

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 July 2017

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

Decision (including any steps ordered)

1. The complainant requested information about passports. 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 FOIA correctly and so it was not obliged to comply with the complainant's information request. No steps are required.

Request and response

3. Following previous correspondence, on 12 August 2016 the complainant wrote to the Home Office and clarified an information request in the following terms:

"...Passports issued, revenue received and appointments made as a result of counter applications between the period of 1st February 2016 and 30th June 2016.

...I simply wish to know the discrepancy between money taken for passports v passports issued & those that did not receive one or a refund from 1st Feb to 30th June 2016.

...Also if you are able to confirm when and by who (individual or committee) approved this new policy that would also be most helpful so would a photograph of him/her/them if that can also be provided."

4. The Home Office responded on 5 September 2016. It refused to provide the requested information citing section 12(1) of FOIA, cost of compliance.
5. The complainant requested an internal review on 6 September 2016. The Home Office sent him the outcome of its internal review on 18 October 2016. It upheld its original position and offered advice and assistance to the complainant, in accordance with section 16 of FOIA, as to how he might refine his request to potentially bring it within the cost threshold.

Scope of the case

6. The complainant contacted the Commissioner on 9 February 2017 to complain about the way his request for information had been handled. He said:

"I simply want to know the difference between passports paid for and passports issued between the specified periods so that the public and I can see how much money the HM Passport Office makes by charging consumers for a passport and in some cases providing nothing in return (including no refund)."

7. He argued that the Home Office must be able to retrieve this information within the cost limit, stating:

"It is clearly basic information that they can pull from their accounts systems. They are at the end of the day ordering passports from a third party and so they need to speak with them daily/weekly/monthly and say ok we need x number more passports as well as have internal checks to control inventory so they can monitor theft and ensure they do not run out."

8. He made no further reference to any "new policy" (and also did not do so when asking for an internal review), so the Commissioner has not considered this aspect of the request any further.
9. The complainant also contended that the Home Office is required to publish an annual report¹ and said that he could not locate such a report for 2015-16. He acknowledged that this may no longer be necessary following HMPO's absorption into the Home Office.

¹ <https://www.gov.uk/government/publications/hm-passport-office-annual-report-and-accounts-1-april-to-30-september-2014>

10. Although not part of the original request, with the complainant's consent, the Commissioner relayed the complainant's comments to the Home Office for consideration as part of her investigation as data which was previously required for these annual reports may be relevant to the current data which has been requested. In reply, the Home Office confirmed that HMP were not required to publish an Annual Report and Accounts ('ARA') information for 2015-16. It said HMPO had been required to do so previously as part of its 'Agency' status but there is no longer a requirement or expectation to produce the document. Additionally, HMPO advised the Home Office that the National Audit Office would now not audit such a document.

11. Further the Home Office said that:

"In previous ARAs HMPO never broke income down beyond a single passport figure. In fact the 13-14 accounts make this very clear. I would direct him to page 46 note 1.13 which also makes clear the basis of HMPO's accounting for income and the fact that HMPO set fees only to recover the costs incurred."

12. 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

13. 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.
14. 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.
15. 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.
16. 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.

17. When responding to the request the Home Office told the complainant:

"The income received from passport fees from all channels is classed as a single income source for accounting purposes. HM Passport Office ('HMPO') recognises and accounts for income when passports are issued, not when applications are received, and for accounting purposes passport income is all classified as a single income stream that is not separated by channel of receipt. It is not therefore possible to link the number of passports issued by a particular route of receipt with the income generated by that route, within the cost limit."

18. As part of its internal review the Home Office advised the complainant:

"HMPO does have a record of counter appointments made. However the number of passports issued is not recorded by counter appointments. Also, HMPO recognises and accounts for income when passports are issued, not when applications are received. This is further complicated by the fact that some of the applications would not have been charged for eg. free veteran applications, cases where refunds have been granted, compassionate cases issued for free etc.

Therefore, we are unable to ascertain whether a counter appointment resulted in a passport being issued or whether a payment relates to a counter application without checking each and every transaction. This would exceed the appropriate cost limit."

19. During the investigation, the Home Office told the Commissioner it had cited the section 12 cost exclusion because HMPO are unable to make a direct link within specified date ranges between counter appointments for a passport application and passports being issued, and whether payments recognised in any given period relate to counter applications without checking each and every transaction to identify which passport applications would be in scope. To do this would far exceed the cost limit.

20. The Home Office reiterated that HMPO have a record of counter appointments made; however it said the numbers of passports issued are not routinely recorded by channel of receipt, ie counter, postal or online:

"HMPO have no requirement to report income by channel type and do not do so. HMPO recognises and accounts for income when passports

are issued, not when applications are received. This is also complicated by the fact that some of the applications would have been issued at nil cost, for example, free veteran applications, cases where refunds have been granted and compassionate cases that have been issued at nil cost."

21. In addition the Home Office explained:

"It is further complicated by the fact that some of the passports issued in the period would have related to the intake of passport applications before the period requested, and passport applications received towards the end of the specified period would not necessarily have been issued and the income recognised within the specified period. As I'm sure you can see, it would therefore be very time consuming and complicated to provide the specific information requested."

22. HMPO receives in excess of 6.5 million passport applications per year. The Home Office said the information requested is not readily accessible and would require it to potentially check individual applications for the specific information pertinent to the complainant's questions.

23. The Home Office highlighted that the request is for 5 months' data covering HMPO's busiest time of the year which would incorporate between 3.5 million and 4 million passport applications. It said:

"This would therefore involve the potential manually checking of electronic records by a small team for several months."

24. The Home Office confirmed that the estimate set out below has been based upon the quickest method of gathering the information:

"If we estimate, conservatively, that to examine each individual file and record the data requested would take two minutes per file, just 720 files would take us to the cost limit/24 hours. The estimated costs here are potentially huge, it is clear that section 12(1) is engaged."

25. Given the number of passports in scope of the request and having considered the points put forward by both parties, the Commissioner is satisfied that to provide the information would exceed the cost limit.

Conclusion

26. 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

27. 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 in accordance with section 16 of FOIA.

28. In this case, the Home Office advised the complainant as follows:

"If you refine your request, so that it is more likely to fall under the cost limit, we will consider it again. For example, if you refine your request to ask for figures on the number of appointments made and the number of passports issued, as a result of counter applications for the period requested we may be able to provide this information. 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."

29. In doing so, the Commissioner is satisfied that the Home Office complied with its duties under section 16 of FOIA.

Other matters

30. 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.

31. The Commissioner is concerned that in this case, it took over 30 working days for an internal review to be completed, despite the publication of her guidance on the matter.

Right of appeal

32. 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

33. 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.
34. 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