

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

### **Decision notice**

**Date:** 15 January 2018

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

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

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1. The complainant has requested data relating to 'lessons learned' within the Home Office.
2. The Commissioner's decision is that the Home Office has correctly applied section 12 of the FOIA to the request, and has also provided the complainant with advice and assistance in accordance with section 16 of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

#### **Request and response**

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4. On 26 April 2017, the complainant wrote to the Home Office and requested information in the following terms:  
*"all of your lessons identified or learned data within your organisation, relating to projects, change or transformation."*
5. The Home Office responded on 17 May 2017 and refused to provide the requested information. It cited the following exemption as its basis for doing so: section 12 of the FOIA (cost of compliance exceeds appropriate limit).

6. The complainant requested an internal review on 25 May 2017, and stated that he did not consider he had received sufficient advice and assistance to know how to narrow down the scope of his request in order to be provided with information. Following an internal review, the Home Office wrote to the complainant on 26 June 2017. It maintained its position, clarifying that in its view section 12(1) was engaged. It also offered some further comments regarding narrowing the scope of the request, stating that it considered that it had provided the complainant with advice and assistance to narrow down the scope of his request.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 24 July 2017 to complain about the way his request for information had been handled.
8. The Commissioner considers that the scope of the case has been to consider whether the Home Office has correctly withheld the information under section 12(1) of the FOIA (cost of compliance exceeds appropriate limit), and whether it has complied with section 16 of the FOIA – duty to provide advice and assistance.

### **Reasons for decision**

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9. **Section 12 – cost of compliance exceeds appropriate limit**
10. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the fees regulations.")
11. 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 for the Home Office.
12. 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:
  - a) determining whether it holds the information;
  - b) locating a document containing the information;

- c) retrieving a document containing the information; and
  - d) extracting the information from a document containing it.
13. The four activities are sequential, covering the retrieval process of the information by the public authority.
  14. The Home Office has confirmed that it does hold information which would fall within the scope of the request.
  15. It has explained that it considers the scope of the request to be extremely broad, and has presented arguments which focus on its interpretation of the scope of the request.
  16. The Home Office notes that the request relates to 'all' of the Home Office's lessons identified or learned data, relating to projects, change or transformation. This, it explains, *"is not held centrally."*
  17. It argues: *"As it stands, the request covers any information on lessons learnt for any projects since the inception of the Home Office. Projects, change and transformation have been occurring since the Home Office began. Information about lessons learnt or identified could have been saved in all manner of repositories and could be included in presentations, reports, emails across many different formats, i.e. Word, Excel, Powerpoint, Outlook, hard copy files or historical records held off site."*
  18. The Home Office has explained that to begin to be able to locate the information falling within the scope of the request, it would need to *"establish a workable definition of 'lessons learned' and 'projects, change or transformation' and keywords for any search. The Department would then need to undertake a generic 'search all' across all repositories of data across all areas of the Home Office, covering all types of projects over an undisclosed time period. This would of course include archived electronic data and hard copy historical files that would involve third party involvement to gain access."*
  19. In summary, the Home Office has argued that since its lessons learned data relating to projects, change and transformation are not stored centrally, it has struggled to identify how it might seek to comply with the request in its current form.
  20. In this case, the Commissioner is persuaded that the scope of the request, which does not specify any time period nor particular area of interest within the organisation, potentially captures information from such a large number of areas within the Home Office, and from such an extensive period of time, that the Home Office has correctly refused the request under the exemption at section 12 of the FOIA.

21. However, the Commissioner would therefore expect the Home Office to focus its efforts in responding to the request on providing advice and assistance to the requester in accordance with section 16 of the FOIA.

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

22. Section 16 of the FOIA states that:

- (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
- (2) Any authority which, in relation to the provision of advice or assistance in any case, conforms to 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.

23. Section 16 refers to the 'code of practice'; that is, *The Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of the Freedom of Information Act 2000*, issued under section 45 of the Act ("the Code").

