

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 March 2018

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF  
[info.access@homeoffice.gsi.gov.uk](mailto:info.access@homeoffice.gsi.gov.uk)

### Decision (including any steps ordered)

---

1. The complainant has requested from the Home Office information in relation to the number of suspected sham marriages and civil partnerships referred for investigation, those investigated and of those investigated, the number where enforcement action was taken for 2014/15 and 2015/16.
2. The Home Office withheld the requested information under Sections 12(1) (costs) and 31(1) (prejudice to law enforcement) of the FOIA.
3. The Commissioner's decision is that the Home Office has successfully applied Section 12(1).
4. The Commissioner does not require the Home Office to take any steps to ensure compliance with the legislation.

### Request and response

---

5. On 1 September 2016 the complainant wrote to the Home Office and requested information regarding suspected sham marriages and civil partnerships for 2014/15 and 2015/16 reported by region broken down as follows;
  - '1. *the number of proposed marriages or civil partnerships referred for investigation*
  2. *the number of investigations carried out into proposed marriages or civil partnerships referred for investigation as potential sham marriages broken down by region*

3. *the number of proposed marriages or civil partnerships investigated as potential sham marriages, where the Home Office took enforcement action, broken down by region'*
6. The Home Office responded on 7 September 2016. It stated it held the requested information but was withholding it under Section 31(1)(a) (prejudice to the prevention or detection of crime) of the FOIA.
7. On 15 September 2016 the complainant requested an internal review.
8. Following an internal review the Home Office wrote to the complainant on 11 October 2016. It stated that it was maintaining its original decision to withhold the requested information under Section 31(1)(a) of the FOIA.
9. Following the intervention of the Commissioner and discussions with the Home Office and the complainant (the details of which are described below), the actual information falling within the scope of the request was clarified in July 2017. Following this clarification, the Home Office applied Section 12(1) of the FOIA in addition to Section 31(1) to the entire request on the basis that it would take in excess of the appropriate limit to determine, locate, retrieve and extract the requested information in question 3.

## **Chronology**

---

10. The Commissioner contacted the Home Office 15 June 2017 to request a copy of the withheld information together with any further arguments it wished to advance in support of its application of Section 31 of the FOIA.
11. The Home Office responded on 19 July 2017. It confirmed it held the requested information and said it was maintaining its position to withhold it under Section 31(1)(a) of the FOIA.
12. The Commissioner responded on 21 July 2017 having considered the spreadsheets purporting to contain the withheld information and queried whether the spreadsheets included the information specified in the complainant's request. The Commissioner suggested that the complainant probably did not require the level of detail set out in the figures supplied and enquired as to whether the Home Office has sought to clarify the complainant's request by asking what she meant by figures 'broken down by region'. She speculated that the complainant may have only required the information broken down by the 11 Designated Register Office (DRO) regions for England and Wales as opposed to individual DROs of which there were about 141.

13. The Home Office replied that it did not clarify what the complainant meant by the word 'region' in her request as it said it would not have released the information 'whatever the regions were deemed to be'.
14. The Commissioner wrote back to the Home Office on 25 July 2017 saying that she could not reach a decision in relation to the application of Section 31(1) of the FOIA until such time as the extent of the information falling within the scope of the request had been clarified.
15. Although one possible option would be to issue a Decision Notice citing Section 16 of the FOIA, the Commissioner said she would contact the complainant direct to clarify what she meant by the word 'region' in her request.
16. The Commissioner contacted the complainant in July 2017 who clarified that by 'region' she meant the 12 Government Office Regions comprising the South West, South East, London, East of England, West Midlands, East Midlands, North West, Yorkshire and the Humber, North East, Wales, Scotland and Northern Ireland<sup>1</sup>.
17. The Commissioner contacted the Home Office again on 28 July 2017 with details of the clarified request and invited it to issue a fresh response.
18. The Home Office responded on 15 August 2017 with an Excel spreadsheet containing three tabs purporting to represent the information falling within the scope of the three questions in the complainant's clarified request.
19. At the Commissioner's request, the Home Office clarified the figures it had provided to her on 28 September 2017 and said it was maintaining its position that Section 31(1)(a) of the FOIA was engaged on the basis that disclosure would prejudice the prevention and detection of crime. The Home Office stated that the only information it held for 2014/15 was details of the number of cases 'referred'. With regard to 2015/16 it said it held details of the number of cases referred, investigated and enforced as specified in questions 1, 2 and 3 of the complainant's request respectively.

