

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

### **Decision notice**

**Date:** 25 January 2022

**Public Authority:** Department of Health (Northern Ireland)  
**Address:** Castle Buildings  
Stormont  
Belfast  
BT4 3SQ

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

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1. The complainant requested information from the Department of Health ("DoH") about communications with BBC Northern Ireland between 1 December 2020 and 19 February 2021.
2. The Commissioner's decision is that the DoH were entitled to refuse to comply with the request under section 12(1) of the FOIA (cost of compliance), and that it has complied with its obligations under section 16(1) of the FOIA to provide adequate advice and assistance to the complainant. However, the DoH has breached section 10(1) FOIA as it failed to respond within the statutory time for compliance, and has failed in its obligation to issue a refusal notice within 20 working days, and therefore breached section 17(5) of the FOIA.
3. The Commissioner does not require the public authority to take any further steps.

#### **Request and response**

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4. On 18 February 2021, the complainant wrote to the DoH and requested information in the following terms:  
  
"Under FOI please supply all official and unofficial information passed to the BBC Northern Ireland from 1st December 2020 to 19th February

2021 inclusive? This should be copies of all briefings, emails, records of phone calls, through social media etc.

Furthermore please provide all information, within the past 3 years, where emails, documents etc show DoH blocking and telling off journalists (from any outlet) who don't agree to the protocol in place which forbids challenging announcements, policies etc?"

5. The DoH responded on 16 April 2021, citing section 12(1) FOIA to refuse the disclosure of the requested information, and suggested the complainant narrow the scope of their request or provide further details. After a number of email exchanges between the complainant, and the DoH regarding cost estimates, the DoH upheld their initial response at internal review on 11 May 2021.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 11 May 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 Department of Health's position

14. The DoH informed the Commissioner that when the request was initially received, work was undertaken to confirm if the information was held. It

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

explained that to provide the information requested it would require locating, retrieving, extracting, and collating information and data from specific business areas and information sources. 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 DoH further explained that it became apparent that the work involved to obtain the initial information would exceed the cost limit:

"a search through our Department's Electronic Document Record Management system using just the term "BBC" between the dates 1/12/2020 to 22/2/2021 produces 11,721 records."

16. The DoH also explained to the Commissioner:

"It is our view that to comply with this FoI request would exceed the cost threshold." This is evidenced from the sampling exercise undertaken. "It would take a member of staff in excess of 48 hrs (at £25 per hour, that is over £1220) to identify what information is relevant to the request. This exceeds the cost limit of £600 afforded by the legislation."

17. And went on to further refine this:

"The business area said that if only 15 seconds (as a conservative estimate) was needed per document to establish the document was in scope of the request, when applied to 11,721 records, this would equate to 48 hours of work; therefore, this would exceed the 24 hours afforded by the legislation."

18. They also advised within the internal review that:

"A response issued on 16 April 2021 advised that the request, as phrased, was likely to exceed the recognised cost limits and therefore had the potential to trigger the application of Section 12 (1) and invited you to review the scope of your request."

19. From the DoH'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**

20. 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>"

21. 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>
22. During the investigation, the DoH provided the Commissioner with an explanation of what it would need to do to obtain the requested information. The Commissioner accepts that the DoH's estimates are reasonable and that it would exceed the appropriate limit to obtain the information.
23. 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. The Commissioner notes why the complainant would want this information.
24. However, the Commissioner considers that the DoH estimated reasonably that the request could not be answered within the cost limit, and as such, the DoH is entitled to rely on section 12(1) of the FOIA to refuse the request.

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

25. 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.*

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<sup>2</sup> [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/444444/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926.pdf)  
([publishing.service.gov.uk](https://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)

*(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."*

26. 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.
27. In this case, the DoH suggested narrowing the request and advised the complainant of the information that could be provided to him if he wished to receive it under Section 16 of the Act. The requester then submitted further requests for additional information in subsequent email exchanges, including the costs for him to receive the information.
28. The Commissioner has considered the advice and assistance provided to the complainant by the DoH. 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.
29. The Commissioner considers that the advice and assistance the DoH offered to the complainant was adequate. The Commissioner is therefore satisfied that the DoH have complied with its obligations under section 16(1) of the FOIA in its handling of this request.

## **Section 10 – Time for compliance with request**

30. 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."*

31. Section 10(1) states:

*"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."*

32. The DoH apologised to the complainant for the delay in providing its response. This they attributed to an unprecedented workload in the business area.
33. The Commissioner wishes to place on record his understanding of the immense pressures placed on public authorities during the coronavirus pandemic. He is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA.
34. However, notwithstanding the circumstances at the time of the request, the Commissioner finds the DoH in breach of the requirements of section 10(1) of FOIA.

### **Procedural Matters**

35. Section 17(5) of the FOIA states that:

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.

36. The Commissioner notes that the DoH did not rely on section 12(1) to refuse the request within 20 working days. Whilst he notes the particular and extraordinary pressures on the DoH during this period, he is nevertheless obliged to record a breach of section 17 of the FOIA in responding to the request.

## Right of appeal

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37. 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)

38. 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.
39. 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  
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SK9 5AF**