

## **Freedom of Information Act 2000 (the Act)**

### **Decision notice**

**Date:** 18 December 2017

**Public Authority:** Department for International Development  
**Address:** 22 Whitehall  
London  
SW1A 2EG

#### **Decision (including any steps ordered)**

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1. The complainant has requested information regarding contracts between the Department for International Development (DfID) and external organisations. DfID aggregated the requests as provided under section 12(4) of the Act and refused to comply with the requests citing section 12(1) of the Act.
2. The Commissioner's decision is that DfID is entitled to aggregate the requests under section 12(4) and is entitled to rely on section 12(1) of the Act to refuse to comply with the requests. However, the Commissioner considers that DfID has not complied with its obligations under section 16 of the Act to provide the complainant with reasonable advice and assistance.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with sufficient advice and assistance to enable her to make a meaningful request under the Act.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Request and response**

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5. This decision notice covers three separate requests that the complainant sent to DfID. The wording of these requests has been reproduced at Annex A at the end of this notice. The Commissioner has adopted DfID's reference system to document the timeline of the appeal:
  - Request F2017-085: Made on 1 March 2017
  - Requests F2017-097 and F2017-098: Made on 10 March 2017
6. DfID responded to these requests as follows:
  - Request F2017-085: Response issued on 24 March 2017: DfID stated that some of the requested information was available through the Contracts Finder link noted in the request and Companies House Websites. Whilst it was not stated in DfID's refusal notice, this is a refusal under section 21 of the Act. DfID denied holding the remainder of the relevant information.
  - Requests F2017-097 and F2017-098: Response issued on 5 April 2017: DfID aggregated the responses to both requests and refused them under section 12 of the Act as the cost of compliance would exceed the appropriate limit.
7. The complainant requested an internal review of the handling of request F2017-085 on 6 April 2017 as she considered the request had not been handled properly. Specifically, she stated that DfID had not provided the exact information requested as links to the Contracts Finder did not contain information on contract extensions or individual Companies House numbers. She also stated that DfID had not used the template she had provided.
8. DfID issued an internal review response for all three requests on 10 May 2017. DfID aggregated the response for all three requests and confirmed that it was refusing them under section 12 of the Act. DfID also stated that it was not obliged to provide held information in a requested template.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 15 May 2017 to complain about the way her requests for information had been handled.

10. The Commissioner considers the scope of this investigation to be whether DfID was entitled to aggregate the requests under section 12(4) of the Act and whether DfID was entitled to rely on section 12(1) to refuse to comply with the requests. She will also consider whether DfID has fulfilled its obligations under section 16 of the Act.
11. As DfID aggregated the requests at internal review and is relying on section 12(1) to refuse to comply with the three requests, the Commissioner will not consider whether DfID would be entitled to rely on section 21 or whether DfID should have provided the requested information in the complainant's preferred format under section 11.

## Reasons for decision

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### Section 12(4) – Aggregation of related requests

12. Section 12(4) of the Act states:

*"The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –*

- (a) *by one person, or*
- (b) *by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,*

*the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them."*

13. Regulation 5 of The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations) states:

*"(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority –*

- (a) *by one person, or*
- (b) *by different persons who appear to the public authority to be acting in concern or in pursuance of a campaign,*

*the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.*

- (2) *This regulation applies in circumstances in which –*
- (a) *the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and*
  - (b) *those requests are received by the public authority within any period of sixty consecutive working days.*
- (3) *In this regulation, "working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom."*
14. The requests were made by the same complainant and within seven working days of each other, fulfilling the criteria at regulations 5(1)(a) and 5(2)(b).
15. The Commissioner must now consider whether the three requests relate, to any extent, to the same or similar information. The Commissioner's guidance on aggregating requests can be found in her guidance on requests where the cost of compliance exceeds the appropriate limit<sup>1</sup>. Paragraphs 44 and 45 state:
- "Regulation 5(2) of the Fees Regulations requires that the requests which are aggregated relate "to any extent" to the same or similar information. This is quite a wide test but public authorities should still ensure that the requests meet this requirement.*
- A public authority needs to consider each case on its own facts but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested."*
16. The Commissioner acknowledges that two of the requests specify separate suppliers, however, the Fees Regulations' wording of "*relate, to any extent, to the same or similar information*" makes clear that the requested information does not need to be closely linked to be aggregated, only that the requests can be linked.

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

17. However the Commissioner is satisfied that there is an overarching theme to the three requests in that they are all requesting information regarding external contracts that were live within 2016. The Commissioner, therefore, finds that DfID was entitled to rely on section 12(4) of the Act to aggregate the three requests.

**Section 12(1) – cost of compliance exceeds the appropriate limit**

18. Section 1(1) of the Act states that:

*"(1) Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

19. Section 12(1) of the Act 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."*

20. The appropriate limit is set in the Fees Regulations at £600 for central government departments such as DfID. 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 the appropriate limit for central government departments equates to 24 hours (or 1440 minutes).

21. 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.

22. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the

First-Tier Tribunal in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*<sup>2</sup>, the Commissioner considers that any estimate must be "*sensible, realistic and supported by cogent evidence*".

### **DfID's position**

23. DfID confirmed to the Commissioner that its Procurement and Commercial Department (PCD) centrally manages and publishes a wide range of information on contracts which are valued above the Official Journal of the European Community (known as the OJEU) threshold of £106,047.
24. DfID explained that low value contracts are not centrally managed and are the responsibility of individual DfID departments and overseas offices. DfID confirmed that in addition to its two UK headquarters offices in London and East Kilbride, where its 20 main divisions or lead groups are based, it also has an extensive network of overseas offices based in approximately 30 overseas countries.
25. DfID set out that it does not publish information on low value contracts as it does for those above the OJEU threshold. DfID explained that it would, therefore, need to interrogate its financial/contract management departments and offices to locate, retrieve and extract the detailed information from its records management system for each contract.
26. DfID set out that it had checked its records relating to contracts with Coffey International that were active in financial years 2015-16 and 2016-17. DfID explained that Coffey International is one of DfID's key suppliers and it is most likely that it would hold more information on them than CL Group. It, therefore, considered it appropriate to use request F2017-097 (relating to Coffey International) for the purposes of its sampling and costs estimates.
27. DfID set out that it had created a report from its central management system which showed that there were 28 entries identified as 'Contracts' (i.e. managed by PCD). The report identified a further 174 'Purchase Orders' which it considered would most likely be low value contracts managed by individual departments or offices.

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<sup>2</sup> <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>  
Paragraph 12

28. DfID explained that each of the entries (whether referenced as 'Contract' or 'Purchase Order') would need to be reviewed and cross checked with information in its separate records management system to establish whether it held the requested information and then centrally compile this information. DfID set out that for the 'Contracts' information, which would be handled by the PCD, it estimated that this would take about eight hours in total.
29. DfID then explained that the bulk of time required would be in respect of collating the information relating to the 174 low value 'Purchase Orders'. DfID set out the steps required for each 'Purchase Order' along with the time required:
  - Identify which office/department was responsible for the 'purchase order' and find an appropriate contact to write to in order to seek the relevant information: ten minutes.
  - Identified office/department to establish which 'purchase orders' are contracts, and identify and extract the requested information for each contract based on their records in the two named systems and return this information to the central team: 45 minutes
  - Central team to compile relevant information for the FOI response: five minutes

### **The Commissioner's position**

30. The Commissioner considers that DfID's estimate of an hour to obtain the relevant information for each purchase order is likely to be excessive. She considers it likely that the relevant department would be able to extract the requested information in a shorter period of time.
31. She does, however, note that as there are 28 'Contracts' and 174 'Purchase Orders' for Coffey International (a total of 202), the information would need to be located, extracted and compiled in less than seven minutes per 'Contract' or 'Purchase Order'. This would almost reach the appropriate limit of 24 hours, and is before compliance with requests F2017-085 and F2017-098 are taken into consideration.
32. The complainant set out in her complaint to the Commissioner that she had specified in her request that if the appropriate limit was reached, live contracts should take priority.
33. However the Commissioner would point out that public authorities are not obliged to work up to the appropriate limit before refusing a request in reliance on section 12. The authority should consider the request in its entirety and issue a refusal notice, so that the applicant can see how

the cost limit would exceeded and make a judgement as to whether to submit a refined request.

34. The Commissioner is satisfied that DfID has demonstrated that compliance with the aggregated requests would exceed the appropriate limit of 24 hours. She therefore considers that DfID was entitled to refuse the complainant's requests under section 12(1) of the Act.

### **Section 16 – duty to provide advice and assistance**

35. Section 16 of the Act states:

*"(1) It shall be the duty of a public authority to provide advice and assistance, so far as would be reasonable to expect the authority to do so, to persons to propose to make, or have made, requests for information to it.*

*(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."*

36. Paragraph 14 of the section 45 Code of Practice<sup>3</sup> states:

*"Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the 'appropriate limit' (i.e. the cost threshold) the authority should consider provide an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee."*

37. The Commissioner's view is that where a public authority refuses a requests under section 12(1) of the Act, section 16(1) creates an obligation to provide advice and assistance on how the scope of the request could be refined or reduced to avoid exceeding the appropriate limit.

38. The Commissioner's guidance states that where it is reasonable to provide advice and assistance in the particular circumstance of the case,

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/235286/0033.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf)



the minimum a public authority should do in order to satisfy section 16 is:

- either indicate if it is not able to provide any information at all within the appropriate limit; or
- provide an indication of what information could be provided within the appropriate limit; and
- provide advice and assistance to enable the requestor to make a refined request.

39. When responding to requests F2017-097 and F2017-098, DfID explained that the requested information was held in its PCD, and across its overseas offices and UK departments, and it would have to contact each office or department and ask it to identify and extract information. It provided a link to online published contract information.
40. DfID stated *"If you were to make a new request for a narrower range of information we may be able to comply within the cost limit"*.
41. In the internal review of F2017-085, F2017-097 and F2017-098, DfID provided an explanation of the set up of its offices and the individual responsibility of each office for its low value contracts. It explained that each office would need to be contacted to collate the requested information.
42. DfID stated: *"I am satisfied that this could not be done in relation to your requests within 24 working hours. I would, however, just add that the cost limit applies particularly to request F2017-097, which we could not comply with within the cost limit, even if we were to consider it entirely on its own"*.
43. DfID set out to the Commissioner that it considered it had fulfilled its obligations under section 16 as it had explained why the requests had been aggregated and why the cost limit applied. DfID explained that it had invited the complainant to submit a narrowed request and drew attention to the fact that the cost limit applied in particular to F2017-097.
44. The Commissioner is not satisfied that, in the circumstance of this case, DfID has fulfilled its obligations under section 16 of the Act. The Commissioner does not consider merely stating that a complainant could submit a narrower request is sufficient advice and assistance. She notes that DfID set out that section 12 applied to F2017-097 in particular, however, she considers that this only implies that the other request could fall within the appropriate limit.

45. She also considers that DfID ought to have provided more focused advice and assistance regarding how to refine F2017-097 itself to aid the complainant in making a meaningful request on this specific subject matter.
46. The Commissioner therefore requires DfID to provide the complainant with adequate advice and assistance under section 16 of the Act.

## Right of appeal

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47. 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)

48. 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.
49. 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 .....**

**Sarah O’Cathain**  
**Senior Case Officer**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## **Annex A**

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### **F2017-085**

*"Thank you for publishing your contract notices on Contracts Finder. However, I notice that in 36 cases you have not published award notices despite the contract being published prior to August 11th 2016, some 200 days ago.*

*Therefore, I am writing to request these award details. Please provide this information in the attached template that lists the contracts requiring award data by Contracts Finder ID. There is also an attached sample with notes and two examples to illustrate the format required.*

*Please note, that we require information that cannot be published via Contracts Finder (see below), so to comply with this request, publishing to Contracts Finder will not be sufficient:*

- *The Companies' House number of the winning supplier*
- *Details of contract start and end dates,*
- *Details of any extensions to the contract*
- *The last possible date to which a contract can run*
- *Estimated contract value*
- *Whether the contract is a call off from a framework.*

*If you fear the cost of this work will exceed the limit of £600, please prioritise those contracts that remain have an end date in the future at the time of writing.*

*Please note that you are required under law to publish award notices to all contracts on Contracts Finder:*

*[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/539104/Procurement\\_Policy\\_Note\\_Legal\\_requirement\\_to\\_publish\\_on\\_Contracts\\_Finder\\_1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/539104/Procurement_Policy_Note_Legal_requirement_to_publish_on_Contracts_Finder_1.pdf).*

**F2017-097** – *"Please provide details of all contracts between the Department for International Development and Coffey International, or its subsidiaries, that were active during the calendar year of 2016 (i.e. the contract started on or before 2016 and ended during or after 2016).*

*I have attached a list of contracts between yourselves and Coffey International that have already been published on Contracts Finder. If you have any other contracts with Coffey International, please provide details of each of these contracts.*

**F2017-098** - *Please provide details of all contracts between the Department for International Development and CL Group, or its subsidiaries, that were active during the calendar year of 2016 (i.e. the contract started on or before 2016 and ended during or after 2016).*

*I have attached a list of contracts between yourselves and CL Group that have already been published on Contracts Finder. If you have any other contracts with CL Group, please provide details of each of these contracts.*

*We require the following information for each contract (including those that have already been identified in the attached list):*

- *Buyer*
- *Supplier*
- *Supplier Companies House number*
- *Start*
- *End*
- *Extensions*
- *Estimated value of the contract at the time of the contract award*
- *Actual spend through the contract*
- *Link to tender notice on Contracts Finder (pls provide link to original framework tender notice if you are not the publisher of this tender)*
- *Link to contracts award notice on Contracts Finder (if this has been published).*

*Please note, any contract let via a call-off agreement or a mini-competition under a framework should be provided. Even low-value contracts, such as those for £1 should also be included.*

*If the data we have provided is the complete list of all the contracts you have with Coffey International/ CL Group please confirm that this is the case."*