---

<sup>1</sup> <https://www.ons.gov.uk/methodology/geography/ukgeographies/eurostat#relationship-of-nuts-areas-to-uk-administrative-geographies>

20. As the Commissioner had a number of reservations regarding the accuracy of the information provided she had further discussions with the Home Office during September and October 2017.
21. Following these discussions the Home Office clarified on 15 November 2017 that the information it had provided to the Commissioner earlier was not accurate in respect of the number of cases resulting in enforcement action for 2015/16 (question 3 of the complainant's request). It said although this information was held it would take in excess of the 'appropriate limit' under Section 12 to identify, locate, retrieve and extract it. It therefore argued that Section 12 was engaged to the entire request. In addition, it said it was still maintaining that Section 31(1)(a) was engaged in relation to the entirety of the information requested.
22. In December 2017 and January 2018 the Commissioner invited the Home Office to reconsider its position in the light of concerns expressed by the complainant regarding the application of Section 12 and its estimated time calculation to determine, locate, retrieve and extract the requested information. The complainant suggested that a search matching primary keys would produce the information she requested within the appropriate limit. The Home Office responded by stating that even a search by matching primary keys for high level data outcomes would still involve the appropriate costs limit being exceeded.

### **Scope of the case**

---

23. The complainant contacted the Commissioner on a number of occasions in 2017 to complain about the way her request for information had been handled by the Home Office. In particular, she complained about its initial failure to clarify what she was requesting and subsequently, its application of Sections 12 and 31 of the FOIA after a long delay.
24. This notice covers whether the Home Office successfully applied Section 12 and if not, Section 31(1) of the FOIA to the complainant's request as clarified with her and the Home Office in July 2017. The point of clarification being that the word 'region' in the request dated 1 September 2016 meant the 12 Government Office Regions described in paragraph 16 above.

### **Reasons for decision**

---

#### **Section 12: the appropriate limit**

25. Section 12(1) of the FOIA provides that a public authority is not obliged to comply with a request for information if the authority estimates that

complying with the request would exceed the appropriate cost limit, (£600 for central government, £450 for all other authorities). A public authority may rely on section 12 in respect of either the duty to confirm or deny that the requested information is held, or the duty to communicate information to the applicant.

26. Section 12 of the FOIA should be considered with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations). If forming a cost estimate, a public authority can consider the time taken on:
  - (a) determining whether it holds the information,
  - (b) locating the information, or a document which may contain the information,
  - (c) retrieving the information, or a document which may contain the information, and
  - (d) extracting the information from a document containing it.
27. Regulation 4(4) of the fees regulations states that the authority should calculate the cost of complying with a request at the rate of £25 per hour. If the authority estimates that complying with the request would cost more than the appropriate limit, it is not obliged to comply with the request.
28. In the case of the Home Office, the £600 limit applies, which equates to 24 hours.
29. Following the First Tier Tribunal's finding in the case of Randall<sup>2</sup>, the Commissioner considers that a sensible and realistic estimate must be informed by the circumstances of the case. A public authority is not required to work up to the cost limit before refusing a request under Section 12, but must be able to demonstrate how the estimate has been calculated.
30. In the case of multi-part requests for similar information an authority can legitimately refuse the entire request under the cost limit, even if compliance with one or more parts of the request would not themselves exceed the cost limit.
31. In this case the Home Office has refused the entirety of the requests under Section 12 of the FOIA even though the information specified in

---

<sup>2</sup> Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency, appeal no EA/2007/0004

the first two questions of the complainant's three part request could be provided (subject to other FOIA exemptions) within the costs limit.

