

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 December 2016

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

Decision (including any steps ordered)

1. The complainant requested information from the Home Office about civil claims made by former or current detainees at a specified immigration detention centre. The Home Office refused to disclose this information under section 12(1) of 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. No steps are required.

Request and response

3. On 17 May 2016 the complainant wrote to the Home Office and requested information in the following terms:

Original Request

"How many civil claims have been made by former or current detainees at Yarl's Wood Immigration Detention Centre relating to incidents alleged to have occurred during their detention?

- *Of these, how many were settled out of court?*

- *Of these, how many were withdrawn before completion of the case?*
- *Of these, how many were ruled in the detainee's favour?*
- *Of these, how many related to sexual offences or inappropriate sexual conduct or contact?*
- *Of cases which ended with either an out of court or in court financial settlement, what was the total cost of these settlements?*

I also wish to see copies of any internal memos, briefings or reports relating to civil claims made by detainees (former or current) against staff members regarding sexual offences or inappropriate sexual conduct."

4. On 7 June 2016, the Home Office asked the complainant to clarify her request in relation to the time frame, incident type etcetera. She did so on 3 July 2016 as follows:

Clarified Request

"To clarify, the time frame my request refers to is not limited to any time period and relates to all records since Yarl's Wood opened.

By incident, I mean any incident in which a civil claim has been made. As I outlined in my request, I also wish to receive separate data relating specifically to incidents involving alleged sexual offences or alleged inappropriate sexual conduct or contact.

Therefore, I wish to receive two pieces of information, one relating to all incidents and a sub-set relating specifically to these sexual incidents.

My request refers to details of any such claims regardless of the person or body against whom they were made, including but not limited to the Home Office, the service provider or fellow detainees. However, if possible, I wish for the information to be separated into these three categories, as well as also given as total sum figures for all categories."

5. On 5 July 2016 the Home Office responded. It said it holds some of the information requested but refused to provide it, citing the cost exclusion, section 12(1) of FOIA. It stated it was unable to offer specific advice and assistance as to how the complainant might bring her request below the cost limit.
6. The complainant requested an internal review on 29 July 2016 and chased the outcome several times, ultimately leading to her complaint

to the Commissioner. The Home Office sent her the outcome of its internal review on 30 September 2016. It upheld its original position and maintained that because of the way the information is held, it was unable to advise the complainant how she could refine her request.

Scope of the case

7. The complainant initially contacted the Commissioner on 14 September 2016 to complain about the way her request for information had been handled. Following the subsequent receipt of her internal review she submitted her grounds of complaint on 18 October 2016.
8. The Commissioner has considered whether the Home Office is entitled to rely on section 12(1), the cost exclusion, in relation to this request.

Reasons for decision

Section 12 – cost of compliance

9. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
10. The appropriate limit in this case is £600, as laid out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”). This must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours’ work.
11. When estimating whether disclosing the requested information would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in disclosing the information. The estimate must be reasonable in the circumstances of the case. It is not necessary to provide a precise calculation.
12. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
 - determining whether the 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; and

- extracting the information from a document containing it.
13. The Home Office confirmed it holds the requested information, but said the section 12 refusal is primarily because the request is *"very wide, is not limited to any time period and relates to all civil claims since Yarls Wood opened, November 2001."* It said the information requested is not held centrally and that it would need to examine each original hard copy case file to identify cases in scope.
 14. It further explained that claims cases are very broadly identifiable on the General Private Law Litigation Team's case management system, but said that no specific details are held electronically and are instead held on hard copy files.
 15. The Home Office calculated that approximately 1300 case files would need to be examined to identify which of these files would be in scope of the request and to source the information requested. It explained that the 1300 cases cover all institutions, not just Yarls Wood, and that it would not be possible to identify even the number for Yarls Wood without conducting this manual check.
 16. It estimated that to examine each file would take approximately 15 minutes, equating to approximately 325 hours to identify the information, and referenced that the amount of documents in each case would vary depending on the complexity of each case. Even if it was arguable that 15 minutes to review each file is excessive, the Home Office highlighted that even at three minutes per file it would still take 65 hours to complete at a cost of £1625.
 17. All such case files are held securely off site by a third party contractor. The Home Office advised that as part of this contract, there is a charge of £1.26 per file to have them returned; therefore in addition to the staff costs above, there would be a further £1031.75 fee.
 18. Additionally, the Home Office confirmed that the above estimate is based upon the quickest method of gathering the information.
 19. The final part of the complainant's request relates to internal memos, briefings or reports about civil claims made by detainees. The Home Office advised there is no central depository for briefings and reports on civil claims, which would again attract section 12(1). It said there may well be internal memos associated with individual claims but, again, it would need to check the individual case files and/or email everyone who worked on the cases to see if they have copies on their IT systems. Clearly, this would be very resource intensive, and in view of the 15 year time period involved, unlikely to produce a full or accurate picture.

20. The Home Office referenced a previously issued decision notice *FS50559708*¹ from 2015 in relation to a request on 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 FOIA as it estimated that the cost of compliance with the request would exceed the appropriate limit.
21. In this case, 989 cases needed to be examined, 25% less than in the case under consideration here. The Home Office stated it would take 30 minutes to review each relevant case to establish whether these were cases in which compensation was paid as a result of unlawful detention. This position was upheld by the Commissioner.
22. Whilst each case brought before the Commissioner has to be considered on its merits, *FS50559708* does have some relevance to the case at hand here, in terms of the subject matter and the volume of case files.
23. The Commissioner has considered the arguments submitted by the Home Office and is satisfied that its estimate is reasonable. Even at three minutes per file the cost limit would be significantly exceeded.

Conclusion

24. From the information provided, the Commissioner has concluded that the Home Office was correct to rely on section 12 in relation to this request.

Section 16 - advice and assistance

25. If a public authority estimates that the cost of determining whether or not information is held would be above the appropriate limit, it is not required to conduct searches but should consider providing advice and assistance with a view to helping the requester bring his/her request under the cost limit.
26. In this case, the Home Office recognised its duty to offer the complainant advice and assistance. As part of its response to the request it said:

"If you refine your request, so that it is more likely to fall under the cost limit, we will consider it again. However we should inform you that

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1043694/fs_50559708.pdf

as the information you have requested is highly specific we are unable to advise you on a way to refine your request that will bring it under the cost limit.

Please note that if you simply break your request down into a series of similar smaller requests, we might still decline to answer it if the total cost exceeds £600.

Even if a revised request were to fall within the cost limit, it is possible that other exemptions in the Act might apply."

27. The Home Office told the Commissioner that because of where and how the requested information is held and the open timeframe, unless the complainant were to significantly refine or dilute her questions, it is:

"very improbable that it could be answered under the threshold. Any exercise that requires the Department to physically search large numbers of hard copy files will involve major costs. Indeed, in this case, just 96 such files would breach the cost limit".

28. As a result the Commissioner is satisfied that the Home Office took steps to address its obligation to provide advice and assistance and so she finds no breach of section 16(1) in this case.

Other matters

29. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As she has made clear in her 'Good Practice Guidance No 5', the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 42 working days for an internal review to be completed, despite the publication of her guidance on the matter.

Right of appeal

30. 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: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. 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.
32. 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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF