

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 May 2020

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

### Decision (including any steps ordered)

---

1. The complainant has requested information about false passports from the Home Office (the "HO"). The HO advised that to comply with the request would exceed the cost limit at section 12(1) of the FOIA.
2. The Commissioner's decision is that the HO was entitled to rely on section 12(1) of the FOIA. She does however find a breach of section 16(1)(advice and assistance) of the FOIA. No steps are required.

### Request and response

---

3. On 6 June 2019, the complainant wrote to the HO and requested information in the following terms:

*"I would like to learn, for each of the five years 2014-2018, how many British passports were detected as false e.g. a forgery, or had been tampered with to correspond to the presenter.*

*(I am not asking for information as to the circumstances of such detections by British or other authorities)".*

4. The HO responded on 19 June 2019. It advised that to comply with the request would exceed the cost limit at section 12(1) of the FOIA.
5. On 19 June 2019, the complainant submitted the following refined request:

*"I would like to learn, for the most-recent available calendar year, how many British passports were detected as false e.g. a forgery, or had been tampered with to correspond to the presenter".*

6. On 16 July 2019, the Home Office responded. It again advised that to comply with the request would exceed the cost limit at section 12(1) of the FOIA.
7. On 18 July 2019, the complainant requested an internal review. Despite the Commissioner's intervention, to date this has not been provided.

### **Scope of the case**

---

8. The complainant contacted the Commissioner on 18 September 2019. The Commissioner required further information which was provided on 21 October 2019. The complainant also provided details of a similar request dated 4 July 2019, where Home Office Border Force had disclosed the number of false British passports detected by Border Force over the last five years. In view of this, he said:

*"Given the tiny number (in my view) involved and that Border Force are presumably the main detectors of false British passports, I consider the cost argumentation of the Home Office Passport Office unconvincing".*

9. The Commissioner invited the complainant to submit any further grounds of complaint; none were received.
10. The Commissioner will consider the citing of section 12(1) below.

### **Reasons for decision**

---

#### **Section 12 – cost of compliance**

11. Section 12(1) states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
12. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are:
  - (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.
13. 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. The Fees Regulations also specify that the cost of complying with a request must be calculated at a flat rate of £25 per hour. This means that the public authority may refuse to comply with a request for information if it estimates that it will take longer than 24 hours to comply.
14. Section 12 of the FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by the HO was reasonable; whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £600, that section 12(1) therefore applied and that it was not obliged to comply with the request.

*Would compliance with the request exceed the appropriate cost limit?*

15. Section 12(1) requires a public authority to estimate the cost of compliance with a request, rather than to formulate an exact calculation. The question for the Commissioner to determine is therefore whether the cost estimate by the HO was reasonable. If it was, then section 12(1) of the FOIA was engaged and the HO was not obliged to comply with the request.
16. In its refusal to the complainant, the HO advised that it was not able to comply with the request because the information requested was not held in a readily retrievable format. It advised him:
- "This information is held within different directorates across the Home Office and would need to be collated and verified; it would not be possible to do this within the cost limit".*
17. In responding to the Commissioner's enquiries, the HO provided three different scenarios to explain where the requested information might be located, depending on how the passport was identified. These are presented in a 'question and answer' format below which reflect the Commissioner's enquiries.

**"Scenario One**

**BRITISH PASSPORTS RETURNED TO HMPO [Her Majesty's Passport Office] BY POLICE AND LOST PROPERTY OFFICES**

***What system are these passports flagged on?***

*The data is taken from HMPO's passport application processing systems which, among other things, contain details of the fields completed by passport applicants on the passport application form...*

***Is there no field for any outcome of any further investigation undertaken?***

*There is a field which indicates whether a passport has been tampered with, however that can also suggest a passport has suffered damage, such as being torn or going through a washing machine. There is no field which conclusively states whether a returned passport has been falsified.*

***If not, is this outcome not held on a different database?***

*No.*

***Why would you need to manually examine each one?***

*Manual examination of case notes would be required to determine the nature of the tampering (e.g. washing machine, torn, falsified).*

**Scenario Two**

**BRITISH PASSPORTS IDENTIFIED AS FALSE BY HMPO DURING THE COURSE OF APPLICATIONS FOR RENEWAL OR REPLACEMENT**

***What system are they flagged on?***

*The data is taken from HMPO's passport application processing systems which, among other things, contain details of the fields completed by passport applicants on the passport application form.*

***Again, is there no field for any outcome of any further investigation taken?***

*There is a field for the outcome of a fraud investigation, however this doesn't indicate whether a false passport was submitted with the passport application as a supporting document.*

***If not, is this outcome not held on a different database?***

No.

