

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 October 2017

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

Decision (including any steps ordered)

1. The complainant requested information relating to expenses claimed, and gifts and hospitality accepted, by the independent anti-slavery Commissioner, Kevin Hyland.
2. The Home Office refused to disclose the requested information relating to expenses claimed by the anti-slavery Commissioner, citing section 12(1) of the FOIA (cost of compliance exceeds appropriate limit). It stated that it did not hold information relating to any gifts and hospitality he may have accepted.
3. The Commissioner investigated the Home Office's application of section 12(1).
4. 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. However, she finds the Home Office breached section 16 (duty to provide advice and assistance) of the FOIA. No steps are required as a result of this decision.

Background

5. Kevin Hyland OBE is the UK's first Independent Anti-Slavery Commissioner. The Commissioner's role was created as one of the key provisions of the Modern Slavery Act 2015.

6. Kevin Hyland was appointed to the role in November 2014 and acted as 'designate' Commissioner until the UK's Modern Slavery Act received Royal Assent in March 2015, when he became Commissioner¹.

Request and response

7. On 26 October 2016, the complainant wrote to the Home Office and requested information in the following terms:

"1. I request a full breakdown of all expenses claimed by independent anti-slavery commissioner Kevin Hyland since he took up his role.

For each entry I would like the following to be included:

- * The date the claim was made*
- * Details of the nature of the claim. For example, if the claim is for an overnight hotel stay please state which one and the reason for the stay. If it's a meal in a restaurant please state which restaurant and the purpose of the meal.*
- * The value of each individual expense claim.*

2. I would also like a breakdown of all gifts and hospitality Mr Hyland has accepted since his appointment.

For each entry I would like the following to be included:

- * The name of the individual or organisation who offered the gift or hospitality.*
- * details of each gift/visit/stay given. Please provide full details of each gift/hospitality including the reason it was accepted.*
- * The value of each gift/hospitality accepted".*

8. The Home Office responded on 15 November 2016. It denied holding some of the requested information, namely the information requested at part (2) of the request, but confirmed it held the remainder. However, it refused to provide that information citing section 12 of the FOIA (cost of compliance) as its basis for doing so.

¹ <http://www.antislaverycommissioner.co.uk/>

9. The complainant requested an internal review on 15 November 2016. The Home Office sent him the outcome of its internal review on 8 August 2017 in which it upheld its original position.

Scope of the case

10. Following earlier correspondence, the complainant contacted the Commissioner on 8 August 2017 to complain about the way his request for information had been handled.
11. The Commissioner wrote to the complainant setting out the scope of her investigation – namely whether the Home Office was entitled to rely on section 12 as a basis for refusing to provide the information he requested about expenses claimed by Kevin Hyland.
12. Accordingly, the analysis below considers the Home Office's application of section 12(1) of the FOIA to the information requested at part (1) of the request.

Reasons for decision

Section 12 cost of compliance

13. Section 12(1) of the FOIA states that:

"Section 1(1) does not oblige a public authority 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. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours in this case.

Would complying with the request exceed the appropriate limit?

15. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
- determining whether it holds the information;
 - 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.
16. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
 17. In this case, the Home Office acknowledged that the complainant had requested a breakdown of all expenses claimed by Kevin Hyland since he took up his role, including, for example, the date the claim was made, the nature of the claim and details of hotels, restaurants etc.
 18. The Home Office told the complainant:

"This is a large amount of data".
 19. In support of its application of section 12, the Home Office told the complainant that to locate, retrieve and extract the requested level of detail would exceed the cost limit:

"...because it would entail a review of each transaction within particular accounts over a period of two years".
 20. By way of further explanation of the work involved, the Home Office told the complainant:

"For example, we would be required to check every entry made against our 'Overseas Subsistence' account over a period of two years to see which entries related to Kevin Hyland. Unfortunately the descriptors on our accounting system are unhelpful (i.e. a lot of entries are just marked as 'expenses') and there is no way in which we can drill into them further to find out what they actually relate to without examining them individually. In addition, this record will not cover expenses incurred through our travel operator, such as hotel bills and train tickets".
 21. The Commissioner notes that, although explaining in general terms why it considered that complying with the request would exceed the cost limit, the Home Office did not provide an estimate of the actual work involved in complying with the request.
 22. The Commissioner notes that the complainant had told the Home Office:

"Since expenses claimed by the commissioner must be processed through an accounts department and, like other public roles, he will be working to a budget, I fail to understand why the information is not easily available".
 23. In the absence of an estimate of the work involved in complying with his request, the Commissioner considers it understandable that the complainant found the Home Office's response unsatisfactory.

24. 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, including a description of the work that would need to be undertaken in order to provide the requested information.
25. In its substantive submission to the Commissioner, the Home Office told her that it took approximately 45 minutes to locate where the data is recorded in its information system for managing claims.
26. With respect to the process to retrieve and extract the requested expenses information, the Home Office explained:

"... we have established that there are 810 lines of claim data relating to the travel and expenses claims of the Independent Anti-Slavery Commissioner (IASC). This is high level information and in order to comply with the request an official ... would have to access each individual claim, retrieve the relevant receipt(s) and record the information relating to specific hotels and restaurants (the 'purpose of the meal' is unlikely to be held). We have estimated that this would take an average of 2 minutes per claim (we acknowledge that some will not take as long and some will take longer). We estimate this task would take a minimum of 27 hours".
27. The Home Office confirmed that it had not undertaken a sampling exercise in order to determine its estimate. However, it confirmed that it considered an estimated time of two minutes per claim to be reasonable.
28. In support of its position, the Home Office confirmed that its databases do not include the level of granularity specified in the request and that the only way to gather the requested information was to individually examine each expense claim submitted.

The Commissioner's view

29. When dealing with a complaint to her under the FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.
30. In essence, therefore, this case turns on whether the estimate provided by the Home Office was reasonable.
31. From the evidence she has seen during the course of her investigation, the Commissioner is satisfied that the Home Office has demonstrated

that it would exceed the appropriate limit to locate, retrieve and extract the requested information. Section 12(1) does therefore apply and the Home Office is not required to comply with the request.

Section 16 advice and guidance

32. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. In general where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit.

33. In this case, the Home Office initially told the complainant:

"If you refine your request, so that it is more likely to fall under the cost limit, we will consider it again. For example you can refine your request to bring it under the limit e.g. by narrowing the timeframe or specifying the costs you would like to see".

34. When it provided its internal review correspondence the Home Office told him:

"...we may be able to comply with your request if you can refine your request to bring it under the limit e.g. by refining the request to information about the dates of the claims, the amounts and a high-level description of the purpose. However, for the reasons mentioned above, I cannot guarantee that this would be possible".

35. The Commissioner notes the more detailed explanations which were provided to her regarding the cost of compliance in this case. In her view, these would have been more helpful to the complainant and would have assisted him better in refining his request.

36. Accordingly the Commissioner concludes that the Home Office failed to provide the complainant with reasonable advice and assistance to the complainant and therefore breached section 16(1) of the FOIA.

Other matters

37. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA. However, the Commissioner has issued guidance in which she has stated that, in her view, internal reviews should take no longer than 20 working days to complete, and

even in exceptional circumstances the total time taken should not exceed 40 working days.

38. In this case, the internal review that the complainant requested on 15 November 2016 was not completed in accordance with that guidance.
39. The Commissioner expects the Home Office to ensure that the internal reviews it handles in the future adhere to the timescales she has set out in her guidance.

Right of appeal

40. 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

41. 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.

42. 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
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