

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 March 2021

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

Decision (including any steps ordered)

1. The complainant requested documents relating to a shooting club. The Home Office refused the request under section 12(2) of the FOIA – as it would take it over the appropriate cost limit to determine if the information is held.
2. The Commissioner's decision is that section 12(2) of the FOIA was cited correctly and so the Home Office was not required to confirm or deny whether the requested information was held.
3. The Commissioner does not require the Home Office to take any steps.

Request and response

4. On 21 February 2020, Lewis Nadas Law (LNL) made an information request on behalf of the complainant for:

"...the constitution of the Fifty Calibre Shooting Association (FCSA), specifically copies of any version of the constitution submitted by the club to the Home Office at any time since 2004."

5. The Home Office responded on 6 March 2020 refusing the request under section 12(2) of the FOIA as it determined that it would cost over the appropriate limit to determine whether the information was held.

6. LNL requested an internal review on the complainant's behalf on 27 March 2020. The Home Office responded on 24 April 2020 upholding its initial response.

Scope of the case

7. The complainant contacted the Commissioner dissatisfied with the Home Office's refusal of the request.
8. The scope of this notice is to determine whether the Home Office correctly relied on section 12(2) of the FOIA to refuse the request.

Reasons for decision

Section 12 of the FOIA – The Appropriate Limit

9. Section 12 of the FOIA states that a public authority does not have to comply with a request for information if it 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 sets the appropriate limit at £600 for the Home Office.
11. A public authority can charge £25 per hour of staff time for work undertaken to comply with a request in accordance with the appropriate limit set out above. This equates to 24 hours of officer time. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider time taken in:
 - a) Determining whether it holds 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.

Section 12(2) of the FOIA – The time it would take to determine whether information is held

12. In this case the Home Office has stated that the time it would take to determine if it holds the information would take over the appropriate limit.
13. Section 12(2) of the FOIA allows a public authority to refuse to comply with section 1(1)(a) – that is, to determine if it holds the information or not - if it estimates that the cost to do so would exceed the appropriate limit.
14. In determining whether the Home Office is able to rely on section 12(2) of the FOIA in this case, the Commissioner asked it to explain how it determined that it would be over the appropriate limit to comply with section 1(1)(a).
15. The Home Office has explained to the Commissioner that in order to qualify for Home Office approval as a shooting club, it must be a genuine rifle or muzzle-loading pistol club with a written constitution which should implement the conditions of the approval.
16. When applying for Home Office approval for the first time, the applicant must have in place a written constitution and that constitution must meet all of the requirements that a Home Office approved shooting club is required to follow.
17. The Home Office stated that the shooting club to which the request relates had not applied for a renewal since the introduction of the electronic filing system in 2018. Therefore if the information were held it would be held in offsite third party storage as paper files. It has further explained to the Commissioner that it can only determine whether it holds the information by establishing whether the correct file can be found.
18. In order to do this it would need to retrieve all the files. The Home Office's explained that there are approximately 5000 files that relate to firearms licencing and policy functions and these files contain approximately 250 documents per file. According to the Home Office, these files are not named or ordered by reference to the name of the club. Instead, each file contains information relating to multiple clubs and other types of organisation, grouped together without any labelling referencing the content of the files. Nor are they stored in any application date order.
19. Therefore the Home Office has stated that every file would need to be requested and each document then checked in order to try to locate the requested information by manually searching for documents that contain the shooting club's name. The Home Office has estimated that if it were

to review each of the 5000 files containing 250 documents within 5 minutes, this would take it around 416 hours of officer time. The Commissioner considers an estimate of 5 minutes per file to be reasonable as it equates to reviewing 1 document every 1.2 seconds.

20. The Home Office has also advised that to retrieve the files from its third party storage would also incur its costs, which it is able to take into account when calculating retrieval costs to try and locate requested information.
21. The Home Office has told the Commissioner what that cost is. It has also told Commissioner that this cost is commercially sensitive, and so the Commissioner has decided not to divulge the cost in this decision notice. The Commissioner will though, confirm that the retrieval cost of the 5000 files, stated by the Home Office, is over the appropriate limit.
22. Having considered all of the above, the Commissioner is satisfied that the Home Office estimated correctly that to determine whether the requested information is held would take over the appropriate limit of 24 hours. The Commissioner also notes the cost of file retrieval in forming her conclusion here.
23. The Commissioner therefore finds that the Home Office cited section 12(2) of the FOIA correctly and was not obliged to confirm or deny whether it held the requested information.
24. The Commissioner does not require the Home Office to take any steps.

25. Section 16(1) of the FOIA imposes an obligation on public authorities to provide advice and assistance to a person making a request, so far as it is reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed to the provisions in the Code of Practice¹ referred to in section 45 of the FOIA in relation to the provision of advice and assistance.
26. Paragraph 14 of the section 45 of the Code of Practice states that, where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:
- "...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or refocusing their request, information may be able to be supplied for a lower, or no, fee."*
27. In this case, the Home Office has explained that it could not offer advice and assistance to narrow down the search parameters as to even locate the shooting club's most recent document pre-dates the 2018 electronic system and so the same searches would need to be carried out manually.
28. The Commissioner accepts that the information required is very specific and if the information can only be located within the unlabelled, undated offsite files, then it would not be possible to refine the search to reduce the time required to search or cost of retrieving the files from storage. Therefore she accepts that the Home Office complied with section 16(1) of the FOIA in this case.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

Right of appeal

29. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
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Cheshire
SK9 5AF