

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2017

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

Decision (including any steps ordered)

1. The complainant requested copies of any correspondence involving Theresa May which makes reference to the South Thanet constituency from the Home Office ("HO"). The HO would neither confirm nor deny holding any information as it said to do so would exceed the appropriate limit, citing section 12(2) of the FOIA (cost of compliance). The Commissioner's decision is that it was entitled to do so but that it breached section 16(1) of the FOIA (advice and assistance) in dealing with the request. No steps are required, however, in light of the additional information which has now been provided in this notice, the complainant may wish to submit a further request.

Request and response

2. On 31 August 2016 the complainant wrote to the HO and requested information in the following terms:

"1. Please provide a copy of all correspondence held by the Home Office (including but not limited to emails, letters, texts, slack messages, or similar) dated between 1 January 2015 to 1 June 2015, involving Theresa May (either as sender, recipient, CC, etc), that makes reference to the South Thanet constituency. Please note, this correspondence could involve keywords and phrases such as "South Thanet", "Thanet South", "Thanet", "Craig Mackinlay", "Nigel Farage", but may not be limited to these.

2. Please provide a copy of all correspondence held by the Home Office (including but not limited to emails, letters, texts, slack messages, or similar) dated between 1 January 2015 to 1 June

2015, involving Nick Timothy (either as sender, recipient, CC, etc), that makes reference to the South Thanet constituency. Please note, this correspondence could involve keywords and phrases such as "South Thanet", "Thanet South", "Thanet", "Craig Mackinlay", "Nigel Farage", but may not be limited to these.

If my request is denied, either in whole or in part, I ask that you justify all deletions/redactions or similar by reference to specific exemptions of the FOIA".

3. The HO responded on 30 September 2016. It stated that to comply with the request would exceed the appropriate limit at section 12 of the FOIA.
4. Following an internal review the Home Office wrote to the complainant on 24 November 2016. It clarified its position, maintaining reliance on section 12 but confirming this to be section 12(2) of the FOIA.

Scope of the case

5. The complainant contacted the Commissioner on 21 December 2016 to complain about the way his request for information had been handled. He did not include any specific grounds of complaint so the Commissioner advised that she would consider the HO's citing of section 12(2) of the FOIA unless he advised her differently; she also invited any further arguments which he wished to provide. No further response was received so the Commissioner will consider the citing of section 12(2) below.
6. During the course of her investigation, because it failed to either acknowledge or respond to her enquiries, the Commissioner found it necessary to issue the HO with an Information Notice in accordance with her powers under section 51 of the FOIA. By way of that Notice, the Commissioner required the HO to furnish her with further information about its handling of the request for information in this case.
7. In response to that Information Notice, on 7 June 2017 the HO provided the Commissioner with a substantive response in which it provided further details regarding its application of section 12(2).

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

8. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:

- 12(1) either comply with the request in its entirety, or
 - 12(2) confirm or deny whether the requested information is held.
9. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 24 hours work in accordance with the appropriate limit of £600 set out above, which is the limit applicable to the HO. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
- (a) determine whether it holds the information
 - (b) locate the information, or a document which may contain the information
 - (c) retrieve the information, or a document which may contain the information, and
 - (d) extract the information from a document containing it.
10. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.
11. In refusing the request the HO failed to specify which limb of section 12 it was relying on and also failed to provide any details as to why section 12 was engaged, only stating that: *"Under section 12 of the Act, the Home Office is not obliged to comply with an information request where to do so would exceed the cost limit"*.
12. When asking for an internal review the complainant gave the following reasons for disagreeing with the HO's citing of section 12:

"The request asks for specific information, namely reference to the South Thanet constituency, either by its possible alternative forms (South Thanet, Thanet South, or Thanet), or through reference, at a time covering the General Election campaign, to key Parliamentary candidates, Craig Mackinlay and Nigel Farage.

I have asked that terms not be limited to these as it is reasonable to provide for the possibility that the Department and its personnel may use specific abbreviations or customary alternatives for these names, such as initials or acronyms or idiomatic expressions. However, notwithstanding this openness to differing forms, the terms given are already narrow.

It must also be noted that the individuals referred to (Nick Timothy and Theresa May) had some involvement in the Conservative campaign in South Thanet. Nick Timothy has been reported to have led the campaign operation in the constituency, while Theresa May reportedly visited the constituency. This both adds to the reasonable view that the individuals may have used specific or idiomatic terms to refer to the constituency, and also increases the ability to retrieve relevant information, based on their known involvement.

In addition, the time period in question, comprising of five months, is a narrow time period, allowing a targeted search.

Many of the key methods of communication requested are digital systems, such as emails, texts, and Slack messages, allowing for quick digital searching, while the number of relevant letters or other hardcopy documents that would need interrogating is likely to be small.

For these reasons it seems unlikely that your estimate that the cost of meeting the request would exceed the costs limit is accurate".

13. To address these concerns, in its internal review the HO advised the complainant that in order to comply with his request it would need to:

"... conduct a search of all correspondence, using the names of the individuals and constituency referred to in your request. Due to these being wide search terms, hundreds of pieces of correspondence would then require further assessment to determine whether they fall in scope of your request".