24. As stated in the Code, one of its aims is to "*protect the interests of applicants by setting out standards for the provision of advice which it would be good practice to make available to them.*"

25. Paragraph 14 of the Code 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. cost threshold) the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling."*

26. In this case, the Commissioner has been asked to consider whether the Home Office has conformed with the requirements of the Code; that is, has complied with its duty under section 16(1) of the FOIA.

27. The Commissioner has therefore considered the Home Office's responses to the complainant.

### **The Home Office's responses**

28. In its initial response to the complainant on 17 May 2017, the Home Office explained that "*due to the unspecified parameters around your request... it would take a number of weeks to locate, retrieve and*

*extract reports for all lessons learnt data relating to projects, change or transformation for the Home Office."*

29. It then stated: *"If you refine your request, so that it is more likely to fall under the cost limit, we will consider it again. You may wish to consider narrowing your request to within a specific time period, and focusing your request on a specific area of the Home Office or on specific kinds of information held."*
30. The complainant responded to this as follows: *"I will struggle to bound my request if I don't know what information is available. It is difficult for me to derive a combination of projects, documents and timeframes that unlocks the combination of your cost limit."*
31. The Home Office then advised the complainant, in its internal review response, that: *"By asking for 'all'- the parameters of this are very wide, and although there is information held on 'lessons learned' since 2014 to date, it is a mix of documents relating to projects and there is no comprehensive list held in a reportable format that lists specific details of the projects under specific programmes. We would need to undertake a search across all the various repositories of data. The core Home Office includes Border, Immigration, Police, Fire, Passports, The Office Security and Counter Terrorism and several other arms-length bodies. There are also several corporate file storage facilities that the Home Office has used over the years. Any lessons learnt or identified could have been saved in all manner of presentations, reports, emails across many different formats, i.e. word, excel, power point, outlook etc."*
32. It also stated: *"You may wish to consider whether there is a specific topic/programme that you may be interested in, in respect of the various policies that the Home Office deals with. Please see [www.gov.uk/home-office](http://www.gov.uk/home-office) for further information on what the Home Office does."*

### **The Commissioner's decision**

33. ICO guidance<sup>1</sup> in this area states as follows, on page 18-19:

*"A public authority should inform the requestor of what information can be provided within the appropriate limit. This is important for two reasons: firstly, because a failure to do so may result in a breach of section 16. Secondly, because doing so is more useful than just advising*

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

*the requestor to 'narrow' the request or be more specific in focus. Advising requestors to narrow their requests without indicating what information a public authority is able to provide within the limit, will often just result in requestors making new requests that still exceed the appropriate limit".*

34. It is evident in this case that the complainant was unsure, following the initial response, how to narrow down his request in order to be provided with information. It is also evident that the complainant had expected a broad range of lessons learned data to be readily available.
35. Referring to the wording of the Code, however, the Commissioner considers that the Home Office's subsequent internal review response demonstrates that it "*consider[ed] providing an indication*" of what could be provided within the costs ceiling. While not indicating exactly what could be provided within the appropriate limit, the complainant was encouraged to narrow down his request to a specific department or to a specific topic/programme.
36. The Commissioner is aware that subsequent requests submitted by the complainant have been refused, including when he has asked for lessons learned data that have been stored centrally and also when he has asked for the lessons learned data from the top 30 projects from the last three years (by value). This has been frustrating for the complainant.
37. However, in view of the very broad initial request which is under consideration in this notice, the Commissioner considers that the advice and assistance in this case was reasonable, since the Home Office was at this time unaware of any areas of interest that the complainant may have wished to be directed towards. Its advice therefore was necessarily of a general nature.
38. The Commissioner is satisfied that the Home Office provided the complainant with sufficient advice and assistance to have complied with section 16 of the FOIA in this case. She therefore does not require the Home Office to take any steps.

## Right of appeal

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39. 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)

40. 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.
41. 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 .....**

**Alun Johnson**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**