32. Specifically, the Home Office has argued while it holds the information specified in question three of the complainant's request, details of the relevant cases are held in a separate database to details of the enforcement activity. It stated that its central case-working records were held on its Case Information Database (CID). This is where details of the individuals and the cases stating they have registered an intention to marry are recorded and stored. This database also records the cases which have been investigated. Details of enforcement visits are recorded in a separate system called the National Operations Diary (NOD).
33. The Home Office explained that to locate, retrieve and extract the information covered by question three of the complainant's request it would need to take the details from the CID of the referred persons extended for investigation and then search those names in the NOD. If a visit was identified for an individual it would then need to review that record to ascertain if the visit was in relation to a sham marriage as it could have been conducted for another reason. The visit record in the NOD would reveal the 'high level' outcome of the visit (for example, arrest, detention, etc). However, for further details (for example for removal) the Home Office would need to revert to the CID record.
34. For one person, this would mean several searches in different systems and the reading those records where located. A low level estimate of the time for each search would be an average of 5 minutes. This was because some cases would result in a 'no trace' and therefore be relatively quick. However, cases where a trace was found would take longer as the record and associated notes would need to be read and recorded.
35. The Home Office pointed out that as the scheme only came into force on 2 March 2015 it only had the raw data for 2015/16 and not 2014/15. In the year 2015/16, 4,422 cases were investigated. In the event that the Home Office had to look up each case, at an estimated average time of 5 minutes, the whole process would take 369 hours. At a rate of £25 per hour this would be the equivalent to £9,225.50. This would take approximately 15 days for one member of staff to complete. For that reason the Home Office said it was applying Section 12 of the FOIA to the entirety of the complainant's request. It added that if the complainant made a revised request for the information specified in questions one and two the Home Office would apply Section 31 of the FOIA.

36. The complainant has suggested that it would take a lot less than the 369 hours estimated by the Home Office to identify, locate, retrieve and extract the information specified in question three of her request.
37. The complainant pointed out that her request simply asked for the number of cases where enforcement action was taken by the Home Office not the actual action taken. She suggested that a search for this would take less time. Also, the complainant suggested that if it was necessary to search the NOD, matching keys for identified files in the CID to find the current status with regard to the high level outcomes would be quick and easy as it wouldn't require reading the case files for details of information regarding the type of enforcement action taken.
38. The Commissioner contacted the Home Office and invited it to reconsider its estimate in the light of the complainant's suggestions.
39. Having reconsider the matter the Home Office stated that even if it searched the NOD based on the files identified in the CID by matching primary keys to ascertain high level outcomes, it still would not be able to identify and extract the requested information within the appropriate limit.
40. The Commissioner has considered the estimate provided by the Home Office and the arguments advanced by the complainant. The Home Office has stated that the average estimated time to search for the information specified in question three of the complainant's request is five minutes. This is an average and would depend on whether there was any information in the CID which would necessitate a search in the NOD. The Home Office accepts that if a search of the CID revealed a 'no trace', the overall search time involved would be less than five minutes. However, if the CID search revealed possible enforcement action, the NOD would have to be searched and this would take longer.
41. The Commissioner notes that even if the average search time was one minute per case, the overall time involved for the Home Office would be 73.7 hours which would still be considerably more than the appropriate limit of 24 hours. In fact, to bring the matter within the appropriate limit it would mean the Home Office would have to complete the search for each case in an average time of 20 seconds. The Commissioner does not believe this would be reasonable bearing in mind the probability of having to make several searches in different systems and the reading of those records where located.
42. The Commissioner has therefore concluded that the cost estimate made by the Home Office was reasonable and so section 12(1) of the FOIA was engaged. Accordingly, she has not gone on to consider Section 31(1).

## Right of appeal

---

43. 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)

44. 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.
45. 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 .....**

**Debbie Clark  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**