

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

### **Decision Notice**

**Date:** 18 October 2022

**Public Authority:** Department of Finance  
**Address:** Clare House  
303 Airport Road  
Belfast  
BT3 9ED

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

---

1. The complainant requested information relating to individuals attending Clare House in a specified time period. The Department of Finance initially refused the request as vexatious under section 14 of FOIA. Following the Commissioner's intervention the Department accepted the request as valid but sought to refuse it under section 12 of FOIA (appropriate limit).
2. The Commissioner's decision is that the Department was entitled to refuse the request under section 12 of FOIA, since compliance with the request would exceed the appropriate limit. He has also recorded some procedural breaches regarding the handling of the request.
3. The Commissioner does not require the public authority to take any further action in this case.

#### **Background**

---

4. On 23 March 2020 Northern Ireland entered "lockdown" to try to limit the spread of Covid-19.<sup>1</sup> People were not allowed to leave their homes without a reasonable excuse, and were told to work from home unless this was not possible.

---

<sup>1</sup> <https://www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-23-march-2020>

## Request and response

---

5. On 19 November 2020 the complainant requested the following information from the Department:
  - The actual Clare House [departmental headquarters] opening hours for each day since 23 March to the present including Saturdays and Sundays and bank/public holidays. If opening hours are not available for some periods, please provide the hours for the days where opening hours are known.
  - The total number of staff working on site in Clare House each day since 23 March to the present broken down by CPD [Construction and Procurement Delivery] and non-CPD. If numbers are not available for certain periods, please provide numbers for the days that numbers are available for.
  - The number of visitors attending Clare House each day since 23 March to the present.
6. The Department responded on 18 December 2020, refusing the request as vexatious under section 14(1) of FOIA.
7. The complainant requested an internal review on 21 December 2020 and specifically asked the Department to explain why the request was considered vexatious.
8. The Department provided the outcome of the internal review on 18 January 2021, upholding its reliance on section 14(1).
9. The complainant contacted the Commissioner on 18 January 2021 to complain about the way their request for information had been handled.
10. One examination of the correspondence the Commissioner was concerned that the Department had not at any point explained to the complainant why their request had been considered vexatious. He asked the Department to provide full details of its consideration of the request.
11. The Department provided the Commissioner with a submission explaining its application of section 14 to the request. The Department maintained that compliance with the request would have caused a substantial burden. It further argued that there was little value or serious purpose in the requested information. The Department also advised the Commissioner that it had previously provided the complainant with information in response to the first

part of the request, ie the opening hours of Clare House for the period specified.

12. At this point the Department advised the Commissioner that it no longer sought to rely on section 14 to refuse the request. The Department now wished to rely on section 12 since it estimated that compliance with the request would exceed the cost limit.

### **Scope of the case**

---

13. The complainant remained dissatisfied with the Department's position. Therefore the Commissioner has proceeded to issue a decision notice.
14. The complainant emphasised that they were particularly aggrieved at the Department's initial reliance on section 14, only to change its mind and rely on section 12 when challenged by the Commissioner.
15. The Commissioner clarified to the complainant that public authorities may at any stage seek to rely on an exemption or exclusion not previously claimed. This was confirmed by the Upper Tribunal in the case of *McInerney v IC and Department for Education* [2015] UKUT 0047 (AAC).<sup>2</sup>
16. In light of this, and the fact that the Department had previously responded to part 1 of the request, the Commissioner's investigation has focused on whether the Department was entitled to rely on section 12 in order to refuse parts 2 and 3 of the request.
17. The Commissioner has also considered the extent of the Department's compliance with the procedural requirements of FOIA.

### **Reasons for decision**

---

#### **Section 12: compliance would exceed the appropriate limit**

---

<sup>2</sup> <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=4420>

18. Section 12(1) of FOIA provides that a public authority is not obliged to comply with a request for information if the authority estimates that complying with the request would exceed the appropriate limit, also known as the cost limit.
19. Section 12 of FOIA should be considered with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.<sup>3</sup> The "Fees Regulations" set the appropriate limit at £600 for central government and £450 for all other authorities. Regulation 4(4) states that authorities should calculate the cost of complying with a request by multiplying the time estimated by £25 per hour.
20. When estimating whether complying with a request would exceed the appropriate limit the public authority may only take into account the following activities:
  - (a) determining whether it holds the 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.
21. If the authority considers that complying with the request would therefore cost more than the appropriate limit, it is not obliged to comply with the request. In the case of the Department, the £600 limit applies, which equates to 24 hours of work undertaking the above activities.
22. The Commissioner is mindful of the First-tier Tribunal's view in the case of *Randall v IC and MHPRA*<sup>4</sup> that a reasonable estimate, in relation to the costs of complying with a request, is one that is  
    "...sensible, realistic and supported by cogent evidence".
23. The Commissioner considers that a sensible and realistic estimate must be informed by the circumstances of the particular case. The Commissioner's published guidance<sup>5</sup> recommends that public

---

<sup>3</sup> <https://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

<sup>4</sup> Appeal no EA/2006/0004

<sup>5</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)

authorities consider a "search strategy" at the outset, so that any estimate of the cost of compliance is based on an appropriate search. For example, it should not be based on the assumption that all records would need to be searched in order to obtain the requested information if this is not in fact necessary.

