

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 March 2022

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

Decision (including any steps ordered)

1. The complainant made four requests for information from the Home Office on 21 March 2021. The Home Office aggregated the requests as they stated all were about modern slavery safeguards. The Home Office relied on section 12(1) of FOIA (cost of compliance exceeds the appropriate limit) to refuse the requests.
2. The Commissioner's decision is that the Home Office was entitled to aggregate the requests under section 12(4) of FOIA and is entitled to rely on section 12(1) of FOIA to refuse the requests. The Commissioner considers that the Home Office has complied with its obligations under section 16(1) of FOIA to provide adequate advice and assistance. However, the Home Office has breached section 10(1) of FOIA as it has failed to respond within the statutory time for compliance.
3. The Commissioner does not require any further steps to be taken.

Background

4. The Commissioner has noted the Home Office has aggregated four requests received on 21 March 2021 as similar in context and overall scope.

Request and response

5. The complainant wrote to the Home Office and requested information on four separate requests in the following terms:
 - "1) how many child rapists have taken advantage of the modern slavery safeguards for each of the last five years (2016-2020)
 - 2) how many people who pose a threat to our national security have taken advantage of the modern slavery safeguards for each of the last five years (2016-2020)
 - 3) how many serious criminals have taken advantage of the modern slavery safeguards for each of the last five years (2016-2020)
 - 4) how many failed asylum seekers have taken advantage of the modern slavery safeguards for each of the last five years (2016-2020)"
6. On the 21 April 2021, the Home Office advised the complainant that it was considering its position regarding their information request, citing section 24(1) (safeguarding national security) of FOIA, which is a qualified exemption, therefore subject to the Public Interest Test (PIT).
7. The complainant requested an internal review of the Home Offices response on 20 May 2021.
8. The Home Office acknowledged the internal review request on 20 May 2021 and responded on 6 July 2021 citing section 12(2) of FOIA to withhold the requested information.

Scope of the case

9. The complainant contacted the Commissioner on 11 August 2021 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of his investigation to be to determine if the Home Office has correctly aggregated the requests under section 12(4) of FOIA and, if so, has it been correctly refused as it would exceed the cost limit under section 12(2) of FOIA.

Reasons for decision

Section 12(4) – Aggregation of related requests

11. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") can be satisfied.

12. Section 12(4) of FOIA states:

"The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them."

13. Regulation 5 of the Fees Regulations states:

"(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concern or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which –

(a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and

(b) those requests are received by the public authority within any period of sixty consecutive working days.

(3) In this regulation, "working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom."

14. The Commissioner has reviewed the complainant's four requests aggregated by the Home Office. These requests were submitted on the same day, 21 March 2021. He is satisfied that all four of the requests were made by the same complainant and within 60 working days of each other, fulfilling the criteria at regulations 5(1)(a) and 5(2)(b).
15. The Commissioner must now consider whether these requests relate, to any extent, to the same or similar information. The Commissioner's view on aggregating requests can be found in the guidance on requests where the cost of compliance exceeds the appropriate limit¹. Paragraphs 44 and 45 state:

"Regulation 5(2) of the Fees Regulations requires that the requests which are aggregated relate "to any extent" to the same or similar information. This is quite a wide test, but public authorities should still ensure that the requests meet this requirement.

A public authority needs to consider each case on its own facts, but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested."

16. The Fees Regulations' wording of "relate, to any extent, to the same or similar information" makes clear that the requested information does not need to be closely linked to be aggregated, only that the requests can be linked.
17. Having reviewed the wording of the complainant's requests made within a 60-day period, the Commissioner is satisfied that there is an overarching theme in that they all request information on modern slavery safeguards concerns from a Home Office report.
18. The Commissioner, therefore, finds that the Home Office was entitled to rely on section 12(4) of FOIA to aggregate the four requests.

Section 12 – Cost of Compliance Exceeds Appropriate Limit

19. Section 1(1) of FOIA states that:

¹ [costs_of_compliance_exceeds_appropriate_limit.pdf \(ico.org.uk\)](#)

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.