***Why would you need to manually examine each one?***

*Manual examination of case notes would be required to determine the nature of the fraud and what supporting documents were submitted with each passport application being investigated and, of those, which were suspected to be false.*

### **Scenario Three**

#### **POST ISSUE – FRAUDULENTLY OBTAINED PASSPORTS**

***If you know that you are already able to currently identify 'roughly 500' fraudulently obtained passports a year, where do you hold this information?***

*This information can be extracted from one of HMPOs databases.*

***Do you hold the actual figure requested?***

*We do hold the actual figure; however, this number should not be confused with [the complainant]'s query. The actual figure of fraudulently obtained passports does not relate to returned passports which were falsified. The 500 figure relates to passports revoked by HMPO following discovery that they were obtained under false pretences i.e. the person who obtained the passport isn't who they claimed to be or isn't entitled to hold a UK passport.*

***If not, where is this average figure sourced and how is it calculated if actual figures are not known?***

*See above.*

***If you already know that they are fraudulent, why you need to examine each case further?***

*We would need to examine each case and read through case notes to identify the nature of the fraud and what documents were submitted to support the fraudulent passport applications.*

## **SAMPLING EXERCISE**

***Please confirm whether a sampling exercise has been undertaken? If so, please provide details.***

### **Scenario One**

*No sampling exercise has been undertaken.*

### **Scenarios Two & Three**

*HMPO sampled data relating to adverse outcomes in passport applications in order to draft intelligence reports. ... In order to draft a report on fraud detections in 2018 HMPO sampled 100 pre-issue frauds from 2018 (scenario 2) and 103 fraudulently obtained passports detected in 2018 (scenario 3). HMPO found that 3 forged UK passports had been submitted in that period in support of fraudulent applications. This report took the author roughly six weeks to research and draft and he estimates that his sampling took him approximately three weeks, although he was not just looking for forged documents having been submitted”.*

## **The Commissioner’s conclusion**

18. When requesting an internal review, the complaint included the following rationale for believing that the information would be readily available:
  - *I am asked to believe that nobody senior in the Home Office or HM Passport Office is interested in the figures I asked for, which I find shocking.*
  - *The Director General for HM Passport Office has described the UP passport as “a global leader of document security” (press release, 18 April 2018). How could the DG make this statement, which has in essence been contradicted by Border Force Complaints, without the figures I asked for?*
  - *I am asked to believe that false British passports do not end up in one place, where they can be examined to improve security.*
  - *... The Bank of England website informs us that 0.02 of banknotes are counterfeit. Why is there no corresponding figure for British passports?*
  
19. The complainant is therefore of the view that the information he has requested should be easily retrievable. However, 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 cost limit. On that point, the Information Tribunal in the case of *Johnson / MoJ* (EA2006/0085)<sup>1</sup> has commented that the FOIA:

*"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".*

20. With that point in mind, the Commissioner considers the cost estimate provided to her by the HO to be cogent, in terms of the time it has estimated for carrying out its search tasks. Although it has not provided an actual time estimation, based on the submission above, the fact that the information is not held in a central location and the fact that someone has previously done some research work in this area so will have a detailed knowledge of the systems' capabilities, the Commissioner considers that the HO has demonstrated that its cost estimate was reasonable and thus that it was not required to comply with the request by virtue of the provisions of section 12(1) of the FOIA.

## **Section 16 – advice and assistance**

21. Section 16(1) of the FOIA provides that -

*"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".*

22. 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 appropriate cost limit.
23. In its refusal notice, the HO said only that: *"Due to the nature of your enquiry it is not possible to advise on how you might refine your request to fall within the cost limit"*. No internal review was provided so the complainant was not appraised with any details about how this type of information is recorded and why its collation would be so onerous for the HO.
24. Whilst the Commissioner accepts that there does not seem to be any further way in which the complainant's request could be responded to within the appropriate limit, she has only been able assess this by obtaining further details about the systems involved from the HO. No such rationale or explanation was previously provided to the complainant and he was not given any indication whatsoever as to why



the information he required would be so difficult to retrieve. Accordingly, the Commissioner finds that the HO breached section 16(1) in failing to provide any advice and assistance.

25. The further explanation now provided in this notice means that no further action is now required by the HO.

## **Other matters**

---

26. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

### *Internal review*

27. 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.
28. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases, which this request was not.
29. The Commissioner is very concerned that the HO failed to provide an internal review in this case. Furthermore, the initial refusal notice provided to the complainant included little detail which could assist him, and breached section 16 of the FOIA. An internal review may have provided him with sufficient detail to either satisfy him that the information was not available to him within the cost limit or may have allowed him to make a further refined request.

### *Information Notice*

30. As the HO failed to respond to the Commissioner's enquiries in a timely manner it was necessary for her to issue an Information Notice in this case, formally requiring a response. An inadequate response to that notice required further correspondence to elicit the necessary



information. The Information Notice will be published on the Commissioner's website.

31. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft Openness by Design strategy<sup>1</sup> to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our Regulatory Action Policy<sup>2</sup>.

---

<sup>1</sup> <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

<sup>2</sup> <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

## Right of appeal

---

32. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. 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** .....

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**