

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

### **Decision notice**

**Date:** 21 May 2019

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

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

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1. The complainant submitted two requests to the Department for International Development (DFID). In relation to the first request, after extending the time it needed to complete its public interest test considerations, DFID initially responded by stating that it held the information albeit it was exempt from disclosure, but at the internal review stage concluded that it did not hold any information in scope of the request. In relation to the second request DFID refused to comply with this on basis of section 12(1) (cost limit). The complainant was unhappy with the length of time taken to respond to the first request and sought to dispute the application of section 12(1) to the second request. The Commissioner has concluded that DFID is entitled to rely on section 12(1) of FOIA in relation to the second request but in respect of the first request it breached section 17(3) of FOIA by failing to complete its public interest considerations within a reasonable timeframe and also section 10(1) by failing to confirm, within 20 working days of the request, that it did not hold the requested information.

## Request and response

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### DFID request reference F2017-443

2. The complainant submitted a request to DFID on 14 January 2018 seeking the following information:

*'Details and documentation of all meetings and minutes about Israel and the occupied Palestinian Territories held between Department for International Development (DFID) officials (Ministers and civil servants and representatives of the Norwegian Refugee Council (NRC), for the six months from August 2016'*
3. DFID contacted the complainant on 12 February 2018 and confirmed that it held information falling within the scope of the request but it considered section 27 (international relations) of FOIA to apply and it needed additional time to consider the balance of the public interest test.
4. DFID informed him of the outcome of its deliberations on 23 April 2018. DFID confirmed that it held details of a meeting which took place on 25 August 2016 however it was withholding further information relating to the meeting on the basis of the exemptions contained at sections 27, 38 (health and safety), 40 (personal data) and 43 (commercial interests) of FOIA.
5. The complainant contacted DFID on 5 June 2018 and asked for an internal review of this decision.
6. DFID informed him of the outcome of the internal review on 15 August 2018 and explained that the withheld information did not in fact fall within the scope of his request. Therefore, the review concluded that DFID did not hold any information falling within the scope of the request.

### DFID request reference F2018-401

7. The complainant then submitted a request to DFID on 18 October 2018 seeking a copy of the following information:
  - *The record regarding the field visit facilitated by the Norwegian Refugee Council (NRC) on 25 August 2016*
  - *A list of the "partner organisations working on the Information, Counselling, and Legal Assistance (ICLA) programme" and the related work of these organizations*

8. DFID contacted the complainant on 15 November 2018 and confirmed that it held information falling within the scope of his request but it considered this to be exempt from disclosure on the basis of sections 27, 38 and 43 of FOIA and it needed additional time to consider the balance of the public interest.
9. DFID provided him with a substantive response to the request on 29 November 2018 in which it explained that the requested information was exempt from disclosure on the basis of sections 27, 38, 40 and 43 of FOIA.
10. The complainant contacted DFID on 10 December 2018 in order to ask it to conduct an internal review of this response.
11. DFID informed him of the outcome of the review on 18 January 2019. The review concluded that complying with the request in full would exceed the appropriate cost limit. This was because the part of the request which sought information about 'related work' of the partner organisations working on the ICLA programme would require staff to search through a large amount of information in order to identify any relevant information. DFID suggested to the complainant that he may make a narrower request, for example simply for the record of the field visit facilitated by the NRC on 25 August 2016, and this could potentially be answered within the cost limit.

## **Scope of the case**

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12. The complainant contacted the Commissioner on 2 December 2018 in order to complain about DFID's handling of the two above requests. In relation to request F2017-443 he was dissatisfied with the time it took DFID to complete its public interest test considerations and the time taken to complete the internal review.<sup>1</sup> He did not seek to dispute DFID's position that it did not hold the requested information.
13. In relation to request F2018-401, the complainant initially complained to the Commissioner about the length of time to took DFID to complete its public interest considerations. Following its completion of the internal review, the complainant explained to the Commissioner that he also

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<sup>1</sup> The time taken to complete an internal review is not a statutory requirement of FOIA and therefore the Commissioner has commented on this aspect of the complainant in the Other Matters section at the end of this notice.

wished to challenge DFID's reliance on section 12(1) to refuse that request.

## Reasons for decision

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### Request F2017-443

#### Section 17(3) - Time taken to consider the balance of the public interest test

14. Section 1(1) of FOIA provides that 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.'*

15. Section 10(1) of FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
16. Under section 17(3) a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest. The Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days, which would allow a public authority 40 working days in total. The Commissioner considers that any extension beyond 40 working days should be exceptional and requires the public authority to fully justify the time taken.
17. In relation to request F2017-443 DFID took 69 working days to complete its public interest test considerations. DFID explained to the Commissioner that this delay was due to the complexity of fully considering the public interest test considerations to the information originally thought to be in scope and to competing pressures for time on the officials involved. Despite these factors, the Commissioner is not persuaded such a lengthy period of time can still be considered to be reasonable. She has therefore concluded that DFID breached section 17(3) of FOIA.
18. Ultimately, DFID concluded that it did not hold the requested information. However, in light of this DFID was under an obligation under section 1(1)(a) and 10(1) of FOIA to inform the complainant of this within 20 working days of the request. Its failure to do represents a breach of section 10(1) of FOIA.