20. Section 12 of FOIA states that:

- (1) 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.
- (2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

21. The "Appropriate Limit" is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") and is set at £600 for a public authority such as the Home Office. The Regulations also state that staff time should be notionally charged at a flat rate of £25 per hour, giving an effective time limit of 24 hours.

22. When estimating the cost of complying with a request, a public authority is entitled to take account of time or cost spent in:

- (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.

23. 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”.² 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.

24. In determining whether the Home Office has correctly applied section 12 of FOIA in this case, the Commissioner has considered the Home Office’s rationale provided to him during the investigation.
25. The Home Office has provided the Commissioner with some background information to understand the difficulties in establishing information relevant to the request.

The Home Office’s position

26. The Home Office explained to the Commissioner that it did not record this information in a manner that would make it easily retrievable. Therefore, to compile the requested information, it would be required to conduct a manual review of its records, which for example, exceeded 10,000 files in 2020 alone, to establish if any files fell within scope of the request. If it took only 1 minute to review each file, which is an extremely conservative estimate, it would take over 166 hours to review the files initially.
27. They also stated that if relevant files were identified from the initial sift process, it would take an additional 20 to 40 minutes due to complexities around the legal procedures undertaken, for any relevant files to be further identified to be within scope of the specific requests.
28. The Home Office added that files prior to 2019 are held on an old management system, therefore the estimate would be higher for those years due to the unfamiliar set up and search facilities of the old system.
29. The Home Office also stated that there were additional factors in this case which include the necessity to exercise skill and judgement to compile any relevant information. Notwithstanding the time required to resolve the issues outlined above, if they were resolved, the work still required to answer the request would significantly exceed the cost limit.

² <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

30. The complainant has argued that the Home Office must already have the information given the Home Secretary made these claims in the first place and that they made four separate FOIs which the Home Office unilaterally rolled into one request. And argued that the individual FOIs would not have passed the cost threshold. However, the Home Office has explained the process to establish if the requested information is held, is the same for one question, as it is for all four, and therefore the cost limit would be exceeded in exactly the same way as advised above.

The Commissioner's view

31. The Commissioner accepts that the Home Office has reasonably estimated that the cost of complying with the request would exceed the appropriate limit.
32. Therefore, even if the Commissioner were to consider that the Home Office's estimate may not be completely accurate, he does not consider that the estimate could be reduced to the point at which it would fall within the cost limit.
33. The Commissioner is therefore satisfied that the Home Office was entitled to rely on section 12(2) of FOIA to refuse the request.

Section 16 – advice and assistance

34. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making or wishing to make requests for information.
35. The Section 45 FOIA Code of Practice states that, where a public authority is relying on section 12 to refuse a request, it should help the requestor to refine their request within the cost limit.
36. The Home Office's refusal notice did not contain any specific advice and assistance that would have assisted the complainant in making a fresh request for the withheld information. However, in its internal review, the Home Office did explain the process by which the information would have to be sought and reiterated the reasons for refusal of the request. The Home Office also provided some assistance to the complainant with links to information that was available.
37. Having considered the available evidence, the Commissioner is satisfied that the Home Office offered reasonable advice and assistance, including providing links to information relevant to the request. The Commissioner accepts that it would not be possible to narrow the request to bring this within the cost limit.

38. The Commissioner considers that the advice and assistance the Home Office offered the complainant to be adequate. Therefore, the Commissioner is satisfied that the Home Office has complied with its obligations under section 16 of FOIA in its handling of the requests.

Section 10 - time for compliance

39. Section 10(1) provides that:

“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.”

40. Section 1(1) provides that:

“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.

41. The original request was made on 21 March 2021 and a substantive response was not provided by the Home Office until 6 July 2021. The Commissioner therefore finds that the Home Office breached section 10(1) in failing to provide a response within 20 working days.

Right of appeal

42. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

43. 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.
44. 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
Cheshire
SK9 5AF