

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

### **Decision notice**

**Date:** 7 December 2021

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

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

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1. The complainant requested information from the Home Office relating to the number of people being made to wait for 3 months or more for a status change to be reflected in their account, in relation to the EU settlement scheme.
2. The Commissioner's decision is that the Home Office was entitled to refuse to comply with the request under section 12(1) of the FOIA, and that it has complied with its obligations under section 16 of the FOIA to provide adequate advice and assistance to the complainant. However, the Commissioner finds the Home Office breached FOIA section 10(1) by not providing its response within 20 working days.
3. The Commissioner does not require the public authority to take any further steps.

#### **Request and response**

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4. On 22 February 2021, the complainant wrote to the Home Office and requested information in the following terms:

*"I would appreciate if you can answer the following question:*

*Since the EU settlement scheme started, how many people have been made to wait for 3 months or more for a change in their status details to be reflected in their accounts (with time*

*counted from the moment they first communicated the change to you until you updated their account details)?”*

5. The Home Office responded on 24 March 2021, advising that there was a delay in the department, and they would reply as soon as they can.
6. The complainant followed up their request on several occasions, and the Home Office responded on 15 June 2021 citing section 12(1) FOIA to refuse the disclosure of the requested information. The Home Office upheld their response at internal review on 5 July 2021.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 7 July 2021 to complain about the way their request for information had been handled.
8. The complainant raised concerns regarding the communications sent by the Home Office. The Commissioner addresses these concerns in 'Other Matters'.
9. The Commissioner considers the scope of this case is to determine if the public authority is entitled to rely on section 12(1) of the FOIA to refuse the request and whether it has complied with its obligation under section 16(1) of the FOIA.

### **Reasons for decision**

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#### **Section 12 – cost of compliance exceeds the appropriate limit**

10. Section 1 of the FOIA states that anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to him or her if it is held and is not exempt information.
11. Section 12(1) of the FOIA 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.”
12. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Regulations”) sets the appropriate limit at

£600 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 24 hours work in accordance with the appropriate limit set out above.

13. A public authority is only required to provide a reasonable estimate, rather than a precise calculation, of the cost of complying with the request, and in putting together its estimate it can take the following processes into consideration:

- determining whether the information is held
- 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.

14. 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 decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/0004*<sup>1</sup>, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”.

15. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the applicant refine the request so that it can be dealt with under the appropriate limit, in line with section 16(1) of the FOIA.

#### The Home Office’s position

16. The Home Office informed the Commissioner that when the request was initially received, work was undertaken to confirm if the information was held. It explained that it was aware that it did not hold the information in the requested format, so looked to see if the information was held in other areas, in order to provide a full response.

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<sup>1</sup><https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

17. The Home Office explained that it became apparent that the work involved to obtain the information would exceed the cost limit. It stated that:

*"the data we hold sits across various databases, logs, and other manually updated spreadsheets and these 'building blocks' would need to be retrieved and analysed to try and provide a set of figures in answer to the request"*

18. It states that approximately 28 hours of technical investigation work would be required, along with having to co-ordinate the activity across different teams. The Home Office provided detail to the Commissioner on how it would obtain the information and the time it would take to do this.
19. The Home Office further stated that it was clear from the initial investigatory work that to comply with the request in full would exceed the appropriate limit, therefore they did not go on to complete the work that would be required to comply with the whole request.
20. The Home Office concluded that this would be the technical work required to ensure a full and accurate response.

### **The Commissioner's conclusion**

21. During the investigation, the Home Office provided the Commissioner with a detailed explanation of what it would need to do to obtain the requested information. The Commissioner accepts that the Home Office's detailed estimates are reasonable and that it would exceed the appropriate limit to obtain the information.
22. The Commissioner considers the Home Office was entitled to not go on to complete the work required to comply with the whole request. The Commissioner's guidance states that whilst a public authority may search up to or even beyond the appropriate limit of its own volition, there is no requirement for a public authority to do so.<sup>2</sup>

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<sup>2</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)

23. The Commissioner therefore considers that the Home Office estimated reasonably that the request could not be answered within the cost limit, and as such, the Home Office is entitled to rely on section 12(1) of the FOIA to refuse the request.

### **Section 16(1) – duty to provide advice and assistance**

24. Section 16 of the FOIA 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.”

25. The Commissioner’s view is that, where a public authority refuses a request under section 12(1) of the FOIA, 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.
26. In this case, the Home Office advised the complainant that, if he narrowed the scope of his request, it would be reconsidered. In its internal review response the Home Office stated:

*“In your initial FOI request you asked for the information “since the EU settlement scheme started” rather than providing a more specific timeframe.”*

It went on to advise the complainant that breaking down the request by individual change type could mean they may be able to provide some information within the cost limit.

27. The Commissioner has considered the advice and assistance provided to the complainant by the Home Office. He acknowledges that the Home Office have suggested that the subject or timespan of the request is narrowed.
28. As such, the Commissioner considers that the advice and assistance the Home Office offered the complainant was adequate. The Commissioner is therefore satisfied that the Home Office has complied with its obligations under section 16(1) of the FOIA in its handling of this request.

## **Section 10 – Time for compliance with request**

29. Section 1(1) of the FOIA 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.”

30. Section 10(1) states:

*“Subject to subsections (2) and (3), 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.”*

31. The Home Office apologised to the complainant for the delay in providing its response and that they would send a response as soon as it is able to do so.

32. Notwithstanding the circumstances at the time of the request, the Home Office breached section 10(1) by responding outside the statutory timeframe.

## **Other Matters**

33. The complainant has expressed concerns in the handling of the request by the Home Office. The complainant says that the Home Office had initially communicated that an outcome to this request was ‘pending clearance’ in April 2021. The complainant had to chase when a response was not provided when promised on a number of occasions. In addition, the complainant is concerned with the Home Office internal review conducted.

34. The Commissioner acknowledges the complainant’s concerns. He is satisfied that the Home Office has provided a refusal notice and internal review response in accordance with the FOIA, however, the Home Office did not do so within the statutory timescale, therefore this has been recorded in this decision notice as a section 10(1) breach of the FOIA.

## Right of appeal

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35. 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)

36. 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.
37. 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 .....**

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