

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

### **Decision notice**

**Date:** 21 December 2021

**Public Authority:** Department for International Trade  
**Address:** King Charles Street  
Whitehall  
London  
SW1A 2AH

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

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1. The complainant requested information from the Department for International Trade ("DIT") for full copies of all internal analysis of post-Brexit international trade deals produced by the department.
2. The Commissioner's decision is that the DIT were 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(1) of the FOIA to provide adequate advice and assistance to the complainant.
3. The Commissioner does not require the public authority to take any further steps.

#### **Request and response**

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4. On 25 April 2021, the complainant wrote to the DIT and requested information in the following terms:

*"I wish to see full copies of all internal analysis of post-Brexit international trade deals produced by the department."*

5. The DIT responded on 18 May 2021, citing section 12(1) FOIA to refuse the disclosure of the requested information, and upheld their response at internal review on 23 June 2021.

## Scope of the case

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6. The complainant contacted the Commissioner on 24 June 2021 to complain about the way their request for information had been handled.
7. The Commissioner considers the scope of this case is to determine if the public authority has correctly cited section 12(1) of the FOIA in response to the request.

## Reasons for decision

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

8. 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."*

9. 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."*

10. 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.
11. 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.
12. 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*".
13. Where a public authority claims that section 12(1) 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 DIT's position

14. The DIT informed the Commissioner that when the request was initially received, work was undertaken to confirm if the information was held. It explained that to provide the information requested would require locating, retrieving, extracting, and collating information and data across many different business areas and information sources and involving a wide range of stakeholders. Due to the breadth and nature of the request, they estimated that meeting the request could not be done within the appropriate limit set out by the FOIA.
15. The DIT explained that it became apparent that the work involved to obtain the initial information would exceed the cost limit:

*"To provide the level of information and detail requested would be disproportionate in terms of the effort and search that would be required. This would cover a large volume of documents including briefings, submissions, presentations, correspondence and analytical workings," along with "The request for 'all internal analysis' is, in our opinion, very extensive, and would include numerous modelling results, outputs and quality analysis results."*

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

16. The DIT also explained to the Commissioner:

*"It is our view that to comply with this FoI request would far exceed the cost threshold, and this is evidenced from the sampling exercise undertaken. From our sampling exercise of 7 individuals (approximately 10%), one from each analytical team at a range of grades, on average we estimate (10 minutes per person to search emails and files by the key words) it would take only 1 member of staff from any given team not fully working on FTAs in excess of 24.5 hrs and 1 member of a FTA-focused team in excess of 48 hrs to locate what information is in scope of (name redacted) request. This alone equates to £1,812.50 which far exceeds the cost limit."*

17. And went on to say:

*"Under each of the search terms, most individuals returned in excess of 1,000 emails and in excess of 60 individual files. 'In excess of' is used because there are search limits which means that numbers of hits are capped at a certain level by the software, so estimates are below actual numbers."*

18. An example was given where one individual conducted a search for 'FTA', returning in excess of 997 emails but only dating back to June 2021. The individual had worked in DIT since December 2018, which outlined the vast quantity of information potentially in scope.

19. They also advised how it proactively discloses data and forwarded this to the complainant in the form of links to information that is already published in the public domain.

20. From the DIT's submissions and the initial investigatory work undertaken; it was evidenced that to comply with the request in full would exceed the appropriate limit.

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

21. Paragraph 6.6 of the Freedom of Information (FOI) Code of Practice states:

*"Public authorities do not have to search for information in scope of a request until the cost limit is reached, even if the applicant requests that they do so. If responding to one part of a request would exceed*

*the cost limit, public authorities do not have to provide a response to any other parts of the request.<sup>2</sup>*

22. 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. For more information, see paragraph 28 onwards of the Commissioner's guidance on costs of compliance exceeds appropriate limit.<sup>3</sup>
23. During the investigation, the DIT provided the Commissioner with a detailed explanation of what it would need to do to obtain the requested information. The Commissioner accepts that the DIT's estimates are reasonable and that it would exceed the appropriate limit to obtain the information.
24. The Commissioner acknowledges the complainants view that disclosure of the information is in the public interest, however, section 12 of the FOIA is not subject to a public interest test.
25. The Commissioner therefore considers that the DIT estimated reasonably that the request could not be answered within the cost limit, and as such, the DIT are entitled to rely on section 12(1) of the FOIA to refuse the request.

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

26. 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."*

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<sup>2</sup> [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf](https://publishing.service.gov.uk/_documents/20180926/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926.pdf)  
(publishing.service.gov.uk)

<sup>3</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)

27. 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.
28. In this case, the DIT suggested narrowing the request to a specific trade deal or specifying a timeframe or period for the request. However, the DIT also stated that even if the scope of his request was narrowed, it still may not be able to comply with a request for information.
29. The Commissioner has considered the advice and assistance provided to the complainant by the DIT, and paragraph 6.9 of the FOI Code of Practice advises that helping an applicant narrow the scope of their request may include suggesting that the subject or timespan of the request is narrowed.
30. The Commissioner accepts that due to the way in which the information is stored by the DIT, and due to the length of time it would take to search each record manually, the request could not be meaningfully refined to allow the information to be provided within the cost limit.
31. The Commissioner considers that the advice and assistance the DIT offered the complainant was adequate. The Commissioner is therefore satisfied that the DIT have complied with its obligations under section 16(1) of the FOIA in its handling of this request.

## Right of appeal

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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 .....**

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