14. It did not provide any further details about why such wide-ranging searches would be required and how such information would be stored within the HO. It did not explain the types of searches that would need to be undertaken, such as personal email accounts or paper files, or why these would be the most appropriate ones to conduct.

15. During the Commissioner's investigation the HO provided more details and explained to her that:

"Our estimate that establishing whether the Home Office holds any information within scope was based in part on information provided by Private Office. This was an appropriate starting point, given the reference to the then Home Secretary (i.e. during the period covered by the request). Private Office estimated that they would have to search around 600 items of correspondence falling within the dates specified. For the most part this could be done electronically, based on searches using 'South Thanet', 'Thanet South' or 'Thanet' as key words, although any communications

identified by the search would then have to be examined individually to assess whether they involved Theresa May or Nick Timothy. We cannot provide a reliable estimate of how long this would take without knowing how many items the search would produce, although the number of items is unlikely to be high. We estimate that the whole process would take approximately one hour".

16. In addition to this, the HO explained that the request was potentially "very wide" and it couldn't guarantee that any information held would all be specifically located in Private Office itself. It advised that information within the scope of the request could be held in almost any part of the HO. It elaborated this point by explaining that, because the request referred to 'any' correspondence which referred to South Thanet 'involving' Theresa May, including any correspondence which was just copied to her, this would not necessarily be processed or retained by Private Office. It said: "*As a general rule Private Office is not responsible for retaining correspondence other than that which relates personally to Ministers*" and: "*Routine correspondence will be passed on to the relevant business area for action where appropriate and it is the responsibility of the business area to retain the correspondence on file*". It also advised that, because the request was made more than a year after the time period it concerned, then Private Office may also no longer hold it.
17. For any information which may exist outside Private Office the HO explained to the Commissioner that it would have to search across the HO in order to locate any information which may fall within the scope of the request. It stated:

"The Home Office consists of around 14 main organisational areas at group or directorate level, including large areas such as UK Visas and Immigration, Border Force, Crime, Policing and Fire Group and HM Passport Office. Most of these are too large for a single search to be carried out across them and so the search would have to be cascaded to lower levels. Within the broad structure there are in excess of 200 individual units, depending on how these are counted, and we would have to cover most of them. Even if we were to omit business areas where it is highly unlikely that any relevant information would be held (e.g. Commercial Directorate), if we assume that each business area would have to carry out the same process as Private Office and taking around an hour, the total time would be well in excess of 24 hours.

We could narrow the search if we knew the likely subject matter of the correspondence in which [the complainant] is interested, but he has not taken the opportunity to explain that".

18. In its refusal notice the HO did suggest to the complainant that if he provided details of the subject matter he was interested in then it may be able to refine its searches accordingly. However, the HO did not give any explanation as to how the sort of information he was looking for may be held or on what basis it had decided that compliance would exceed the appropriate limit; it failed to clarify this situation following internal review. For example, had the complainant been made aware that it would only take around an hour to locate relevant information in Private Office (as the HO advised the Commissioner above), then he may have been happy to narrow his request to this business area only. Had it done so then this may have allowed the complainant to focus his request thereby ensuring he received the maximum amount of disclosable information, if held, which was not subject to any other exemptions.
19. The lack of explanation provided to the complainant is disappointing, however, based on the literal wording of the request and the subsequent explanation given by the HO to the Commissioner, she is satisfied that section 12(2) applies to the request and that the HO was not obliged to comply with it.

Section 16 – advice and assistance

20. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the Section 45 Code of Practice¹ ("the Code") issued by the Secretary of State, it will have complied with section 16(1).
21. In its refusal notice the HO advised the complainant:
- "If you refine your request, so that it is more likely to fall under the cost limit e.g. by making the subject matter more specific, we will consider it again. 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."*
22. The HO did not provide any explanation whatsoever regarding its citing of section 12 of the FOIA, including the subsection being relied on, and gave no indication of the type of information it may hold, the volume or where it may be located.

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

23. When requesting an internal review the complainant remarked on the HO's obligations under section 16 of the FOIA and advised that no explanation had been offered as to how it had determined that the appropriate limit applied to his request. He asked:

"... under Section 16, please provide your estimate of the costs of complying with my request, and a breakdown of how you have arrived at it. This advice would assist in any decision as to the appropriateness of refining or narrowing my request, as suggested in your email".

24. In its internal review the HO advised the complainant:

"I confirm the Home Office complied with section 16 of the Act, as you were provided with advice and assistance on how you could refine your request for it to more likely fall within the cost limit".

25. The Commissioner notes that the HO did refer to advice and assistance and it is clearly aware of its obligations under the FOIA. However, she finds that the explanations given to the complainant were neither particularly helpful nor were they worded in a way which would assist him in focussing his request. She notes the more detailed explanations which were provided to her during her investigation and is of the view that these would have been much more helpful to the complainant and could have assisted him better in refining his request.
26. Accordingly the Commissioner concludes that the HO breached section 16(1) of the FOIA.

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

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