

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 September 2017

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

### Decision (including any steps ordered)

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1. The complainant has requested information relating to refusals of UK citizenship applications for applicants failing the good character requirement. The Home Office provided some information but did not comply with the rest of the request, citing section 12 (cost limits) of FOIA.
2. The Commissioner's decision is that the Home Office has applied section 12 of FOIA appropriately. She also finds no breach of section 16(1) (advice and assistance) of FOIA.
3. The Commissioner does not require the Home Office to take any steps as a result of this decision notice.

### Initial request

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4. On 31 August 2016, the complainant wrote to the Home Office (HO) and requested information in the following terms:

"I would like to ask for some information relating to refusals of UK citizenship applications for applicants failing the good character requirement. The Home Office routinely collects information on those refused applications under the good character requirement and I noticed the number had significantly increased in 2015. I would be grateful if the Home Office would provide a breakdown of those refusals for failing the good character requirement in the calendar year 2015 and refusals for failing the good character requirement in the first six months of 2016.

In particular, I would like the breakdown to show refusals under each bracket of 'Annex D: the good character requirement. Ideally I would like the breakdown to include each of the subsections in sections 1 to 9 but alternatively the figures for each of the general sections 1 to 9 can be provided."

5. The HO responded on 27 September 2016. It provided a link to some information and explained that it would not be complying with the rest of the request, citing section 12 (cost limits) of FOIA. It also explained that the detailed information requested relating to 'refusals under each bracket of "Annex D: the good character requirement "'was not identifiable from centrally recorded statistical databases which group such cases, and would therefore necessitate manual examination of over 8,000 individual cases at disproportionate cost. The HO advised the complainant to narrow his request but warned that it still might be over the cost limit.
6. In addition, the HO explained to the complainant that if he wanted to request an independent internal review of its handling of his request he could so by submitting a complaint within two months, quoting the reference number it had provided him with. It also explained that it would be helpful if he could say why he was dissatisfied with the response.

## **Request and response**

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7. The complainant requested an internal review on 27 September 2016, including a narrowed down timescale of three months. The HO responded on 25 October 2016, explaining that it had treated his request for an internal review, as a new request for information. The Commissioner will deal with this point in 'Other matters'.
8. The HO applied section 12(1) again. It confirmed that information regarding which section of the good character annex its refusals was based on was not recorded on centrally collated statistical databases in a way which allowed straightforward analysis of the data. It also explained that refusal may, for example, be based on more than one section.
9. In addition, the HO explained that the requested information could only be obtained by examination of individual case files; extracting the information would only be achievable at a disproportionate cost.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 26 October 2016 to complain about the way his request for information had been handled.

He explained that he did not accept that the HO could not provide him with statistical information for his narrowed down timescale of three months.

11. As the complainant has complained about the HO not providing him with information in relation to his narrowed down timescale of three months, the Commissioner will consider how it responded to his subsequent refined request of 27 September 2016.
12. The Commissioner will consider the HO's application of section 12(1) and whether it has complied with its duty under section 16(1) to provide advice and assistance. She will also consider how the HO dealt with the request generally.

## **Reasons for decision**

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### **Section 12 – cost of compliance exceeds appropriate limit**

13. Section 12(1) of the 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.
14. The appropriate limit in this case is £600, as set out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations). This is calculated at the rate of £25 per hour, providing an effective time limit of 24 hours.
15. When estimating whether complying with a request for information would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in complying with the request. The estimate must be reasonable in the circumstances of the case. It is not necessary to provide a precise calculation.
16. The Regulations allow a public authority to charge the following activities at a 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.
17. The HO explained to the complainant that, as it had already explained previously, in its response of 27 September 2016 to his initial request 31

August 2016 although it holds the information requested, the detailed breakdown of information requested relating to 'refusals under each bracket of "Annex D: the good character requirement"' is not identifiable from centrally recorded statistical databases.

18. In addition, the HO explained that the level of detail requested by the complainant would require it to check each physical application held on electronic and individual hard copy files. This would require the manual checking of 8,000 electronic and paper files. In order to conduct its searches it would have to obtain a full list of all people (and their case reference numbers) that fall within the scope of the request. Staff would have to search the records of each, looking for any information pertinent to the questions. The HO would then have to cross-check between computer and paper file records. It advised that this was the quickest method available.
19. The HO estimated conservatively, that to examine each individual file and record the data requested would take 3 minutes per file. It explained that in relation to the 8,000 files, it would take staff 400 hours to gather the data. It pointed out that at £25p/h, this equated to £10,000.00.
20. Furthermore, the HO explained that some hard copy files were held securely off site by a third party contractor. It explained that as part of the contract, there was a charge of £1.26 per file to have them returned. It argued that to retrieve those documents, on top of the staff costs shown above, would mean further costs. The HO explained that exact numbers of files held off site would not be known with any certainty until work to gather the information commenced.
21. The HO also explained that, as the estimated costs were obviously far higher than the cost limit, it was satisfied that section 12(1) was engaged.

## **Conclusion**

22. The Commissioner has considered the information provided to her, including the arguments submitted by both parties. She is satisfied that an estimate of three minutes to examine each individual file and record the requested data is reasonable. The Commissioner also notes the HO's explanation that there are some hard copy files held off site; it would not know how many files were held with certainty until work to gather the information had been commenced, which would add to the overall cost.
23. The Commissioner also notes that the complainant initially asked for information covering a six month period and then narrowed it down to a three month period. She notes the HO's confirmation that it would still

need to go through 8,000 files so therefore, the cost of compliance would still be approximately £10,000.00.

24. The Commissioner notes that the estimate provided by the HO is far in excess of the cost limit of the cost limit of £600.
25. The Commissioner considers that the HO has applied section 12(1) appropriately to the narrowed down request of 27 September 2016.

### **Section 16 - advice and assistance**

26. If a public authority estimates that the cost of complying with a request for information would be above the appropriate limit, under section 16 of the FOIA it should consider providing advice and assistance with a view to helping the requester bring his/her request under the cost limit.
27. The Commissioner notes that in its response to the complainant's narrowed down request, it explained that the complaint would need to narrow down his request but warned that it could not guarantee that it would disclose any information. The HO also provided the applicant with a link to the Commissioner's guidance on resubmitting a more specific request.<sup>1</sup>
28. In the Commissioner's guidance on section 16<sup>2</sup> she recognises that, in cases where compliance with a request would exceed the cost limit, there will be occasions where there are no obvious alternative formulations of the request.
29. During her investigation, the HO explained to the Commissioner that it had endeavoured to help the applicant with regards to refining his request. However, as the requested information could not be captured by standard reporting it explained that it was difficult to give any meaningful specific advice and assistance.

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<sup>1</sup> <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request>.

<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1624140/duty-to-provide-advice-and-assistance-foia-section-16.pdf>

30. Taking everything into account, the Commissioner is satisfied that the HO has complied with its duty to provide advice and assistance under section 16(1).

### **Other matters**

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31. There was some confusion about the status of the complainant's request for an internal review of 27 September 2016.
32. The HO explained that it had treated the complainant's request for an internal review as a new request for information, because he had narrowed down his request.
33. Paragraph 64 of the Commissioner's guidance on requests where the cost of compliance exceeds the appropriate limit<sup>3</sup> explains that a refined request should be treated as a new request for information.
34. However, when the HO responded to the complainant's initial request of 31 August 2016 and his narrowed down request of 27 September 2016 it advised him that he should consider narrowing his request. It also explained that he could request an internal review of the way it had handled his request and told him to quote the reference number it had provided him with and if possible, explain what he was dissatisfied with.
35. The Commissioner considers that it would have been helpful if the HO had explained to the complainant that if he did resubmit a narrowed down request, it would be treated as new request.
36. The Commissioner notes that the complainant did not request an internal review in relation to his narrowed down request of 27 September 2016. However, she also notes that the estimated cost of compliance far exceeds the cost limit of £600. She is therefore satisfied that, even though the complainant did not request an internal review in response to the HO's response to him of 25 October 2016, the HO could have upheld its application of section 12(1).
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<sup>3</sup> [https://ico.org.uk/media/for-organisations/documents/1635/fees\\_cost\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1635/fees_cost_of_compliance_exceeds_appropriate_limit.pdf)

## Right of appeal

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37. 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: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.

39. 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**  
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**SK9 5AF**