

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 August 2022

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

Decision (including any steps ordered)

1. The complainant requested information from the Home Office relating to the number of deportations from the UK listed by nationality and visas held.
2. The Home Office refused to comply with the request citing section 12 (cost limit) of FOIA in respect of the visa information and section 21 (information reasonably accessible to applicant by other means) of FOIA in respect of the number of deportations from the UK and nationalities.
3. The Commissioner's decision is that the Home Office was entitled to refuse to comply with the entirety of the request in accordance with section 12(1). The Commissioner also finds that the Home Office complied with its obligations under section 16 of FOIA to offer advice and assistance.
4. The Commissioner does not require the Home Office to take any steps.

Request and response

5. On 13 October 2021, the complainant requested information in the following terms:

"I want to know how many people have been deported and if possible list the visa type they had. List by each year and by nationalities set as the example below. I want a list of all countries in the world not just set in the example."

	2010	2011	2012	
India	1000	1200	1300	
Pakistan	200	100	2000	
Russia	500	200	200	
China	1000	1000	1000	
USA	200	300	300	

6. On 26 October 2021, the Home Office responded citing section 21 of FOIA advising that the information was already publicly available in the "Immigration Statistics Quarterly release" and provided the complainant with links to the relevant information and explained the tab on the Excel spreadsheet at which the information could be found.
7. The Home Office also explained that the visa information was not readily available and cited the cost exemption in section 12 of FOIA for withholding that information.
8. The complainant was unhappy that the information already publicly available was not in the format he had requested and would require him to go through the publicly available information and extract what he wanted.
9. In its internal review response dated 8 December 2021, the Home Office upheld its original decision.

Scope of the case

10. The complainant contacted the Commissioner on 9 December 2021 to complain about the way their request for information had been handled. The complainant was unhappy that the publicly available information was not in the format requested and argued that information was provided in the format requested in response to a previous similar request.
10. The Commissioner considers the scope of this case to be to determine if the Home Office has correctly cited section 12(1) of FOIA. The Commissioner has also considered whether the Home Office met its obligation to offer advice and assistance, under section 16 of FOIA.

11. The Commissioner notes that FOIA does not require publicly available information to be provided in a particular requested format.

Reasons for decision

Section 12 – cost of compliance

12. Section 12(1) of FOIA 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” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
13. Section 12(2) of FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. The Home Office relied on section 12(1) in this case.
14. The appropriate limit is set in the Fees Regulations at £600 for central government, legislative bodies, and the armed forces and at £450 for all other public authorities. The appropriate limit for the Home Office is £600.
15. 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 for the Home Office.
16. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - 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.
17. 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 Information Commissioner &*

Medicines and Healthcare Products Regulatory Agency EA/2007/0004, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.

18. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information. It is worth noting that if one part of a request triggers the section 12 exemption, then that will apply to the entirety of the request and there is no requirement for the Commissioner to consider any other exemptions cited by the public authority.
19. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

Would the cost of compliance exceed the appropriate limit?

20. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked the Home Office to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
21. In its submission to the Commissioner the Home Office explained that information on visas is predominantly recorded on the Home Office's Central Reference System (CRS). This system contains information on each visa application received by the Home Office. Whereas information on deportations is predominately recorded on the Case Information Database (CID). This contains information on each return from the UK.
22. The Home Office further explained that the information on visas and deportations are collected on different systems with no unique identifier to match a visa with a deportation. Data on the visa type held by those who have been deported is therefore not readily available.
23. The Home Office advised the Commissioner that there were approximately 26.7 million visas issued between 2010 and Q2 2021, and 128,800 enforced returns between 2010 and 2021 Q1 (the latest available data at the time of the original request).
24. The requestor did not specify a time period in their request, so the Home Office has assumed it would be providing data back to 2010 (as

that was the date on the requestor's example table which formed part of their request).

25. The Home Office explained that to effectively respond to the request regarding visa information it was likely that the Home Office would need to look at visa data pre-dating 2010 which would significantly increase the number of visas in scope. The Home Office further explained that if the time period of the request was refined (e.g. to include only enforced returns from the latest year), this would reduce the number of return records in scope, but the number of visas would remain the same, because a deported person could have been issued with a visa many years before being returned, so searches of the entire visa time series would still be required even if only looking at deportations for a shorter period of time.
26. The Home Office went on to consider two options for undertaking the work involved in matching visa information with deported persons.
27. The first option was a manual review of each of the returns to identify whether they have an associated visa or leave type. This would involve comparing names, date of birth, sex, and other personal details (where available) between the two datasets to decide whether they relate to the same individual. The Home Office explained that the matching approach would come with a large degree of uncertainty. For example, names may be incorrectly matched between systems (more than one individual can have the same name leading to a false match, or the same individual may have their name spelt differently in each system and not be matched). The Home Office estimated that if it took 1 minute to manually review each of the 128,800 enforced returns for the period 2010 to 2021 Q1 against the visa dataset, that would take more than 89 days to complete just this part of the process. In reality, the Home Office suggested it would take significantly longer than 1 minute per record to do a robust review.
28. The second option suggested by the Home Office was to develop a data matching system. The Home Office explained that it had previously undertaken a data matching exercise (relating to a separate subject matter) which involved approximately 6.4 million records. Lessons from that work have been used to inform the estimate provided in this case. To respond to this request would involve comparing over 26.7 million visa records with 128,800 returns records, so could reasonably be expected to take a significant amount of time, as with the previous data matching example. In addition, the Home Office explained that some people will arrive on one type of visa and extend their leave while in the UK. They may either extend in their current leave category or move to a different category. This information will be recorded in a different way to the visa data and further complicate the data matching process.

29. The Home Office provided the Commissioner with a detailed breakdown of the work which would be anticipated to complete the development of a data matching system and the minimum estimated time for such a project was 57.75 hours. The Home Office explained that the estimate was based on a minimum estimate of the time taken at each stage, assuming that staff have both the right skills, and are familiar with the data and case working systems. It was highly likely that some of the stages would take significantly longer than estimated or may need repeating. The Home Office estimate did not include any time to carry out a feasibility test (carry out the agreed data matching approach on a smaller subset of data to understand the results) on the agreed methodology. This would likely take several additional hours to complete.
30. The Commissioner considers that the Home Office estimated reasonably that it would take more than the 24 hours / £600 limit to provide the visa information requested. The Home Office was therefore correct to apply section 12(1) of FOIA to the complainant's request. As the Commissioner considers that the section 12 exemption was correctly applied, then that will apply to the entirety of the request, and there is no requirement for the Commissioner to consider whether the section 21 exemption was correctly applied by the Home Office.

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

31. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
32. The Commissioner notes that in its internal review response the Home Office stated:

“Unfortunately, in this case, the responding unit are unable to suggest a way in which your request might be refined, due to the way the two separate datasets are held. As the steps outlined would be required for any request of this nature, reducing the scope of the request would not reduce this aspect of the work.”

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

33. The Commissioner considers that the Home Office providing the complainant with the links to the information which was already publicly available in the "Immigration Statistics Quarterly release" and explaining the tab on the Excel spreadsheet at which the information could be found was useful and provided the complainant with a substantial amount of the information requested. In the Commissioner's view this advice and assistance was consistent with what would be required to comply with section 16(1).
34. The Commissioner is therefore satisfied that the Home Office met its obligations under section 16 of FOIA.

Right of appeal

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

Website: 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

Michael Lea
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