### **The Department's position**

24. The Department explained that, to comply with parts 2 and 3 of the request, it would need to extract the requested information from manual registers of staff entering and leaving Clare House. The registers are held in physical form only, and are managed by security staff.
25. The Department said that it would need to locate, review and collate the information from the registers. It would need to cross reference the registers with business area staffing lists, contractors' logs and premises mail boxes to separate out staff working within CPD.
26. The Department provided the Commissioner with a breakdown of its cost estimate in respect of the above search strategy. The Department had conducted a sampling exercise which indicated a daily range from 30 to over 100 entries. Taking as an average 50 entries per day, the Department calculated that there were approximately 10,000 records to check. The Department clarified that it began retaining daily records from 4 April 2020, so it did not hold records for the period 23 March 2020 to 4 April 2020. The Department subsequently conducted a more detailed exercise and established that there were in fact 167 daily records in the period specified by the complainant, ie 4 April 2020 to 19 November 2020, and 8942 entries.
27. The Department initially estimated that it would take around five minutes to check, record and collate each entry. This was based on analysis of all the manual records of staff entering and leaving the building. The Department explained that the recorded information comprised each individual's name, car registration (if applicable), and their arrival and departure times. It did not include information relating to business area. Therefore the Department would have had to cross reference each name on the daily list against business area staffing lists and contractors' logs. It would then have to separate out those working in CPD.
28. The Department clarified that it had taken into account the fact that staff would become familiar with repetitive names the further they worked through the process. They would be able to distinguish staff from visitors more quickly towards the end of the exercise. For this

reason the Department considered that the estimate of five minutes per entry could reduce as far as one minute in some cases. Accordingly it reassessed its estimate and concluded that an average of two minutes per estimate would be more reasonable.

29. Based on two minutes per record, and 8942 records, the Department calculated that the time taken to comply with the request would be 298 hours, which equated to £7450 at £25 per hour. The Department also pointed out that, at the time of the complainant's request, a "work from home" directive was in place. This meant that the Department would need to require staff to come into the office to identify, extract and collate the requested information.

### **The complainant's position**

30. The complainant advised the Commissioner that they did not accept the Department's time estimate for processing records:

"The Department has confirmed that it holds 167 daily records covering the time period 4 April to 19 November 2020, and these records include 8942 entries. This works out at an average of 52 people in the building each day. I am confident that most of the recorded staff in the building will be same for each day so in reality probably less than 100 individual records would have to be cross checked to categorise them into CPD/non CPD. In addition if these checks were carried out by a person responsible for accommodation in the building most of the individuals' business areas would be already known and so it is highly likely that far less than 100 would have to be actually cross-checked. Even if we accept 100 checks against a readily available list of staff working in the building by sorted by alphabetical order by surname this would take an estimated and generous 2 hours at most to categorise into CPD and non-CPD. With this categorised list I would estimate that the time to tally the count for each day would take no more than 5 minutes per day (5mins\*167 days = 835 minutes) 835 mins /60= 14 hours. A more reasoned, but still very generous, estimate of time to collate information would therefore be up to 20 hours (i.e. 2 hours to cross check and categorise approx. 100 names + 14 hours to tally each day+ plus 4 hours to and transcribe the recorded daily tallies onto a spreadsheet), far short of the 24 hour max time limit."

### **The Commissioner's position**

31. The Commissioner accepts that the Department's search strategy was logical and focused. Owing to the way the sign in procedure was administered the Commissioner accepts that the Department would

need to go through each sign in sheet, extract the names of individuals and then analyse them to produce the breakdown specified by the complainant in the request. The Commissioner has seen no evidence that there would be a more efficient way to obtain the requested information. The Commissioner is also satisfied that these activities fall within the permitted activities set out in the Fees Regulations.

