

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 January 2023

Public Authority: Foreign, Commonwealth and Development Office

Address: King Charles Street
London SW1A 2AH

Decision (including any steps ordered)

1. The complainant requested information from the Foreign, Commonwealth and Development Office ("FCDO") relating to a visit by Elizabeth Truss to Australia in January 2022.
2. The FCDO initially refused to comply with the request citing section 14 (vexatious requests) of FOIA.
3. However, in its submission to the Commissioner, the FCDO cited section 12 (cost limit) of FOIA as the basis upon which the request was refused.
4. The Commissioner's decision is that the FCDO was entitled to refuse to comply with the request in accordance with section 12(1).
5. The Commissioner finds that the FCDO complied with its obligations under section 16 of FOIA to offer advice and assistance.

Request and response

6. On 20 March 2022, the complainant made the following request for information:

"Under the Freedom of Information Act 2000 I wish to see the following information regarding Elizabeth Truss' trip to Australia in January 2022:

1. The full names and job titles of those who went on the trip.
2. Full copies of all notes, minutes, agendas and briefing materials for meetings that were attended on the trip.

3. Full copies of all agendas/itineraries/dairies for the trip.
4. A full breakdown of all of the costs associated with the trip (including fees, travel, accommodation, food and any other related costs).

If funding came from any second or third parties please include them in the breakdown.”

7. The FCDO refused the request as “excessively burdensome” on 30 March 2022, and subsequently provided the outcome of an internal review on 11 May 2022, which upheld its position as regards section 14 FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 13 May 2022 to complain about the way their request for information had been handled.
11. The Commissioner wrote to the FCDO for its submissions in respect of this case and in its response, the FCDO altered its position and cited section 12 of FOIA as the basis upon which the request was refused.
12. Therefore, the Commissioner considers the scope of this case to be to determine if the FCDO has correctly cited section 12(1) of FOIA. The Commissioner has also considered whether the FCDO met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

13. 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”).
14. 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 FCA relied on section 12(1) in this case.

15. The appropriate limit is set in the Fees Regulations at £600 for central government, legislative bodies, and the armed forces and at £450 for all other public authorities. The appropriate limit for the FCDO is £600.
16. 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 FCDO.
17. 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.
18. 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”. 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.
19. Section 12 is 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. It is worth noting that if one part of a request triggers the section 12 exemption, then that will apply to the entirety of the request and there is no requirement for the Commissioner to consider any other exemptions cited by the public authority.
20. 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?

21. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner expects the FCDO to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
22. In its submission to the Commissioner, the FCDO explained, by way of background, that many of those involved in organising the trip had now moved roles, or left the department, and would no longer have access to FCDO IT systems which would increase the time required to gather the requested information.
23. In respect of question 2, the FCDO explained that, as the request was for “**all** notes, minutes, agendas and briefing materials for meetings that were attended on the trip” and did not specify a time period, it was very wide. The request would require the FCDO to first identify everyone who was involved in the organisation of the trip and ask them to search for any relevant documents, and to then determine who was at each of the meetings and events which took place during the trip and ask them to search for relevant materials.
24. The FCDO indicated that around 20 people were involved in the organisation of the trip.
25. In respect of the meetings and events which took place in Australia alone, the FCDO indicated that around 5 to 10 substantive meetings and events took place during the trip with about 4 to 5 people in attendance at each. The FCDO estimated that it would take each person around 30 minutes to carry out relevant searches and so for 5 people to carry out searches would take approximately 2 hours 15 minutes which would then be required for up to 10 meetings and so it could take up to 22 hours to complete just that part of the request.
26. As regards agendas and briefings, the FCDO explained that final versions are held but that multiple versions will have been created during the planning stages and as the request was for “all” such documents the FCDO have read this to mean that all existing drafts would have to be located which would require extensive searches across a number of teams. Having carried out a sample search, the FCDO estimated that around 25 people would need to carry out searches for the information requested. The information will be spread over emails and word documents (with the added challenge that most of the people involved in the visit have moved on from their roles). The FCDO estimated that these searches would take approximately one hour for each person to carry out and would amount to a total of 25 hours to search for all versions of the agendas and briefing materials.

27. In respect of diaries and itineraries, the FCDO explained that again there would be multiple versions of these and that similar searches would have to be carried out for the different versions as detailed in paragraph 25 above. The FCDO confirmed that final versions are held.
28. Information regarding the costs of the trip is already published and the relevant link provide to the complainant. However, the FCDO explained that the more detailed breakdown is not held by the UK government as Elizabeth Truss went to Australia on guest of government status.
29. The Commissioner considers that, even if the estimates provided by the FCDO were cut by half, the work involved would still exceed the 24-hour limit.
30. It is the Commissioner's view that the FCDO estimated reasonably that it would take more than the 24 hours / £600 limit to provide the information requested. The FCDO was therefore correct to apply section 12(1) of FOIA to the complainant's request.

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

31. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
32. The Commissioner notes that in its initial response to the complainant on 30 March 2022, the FCDO advised the complainant as follows:

"You may therefore wish to refine your request to narrow its scope. You could do this by restricting to points 1 & 3 and providing a date range"

The FCDO also explained that some of the costs data was already published and provided the complainant with the relevant link to that information.
33. The Commissioner is therefore satisfied that the FCA met its obligations under section 16 of FOIA.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Other matters

34. The Commissioner notes that in its submission to the Commissioner, the FCDO suggested further ways in which the request could be narrowed in order to allow the disclosure of some information, in particular, that final versions of some of the requested documentation are held.
35. The Commissioner notes that these suggestions have not yet been made directly to the complainant and that these suggestions may help to progress the request.

Right of appeal

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: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF