

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 August 2017

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

Decision (including any steps ordered)

1. The complainant requested information concerning the death of a British citizen, Bilal Ahmed, in Kashmir in 2000. 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) (cost of compliance exceeds appropriate limit) of the FOIA.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 12(2) in relation to the request but that it breached section 16(1) of the FOIA (duty to provide advice and assistance) in failing to provide reasonable advice and assistance to the complainant. She requires no steps to be taken as a result of this decision.

Request and response

3. On 22 June 2016, the complainant wrote to the Home Office and requested information in the following terms:

"I am requesting documents concerning the death of British citizen Bilal Ahmed (AKA Mohammed Bilal) in India administered Kashmir on 25th December, 2000... I am looking for documents between December 2000 to 2001".

4. The complainant provided the Home Office with a link to information about the death of the individual named in the request¹.
5. Following correspondence from the Home Office, the complainant clarified his request on 10 July 2016:

"Thank you for your email asking for clarification concerning my request looking for documents concerning the death of Bilal Ahmed (AKA Mohammed Bilal) in India administered Kashmir on 25th December, 2000.

From previous experience dealing with your department, I understand that such files on individuals and incidents are collated together in a few folders.

Please inform me of how many folders or pages you will have to review as at this stage, I would be interested in all of them".

6. The Home Office responded on 6 September 2016. It refused to provide the requested information, citing section 12 of the FOIA (cost of compliance) as its basis for doing so.
7. The complainant requested an internal review on 2 October 2016. The Home Office sent him the outcome of its internal review on 25 November 2016. It upheld its original position, clarifying that it considered that section 12(2) applied.

Scope of the case

8. The complainant contacted the Commissioner on 20 December 2016 to complain about the way his request for information had been handled.
9. As is her practice, the Commissioner wrote to the Home Office at the start of her investigation. In the absence of its substantive response, on 6 June 2017 the Commissioner issued the Home Office with an Information Notice in accordance with her powers under section 51 of the FOIA. By way of that Notice the Commissioner required the Home Office to furnish her with further information about its handling of the request for information in this case.

¹ http://news.bbc.co.uk/1/hi/world/south_asia/1091056.stm

10. The Home Office ultimately confirmed its application of section 12(2) to the requested information on the basis that it would exceed the cost limit to establish if it held any information relevant to the request.
11. The analysis below considers the Home Office's application of section 12(2) of the FOIA to the requested information.

Reasons for decision

Section 12 cost of compliance

12. Section 12(2) 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 information of the description specified in the request is held would be excessive, the public authority is not required to do so.
13. 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).
14. 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, and specify the tasks that can be taken into account when forming a cost estimate as follows:
 - 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.
15. 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) was engaged and the Home Office was not obliged to confirm or deny whether the requested information was held.
16. In correspondence with the complainant, the Home Office told him:

"The Home Office is a large organisation with many departments which holds both hard copy papers, and in more recent years, holds electronic data, information and records. In order to comply with your request we would require a small team of staff in a number of

departments to search both paper and electronic archived records to establish the quantity of any information held on the subject. We estimate that the search could take over a week and could cover an extensive period of time".

17. The Home Office subsequently clarified:

".. it would exceed the costs threshold to identify if the information requested is held, as this would have required searching a large number of electronic, paper and historic files across several, (and now some obsolete) units. Conducting a search across several units with several files would not be cost effective and would take more than 24 hours work. The words 'documents concerning' are quite broad in that references to Bilal Ahmed may be contained in several documents in various different policy units".

18. During the course of the Commissioner's investigation, the Home Office was asked to provide more detail in respect of its application of section 12(2) to the requested information.

19. In its correspondence with the Commissioner, the Home Office described the nature of the searches it had conducted and told her that it had explained to the complainant that it had not located any information. It also confirmed its view that the words '*documents concerning*' are quite broad and that references to the individual named in the request may be contained in documents in various different policy units.

20. In support of its application of section 12(2), the Home Office observed that the complainant is not requesting recent information. It confirmed that it was unable to simply state that it did not hold the requested information as it may have been recorded in its files.

21. The Commissioner accepts that the Home Office explained to the complainant that in order to comply with his request it would need to search archived records to establish the quantity of any information held on the subject. She also acknowledges that the Home Office provided the complainant with an estimate of the costs involved and an explanation of why it considered that complying with the request would take more than 24 hours work.

22. In its submission to the Commissioner, the Home Office provided further information in support of its view that it could not carry out such a broad search within the cost limit. For example, it described its search strategy and explained why it would have to search across the Home Office in order to locate any information which may fall within the scope of the request.

23. From the evidence she has seen, and mindful of the wording of the request, the Commissioner is satisfied that the Home Office

demonstrated that it had estimated reasonably that it would exceed the appropriate limit for it to confirm or deny whether it held the information within the scope of the request. Section 12(2) therefore applied and the Home Office was not obliged to confirm or deny whether it held that information.

Section 16 advice and assistance

24. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request².
25. The Commissioner notes that the Home Office advised the complainant that it may be able to carry out a search within the cost limit if he narrowed his request.
26. However, the Commissioner is not satisfied that the Home Office provided reasonable advice and assistance to the complainant to enable him to focus his request. Accordingly the Commissioner concludes that the Home Office breached section 16(1) of the FOIA.

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

Right of appeal

27. 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

28. 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.
29. 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
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Wycliffe House
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