32. The Commissioner further accepts that the Department has provided a detailed explanation of its cost estimate. The Commissioner considers that the Department's initial estimate of five minutes per entry is excessive and he welcomes the fact that the Department proactively reconsidered it.
33. In the Commissioner's opinion the estimate of an average of three minutes per entry is more reasonable. The Commissioner notes that it necessarily includes identifying each individual's name from the handwritten sign in sheet, then checking whether the individual is staff, a contractor or other visitor. If the individual is a staff member, the Department must then ascertain whether the individual works in CPD. Finally the Department would need to collate the relevant information. The Commissioner is satisfied that it is reasonable to estimate that these activities would take an average of three minutes per record. He also considers it reasonable to take into account the fact that the actual time required is likely to reduce over the specified time period as set out by the Department.
34. The Commissioner has carefully considered the arguments put forward by the complainant. He observes that they are dependent on various assumptions:
  - Most of the people in the building will be the same or similar each day.
  - The checking process would be carried out by a person responsible for accommodation, who would have knowledge of the business areas of the people in the building.
  - Names would be checked against a readily accessible list of people in the building, which is organised alphabetically by surname.
35. With regard to the first point, the Department advised the Commissioner that attendance ranged from 30 people to over 100 people towards the end of the period. Therefore the Commissioner is not persuaded that the Department would benefit from duplication of records to the extent suggested by the complainant.



36. With regard to the second point, the Commissioner does not accept that the person checking the lists would necessarily have sufficient pre-existing knowledge of who worked in each of the various business areas. The Commissioner is not persuaded that the likelihood of such previous knowledge would be sufficient to reduce the work required to bring the task under the cost limit.
37. Similarly with regard to the third point, the Commissioner cannot assume that the Department would have a single, comprehensive and up to date list of all individuals based in Clare House. The Department has confirmed that each business area will have a separate list, but it is possible that one or more lists may not be up to date at any given time depending on staffing changes. Consequently the Commissioner does not accept that the Department would be able to reduce the time required in this manner.
38. The Commissioner finds, therefore, that the Department's estimate of £7450, or 298 hours, is reasonable with regard to parts 2 and 3 of the request. A public authority is entitled to refuse the entirety of a request if compliance with one or more parts would exceed the cost limit. Therefore the Department is not required to determine how much of the request could be dealt with before the cost limit is exceeded, although such consideration may be relevant in the context of section 16 as discussed below.

### **Section 16: advice and assistance**

39. Under section 16 of FOIA a public authority is required to provide advice and assistance to requesters. Paragraph 6.9 of the Code of Practice<sup>6</sup> issued under section 45 of FOIA sets out that this should include advice as to how a request could be refined where compliance exceeds the cost limit under section 12 of FOIA. If it is not possible to provide advice and assistance under section 16 as to how a request could be refined the authority should confirm this to the requester.
40. The complainant suggested that the Department ought to have engaged with them to see if the request could be changed so that the processing time would fall within the £600 limit. The Commissioner agrees that this would have been helpful and reasonable at the time the request was originally refused, albeit that the Department did not rely on section 12 until the Commissioner became involved. For this reason the Commissioner finds that the Department failed to comply

---

<sup>6</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>



with the requirement to provide advice and assistance under section 16 of FOIA.

41. The Commissioner did ask the Department whether there was any practical advice or assistance they could provide that may result in a successful request. The Department responded that the complainant might refine their request by narrowing the focus of the dates in question. That said, the Department also pointed out that staff numbers in the building fluctuated, given the different restrictions imposed at different times. The Department felt this may impact on the time required to comply with a refined request.
42. Since the Department has subsequently suggested how the complainant may refine their request the Commissioner does not consider it necessary to require remedial steps in this case. The Commissioner expects that had the Department correctly identified section 12 in its original response, it should have provided this advice and assistance at that time.

### **Section 17: refusal notice**

43. Section 17(5) of FOIA states:

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

44. In this case the Department's refusal notice cited section 14, but the Department subsequently sought to rely on section 12 instead. It follows that the Department failed to comply with section 17(5) in that it failed to issue a refusal notice citing section 12 within the 20 working days for compliance.

### **Other Matters**

---

45. The Commissioner further observes that the Department did not explain to the complainant why it originally considered his request vexatious, either in its refusal notice or internal review. The Department referred the complainant to the Commissioner's guidance on section 14, but did not explain why this particular request fell within the scope of the indicators set out in the guidance.

46. The Department pointed out that section 17(5) of FOIA does not explicitly state that a public authority should explain why a request is considered vexatious. However the Commissioner considers it to be a matter of good practice, as well as customer service.

## Right of appeal

---

47. 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: 0203 936 8963  
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)

48. 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.
49. 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 .....**

**Sarah O’Cathain**  
**Senior Case Officer**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**