## **Request F2018-401**

### Section 17(3) - Time taken to consider the balance of the public interest test

19. As noted above, the complainant was also dissatisfied with the length of time it took DFID to complete its public interest test considerations in relation to request F2018-401. However, DFID only took 30 working days to complete its public interest considerations, which in light of the comments above, the Commissioner considers to be a reasonable period of time and therefore does not represent a breach of section 17(3) of FOIA.

### Section 12(1) – Cost of compliance

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

*'(1) 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.'*

21. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('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 section 12(1) effectively imposes a time limit of 24 hours.

22. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) of the Fees Regulations 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.

23. 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*, the Commissioner considers

that any estimate must be 'sensible, realistic and supported by cogent evidence'.<sup>2</sup>

*DFID's position*

24. As noted above, in its internal review response DFID explained that section 12(1) was applied because the part of the request which sought information about the '*related work*' of the partner organisations working on the ICLA programme would require staff to search through a large amount of information in order to identify any relevant information.
25. DFID described the nature of these searches in its submissions to the Commissioner as follows:
26. DFID explained that in order to determine what information it might hold on this part of the request, it conducted searches of its central electronic document and record management system (EDRMS) of the names of the partner organisations who worked on this programme and whose names were contained in the note it held of the field visit to the Norwegian Refugee Council (which the complainant had also requested). DFID explained that this produced a total of 4,830 items and that each item might be a single document, or it could be an email with several attachments or a lengthy email chain. DFID explained that each item (and any sub-items attached to an item) would have to be accessed and read to determine whether it contained any information relevant to the request. DFID suggested that with this volume, some emails held are likely to consist of lengthy chains, and such chains would need to be read to identify any relevant information held within it.
27. DFID explained that it then conducted further refined searches to try and identify whether it would be possible to comply with the request within the cost limit. In order to do it searched the names of the organisations combined with the terms 'Information, Counselling and Legal Assistance', 'ICLA', 'Norwegian Refugee Council' and 'NRC'. DFID explained that the searches produced a total of 3,367 items.
28. DFID explained that it considered that it would be reasonable for each item to require a member of staff to spend at least one minute determining whether it held information relevant to the request, although consideration of more complex or lengthy items as described above would take significantly longer than one minute. DFID therefore

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

argued that even if it were possible to make a determination on the basis of a single minute's examination of each item, examination of these search results would significantly exceed the time limit of 24 hours (1440 minutes).

29. DFID also explained that it was possible that references in information that it held on the work of these organisations would not include these additional search terms, or even the names of the organisations (for example, a reference in an email to a discussion with a member of staff at one of the organisations might only contain that person's name and not the name of their organisation if the individual were familiar to recipients of the email). DFID explained that was likely that it held information on the activities of these organisations which relate to matters outside the terms of the complainant's request and information of that type would need to be viewed and excluded. DFID argued that such searches were reasonable ones for it to take in order to identify information which may be in scope.
30. DFID explained that in addition to information held within its EDRMS, it is likely that additional information would be held in email accounts and on the laptops of individual members of staff working on relevant issues in DFID. DFID explained that staff are not required to save every email they receive or send or every document they create or receive in the EDRMS, and so the EDRMS items are unlikely to represent a complete or comprehensive source of all information held by DFID on the work of these organisations. DFID explained that searching for relevant information from appropriate individuals would also add to the time required to identify relevant information, if the time limit had not already been exceeded by the implications of the EDRMS searches. DFID explained that having already, in its view, established that the EDRMS searches alone would breach the cost limit, it did not initiate searches of individuals' email accounts or laptops.

#### *The Commissioner's position*

31. Given the wording and scope of the request, the Commissioner considers the searches of its EDRMS to be focused and targeted ones. Furthermore, the Commissioner also accepts that it is reasonable for DFID to estimate that it will take an average of one minute per document to assess whether they contain information which is relevant to the scope of the request given the variety of different documents returned by the search. Given the volume of documents returned by DFID's searches within its EDRMS the Commissioner is satisfied that complying with the request would clearly exceed the appropriate cost limit, even before taking into account the time it would take to search for any relevant documents held outside of the EDRMS. The

Commissioner is therefore satisfied that DFID is entitled to rely on section 12(1) of FOIA to refuse to comply with request F2018-401.

### **Other matters**

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32. As noted above, the complainant expressed his concern to the Commissioner about the length of time it took DFID to complete its internal review in relation to request F2017-443. FOIA does not impose a statutory time within which internal reviews must be completed albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe. In the Commissioner's view it is reasonable to expect most reviews to be completed within 20 working days and reviews in exceptional cases to be completed within 40 working days.
33. In handling this request DFID took 51 working days to complete the internal review. DFID explained to the Commissioner that this delay was due to workload and resource pressures at the time in the team responsible. The Commissioner is not unsympathetic to the resources pressures that public authorities can face. However, she hopes that in the future DFID will complete its internal reviews within the timeframes set out in her guidance.



## Right of appeal

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34. 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)

35. 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.
36. 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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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