

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

### **Decision notice**

**Date:** 23 March 2022

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

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

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1. The complainant has requested information sent or received by the Home Secretary and her secretarial and private office staff between certain dates in relation to the policing of the Clapham vigil by the Metropolitan Police and the passage of the Police, Crime, Sentencing and Courts Bill. The Home Office refused the request as it considered that compliance with it would exceed the cost limit under section 12 FOIA.
2. The Commissioner's decision is that the Home Office has correctly cited section 12(1) FOIA, in response to the request. It has also complied with its duty to provide advice and assistance in line with the requirements of section 16 FOIA. He finds that the Home Office breached section 10(1) FOIA by failing to respond to the request within the statutory time for compliance.
3. The Commissioner does not require the Home Office to take any steps.

#### **Request and response**

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4. On 15 March 2021, the complainant requested information in the following terms:  
  
"Please provide a copy of all correspondence (including email and messages sent via work instant messaging services such as Slack or Teams) sent or received by Priti Patel's office (including the Home Secretary and her secretarial and private office staff) concerning:  
  
-The policing of the Clapham vigil by the Metropolitan Police  
-The passage of the Police, Crime, Sentencing and Courts Bill

From March 11th to March 15th 2021”.

5. On 1 July 2021, the Home Office responded advising the complainant that, while it held the information, it was exempt from disclosure by virtue of section 12 FOIA (the cost limit exemption).
6. The Home Office provided an internal review response on 9 August 2021 maintaining its reliance on the cost limit exemption under section 12 FOIA.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 9 August 2021 to complain about the way the request for information had been handled saying:

“The request was for a highly limited number of accounts (The Home Secretary and her immediate assistants) for a four day period. It is hard to see how this very limited request could breach the cost limit under section 12.”

8. The Commissioner considers the scope of this case to be to determine if the public authority has correctly cited section 12(1) FOIA in response to the request. He has also considered whether the Home Office complied with its duty to provide advice and assistance under section 16 FOIA.

### **Reasons for decision**

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#### **Section 12 – cost of compliance exceeds the appropriate limit**

9. 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 cost limit.
10. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (‘the Fees Regulations’) at £600 for public authorities such as the Home Office.
11. 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) FOIA effectively imposes a time limit of 24 hours for the Home Office to deal with this request.

12. 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.
13. 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*, 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.
14. Section 12 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.
15. Where a public authority claims that section 12 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 FOIA.

**Would the cost of compliance exceed the appropriate limit?**

16. When dealing with a complaint to him under FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources or how it chooses to hold its information.
17. Therefore, as set out in the Fees Regulations, the Commissioner has considered whether the estimated cost of responding to the request would exceed the appropriate limit of 24 hours.
18. The Home Office provided a brief cost estimate to the complainant on 9 August 2021. It said:

"I am advised that an initial key word search undertaken by relevant individuals identified a large number of documents containing the key words searched. However, not all emails, or all information within each

email identified by the key word search will necessarily fall within scope of the request.

This is because not all will concern the passage of the Bill or the policing of the vigil, as opposed to other topics and some correspondence will discuss a mixture of related and unrelated subjects. Each item of correspondence would need to be reviewed to identify and retrieve the in scope material.

A sample exercise was undertaken and I am satisfied that to complete this task would be extensive. Due to the high volume of correspondence held, it is estimated that the cost to search, identify and extract the information in scope would exceed the cost limit under section 12."

19. As is the practice in a case where a public authority has cited the cost limit under section 12, the Commissioner asked the Home Office to provide a more detailed explanation of its cost estimate.
20. The Home Office explained to the Commissioner that to determine whether the information was held, an initial electronic key word search was carried out by 24 of the Home Secretary's private office staff and the results collated. The Home Office advised that it was not possible to carry out this key word search centrally. This took an average of 15 minutes per person or 6 hours.
21. The Home Office also explained that the initial key word search identified 218 email chains, with a total of 75 attachments.
22. Section 1 FOIA provides a general right of access to information requested. However, a public authority has a duty to consider whether any information located and retrieved is relevant to the request. For these reasons it is not a case of merely providing the information without reviewing it to determine if the information held is in scope.
23. In light of this, the Home Office explained that not all information within each email and attachment identified by the key word search, would necessarily fall within scope of the request. Therefore, each email and attachment would have to be examined individually to identify, and then extract, the in scope material.
24. The Home Office confirmed to the Commissioner that it had performed a sampling exercise by reviewing 38 of the email chains identified and their attachments to identify, and then extract, the in scope material. This took 4.5 hours or, on average, 7 minutes per email chain and any attachments.

25. In total, therefore, to determine if any information is held for the 218 email chains and attachments, the Home Office estimated it will take 26 hours.
26. Even if it were possible to reduce the amount of time taken to check the 218 email chains and attachments to, for example, 5 minutes per email chain, this would still be over the cost threshold limit at 18 hours (when combined with the 6 hours taken to carry out the key word search).
27. A summary of the Home Office's cost estimate is as follows:
  - Determining whether the information is held and retrieving it: **6 hours**
  - Extracting the information from a document containing it: **26 hours**
28. The Home Office's total costs estimate is **32 hours**.
29. Having considered the estimates provided, the Commissioner's overall conclusion is that the Home Office has estimated reasonably and cogently that to comply with the complainant's request would exceed the cost limit of 24 hours. The Home Office was therefore entitled to apply section 12(1) of the FOIA to the complainant's request.

## **Section 16 – advice and assistance**

30. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request where it would be reasonable to do so. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice in providing advice and assistance, it will have complied with section 16(1).
31. In general, where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester how their request could be refined or reduced to potentially bring it within the cost limit.
32. The Commissioner notes that the Home Office suggested a way the complainant may wish to consider refining the request on 1 July 2021, noting that the request related to two different topics. It suggested that a request specifying one or other topic would be more likely answerable within the cost limit.
33. The Commissioner considers this was an appropriate response in the circumstances given the nature of the original request. He is therefore satisfied that the Home Office met its obligation under section 16 FOIA and does not require it to take any steps.

## **Procedural Matters**

34. Section 10(1) FOIA states that a public authority must respond to a request promptly and in any event not later than the twentieth working day following the date of receipt.
35. The request for information was made on 15 March 2021. The Home Office responded with a refusal notice on 1 July 2021. As this was more than 20 working days after the request was made, the Commissioner finds that the Home Office breached section 10(1) FOIA. However, as a response was later issued to the complainant, no further steps are required by the Home Office.

## Right of appeal

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36. 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)

37. 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.

38. 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 .....**

**Gerrard Tracey  
Principal Adviser  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**