scope of the request. On this point, whilst the Home Office has not given a detailed description of what that two minutes would consist of, such as by indicating the average length of the emails or by stating what proportion of them have attachments, the Commissioner accepts that two minutes is on the face of it a sensible estimate of the average time to read and consider an email. He also notes that this estimate could be reduced by 30 seconds yet still exceed the limit.

19. For these reasons, the conclusion of the Commissioner is that the Home Office estimated reasonably that the cost of complying with the complainants' information request would be in excess of the cost limit. Therefore, section 12(1) applied and the Home Office was not obliged to comply with this request.

Section 16

20. 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 12¹ 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.
21. In this case, whilst the complainants were advised that a refined request may be possible to comply with within the cost limit, no advice was given on how the request could be refined to achieve that end. In correspondence with the ICO, however, the Home Office did describe an amendment to the request that it believed could bring it within the cost limit.
22. In failing to describe that amendment of the request to the complainants, the Home Office failed to comply with the requirement of section 16(1) of the FOIA. At paragraph 3 above, it is now required to write to the complainants providing advice on how their request could be refined to bring it within the cost limit. This advice should relate to the description given in correspondence with the Commissioner about how a request *"relating to the general increase in visa fees"* may not exceed the limit.

¹ https://ico.org.uk/media/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

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
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