

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 November 2022

Public Authority: Home Office

**Address: 2 Marsham Street
London
SW1P 4DF**

Decision (including any steps ordered)

1. The complainant has requested information from the Home Office in relation to the number of deaths of people being housed under sections 95, 96, 98 or 4 of the Immigration & Asylum Act 1999. The Home Office originally refused the request under section 38(1)(b) of FOIA – health and safety. However, upon review, it changed its position and is relying on section 12(1) of FOIA – cost of compliance exceeds the appropriate limit.
2. The Commissioner's decision is that the Home Office is entitled to rely on section 12(1) of FOIA to refuse the request. It also complied with its duty to provide advice and assistance in line with the requirements of section 16 of FOIA.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 17 August 2021, the complainant wrote to the Home Office and requested information in the following terms:

"1 - Please provide me with the number of deaths of people being housed under sections 95, 96, 98 or 4 of the Immigration & Asylum Act 1999 from 1 April 2016 to the present. Please break this information

down by name of the deceased, date of death, and location of death. For location, please be as specific as possible and name the facility where the death occurred e.g. Napier Barracks, Folkstone, Kent. If you cannot provide the exact location, please provide the town or city where the facility is located and explain why you cannot provide its name. I remind you that under ICO guidelines, "there are no specific exemptions for deceased people", unless the request includes information about living individuals or confidential information such as medical records. As this request asks for neither, I am hopeful that you will be able to fulfil it.

2 - Has there been more than one death at any of the facilities? Please name the facility, or give its location, and say who died there and when. If there is more than one facility where this has taken place, please repeat the process for each."

5. The Home Office responded on 9 September 2021. It provided some information within the scope of the request, but refused to provide the remainder. It cited the following exemption as its basis for doing so: section 38(1)(b) – health and safety.
6. Following an internal review, the Home Office wrote to the complainant on 4 November 2021. It stated that it upheld its original position, but added that it was also relying on section 38(1)(a).
7. During the course of the Commissioner's investigation, the Home Office advised that it had reviewed the request and explained that it was now relying on section 12(1) of FOIA – cost of compliance exceeds the appropriate limit.

Scope of the case

8. The complainant contacted the Commissioner on 20 December 2021, to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of this case is to determine if the Home Office has correctly cited section 12(1) of FOIA in response to the request. The Commissioner has also considered whether the Home Office met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

10. 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").
11. 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.
12. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 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.
13. 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.
14. Where section 12(2) is relied upon, 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 activity:
 - 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.
15. 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/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.
16. Section 12 of FOIA is an absolute exemption and 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.

17. 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?

The Home Office's position

18. In the Home Office's response to the Commissioner, it has provided some background information on how it receives notifications (including if the individual has died) regarding individuals claiming asylum support. It explained that these notifications are recorded on an incident database and that there is a new database each year.
19. The Home Office explained that when it initially responded to the request, it used the incident databases to filter the reported deaths of asylum seekers within the time frame requested. It advised that it provided the dates, and geographical areas of the deaths based on the information it held. The Home Office also explained to the complainant that they are not assured figures and are subject to change.
20. The Home Office also explained that other than the incident databases, the death of an asylum seeker is not officially recorded anywhere other than within individual case records. It advised that these statistics are not held in a reportable format.
21. The Home Office advised that the figures it previously provided to the complainant were taken from the live operational databases. It explained that third parties, such as the Police or Ambulance service, are likely to be the first responder, so the Home Office is not always notified of deaths in real time and initial reports may not always contain all of the relevant detail, as this can emerge over time. As such, the statistics are therefore based on such reports and are therefore provisional and subject to change. As further information is received, the database is updated, which may alter the reportable figures.
22. The Home Office has explained that the information previously withheld under section 38 of FOIA, is not recorded in the databases and a manual search of individual records is required to obtain it.
23. The Home Office has explained to the Commissioner the different steps that it would need to take in order to obtain the requested information. It explained that it sent the request to the relevant team, who were asked to collate the names and addresses of the 95 deaths collated

within it. The information is held over six spreadsheets and each one needed to be downloaded, which took around 15 minutes.

24. The Home Office went on to break down the steps further for things such as filtering the spreadsheets, creating a new spreadsheet to collate the information in, along with opening the report for each name and determining if it falls within the scope of the request, before then copying and pasting the information to the new spreadsheet.
25. The Home Office estimates that it would take between a minimum of 8.25 hours, or a maximum of 16.3 hours for this process.
26. The Home Office went on to explain that there would be further steps needed to obtain the information. It explained that two of its databases would need to be accessed so that the address at the time of death could be gathered. It added that each asylum seeker may have multiple case lines and to gather the details requested, checks would need to be made on each individual's records.
27. The Home Office explained that as information comes in at different times, all notes would have to be checked. It advised that in some cases, information may be stored across the two different databases, depending on the time that they claimed asylum.
28. The Home Office estimates that to carry out these checks, it takes approximately 15 minutes per individual (based off a sample of 4 cases), which results in a total of 1425 minutes/23.75 hours to work through the 95 individuals already identified.
29. The Home Office has explained that when both figures are combined, the lowest conservative estimate is 32.6 hours, with the highest estimate being 40.5 hours.

The Commissioner's position

30. 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 the cost limit under FOIA¹.

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

31. The Commissioner accepts the Home Office's estimates in relation to the timings for various tasks to obtain the requested information, including having to use two different databases to check individual records. He does not consider that it would take 5 minutes to filter a spreadsheet, however, even if this would only take 2 minutes, the appropriate limit would still be exceeded. The necessity to conduct manual searches takes this request over the cost limit.
32. 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 FOIA to refuse the request.

Section 16 – duty to provide advice and assistance

33. Section 16 of 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.”

34. The Commissioner's view is that where a public authority refuses a request under section 12(1) of FOIA, compliance with the section 45 Code of Practice will fulfil its duty under section 16(1) to provide advice and assistance on how the scope of the request could be refined.
35. Paragraph 2.10 of the section 45 Code of Practice states:

“Where it is estimated the cost of answering a request would exceed the “cost limit” beyond which the public authority is not required to answer a request (and the authority is not prepared to answer it), public authorities should provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within the costs limit”.
36. In addition, paragraph 6.9 states that “public authorities should consider what advice and assistance can be provided to help the applicant reframe or refocus their request with a view to bringing it within the cost limit”.
37. The Home Office has provided explanations of how the complainant's request could be made shorter, which may lead to them being able to

provide the requested information. It has also advised that any such details that may be able to be provided would be from live systems and ,as such, are subject to change.

38. The Commissioner is satisfied that the Home Office has complied with its obligations under section 16 of FOIA.

Right of appeal

39. 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

40. 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.
41. 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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