

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 May 2023

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

Decision (including any steps ordered)

1. The complainant requested information about passenger volumes and staffing levels at Heathrow Airport on a given date. The Home Office ultimately refused to provide the requested information, citing section 12(1) (cost of compliance) of FOIA.
2. The Commissioner's decision is that the Home Office has properly relied on section 12(1) of FOIA. It also met its advice and assistance obligations under section 16 of FOIA.
3. No steps are required as a result of this notice.

Request and response

4. On 29 April 2022, the complainant wrote to the Home Office and requested information in the following terms, for the day of 27 March 2022:

“Q1 – how many passengers arrived at the terminal on the day in question

Q2 - how many Border Staff were on site during what hours of the day

Q3 - What is your guidance on the number of Border Staff required for most efficient passenger experience

Q4 - The average number of Border Staff, on site per terminal, during pre-pandemic levels compared with now

Q5 - the number of Border Staff assigned to Heathrow during 2019 (month by month) and the number assigned in 2022 (month by month)".

5. The Home Office responded on 30 May 2022. It refused to provide any of the requested information citing section 31(1)(e) of FOIA - the exemption for the operation of the immigration controls, within the section 31 law enforcement exemption.
6. The complainant requested an internal review on 12 June 2022. The Home Office did not provide the outcome of its internal review until 21 July 2022. It revised its position and instead cited the section 12(1) cost exclusion within FOIA, advising that to comply with the request would exceed the cost limit, as follows:

"This is because the Home Office does not hold a dataset which includes all the information in scope of your request. In respect of your questions 3-5 in particular, the information is not easily retrievable. The information is spread across a number of databases and computer systems. The Border Force region where Heathrow is located draws staff from a number of areas both inside and outside the region, on a constantly changing basis and at short notice. To comply with your request would require significant cross checking of information held in various sources, in addition to locating and scrutinising clerical records of the daily deployment of staff for the period specified. We estimate that the exercise would require a number of officials to compile the information. This exercise would take a significant amount of time for the period which you have specified, substantially in excess of 24 hours."

Scope of the case

7. The complainant contacted the Commissioner on 4 November 2022 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the Home Office was entitled to rely on section 12(1) of FOIA to refuse this request.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

Aggregation of requests

9. Multiple questions within a single item of correspondence are considered to be separate requests for the purpose of section 12. In the present case, this means that there are several requests to be considered. However, where requests relate to the same overarching theme, a public authority may aggregate two or more separate requests in accordance with the conditions laid out in the Fees Regulations¹, provided those requests are received by the public authority within any period of sixty consecutive working days. Any unrelated requests should be dealt with separately for the purposes of determining whether the appropriate limit is exceeded.

10. In the Commissioner's guidance² on exceeding the cost limits, he explains that:

“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”.

11. 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.

¹ <https://www.legislation.gov.uk/uksi/2004/3244/regulation/3/made>

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

12. The Home Office told the Commissioner it had considered the guidance and had aggregated all five requests.
13. The Commissioner is satisfied that there is an overarching theme. This is because the individual questions all refer to information about passenger numbers and staffing levels at Heathrow Airport. Therefore, the Home Office was entitled to aggregate the costs of dealing with each question.
14. The reasoning below examines whether the MOJ is entitled to rely on section 12(1) of FOIA to refuse to provide the requested information.
15. Section 12(1) 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.
16. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are:
 - (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.
17. The applicable cost limit in this case is £600, which is equivalent to 24 hours' work.
18. Section 12 of FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by the Home Office was reasonable; in other words whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £600, that section 12(1) therefore applied and that it was not obliged to comply with the request.
19. The Commissioner asked the Home Office to provide an estimate for the costs of complying with the request. It advised that the requested information is not held centrally; rather it is split across various teams (or 'commands') and searches would need to be conducted across each, in order to obtain the requested information.

20. The Home Office provided some detailed information about staff resourcing and a breakdown of the estimate for part 2 of the request, both of which it asked not to be reproduced in this notice. The Commissioner has respected the Home Office's position. He has taken the confidential submissions into account in reaching his decision in this case.
21. The Commissioner is able to include here that the Home Office's overall estimate for part 2 alone would equate to between 35 and 42 hours work, which in itself exceeds the 24 hours limit.
22. The Home Office also explained that, in order to respond to parts 4 and 5 of the request, it would need to undertake additional checks to those provided for part 2. Specifically, it said:

"The same areas and same type of searching of records would need to be conducted as per Q2, however, unlike Q2, because Q4 asks for information 'per terminal' this would require a greater volume of information needing to be searched, including approx. 100 individual rosters for each terminal (and any additional resource that may have been called upon to assist) – we estimate this would take about 4-5hrs per command. In total about 25hrs' work.

Therefore, to answer Q4 it would take:

The time required for Q2 (35-42hrs) + the time required for Q4 (25hrs) = 60-67hrs work.

Q5 of the request asks about Border Force staff assigned to Heathrow during the whole of 2019 and the whole of 2022 (broken down by month). Again, the same areas and the same type of searching as for Q2 would be required, however because of the timeframe stipulated, this would again, involve a greater volume of information having to be searched with approximately 500 individual rosters per week across the 52 weeks of the year needing to be reviewed - some 26,000 rosters – we estimate this would take about 4-5hrs per command.

In total, about 25hrs' work.

Therefore, to answer Q5 it would take: The time required for Q2 (35-42hrs) + the time required for Q5 (25hrs) = 60-67hrs

Therefore, taking all the above into account, we estimate that to respond to the request in its entirety would take:

Q2 – 35-42hrs+

Q4 – 60-67 hrs+

Q5 – 60-67hrs

This would give us a grand total somewhere between 155-176hrs' work– significantly greater than the appropriate time limit.”

23. Having considered the detailed estimate provided, the Commissioner finds that it is realistic and reasonable. He therefore accepts that to provide the requested information would significantly exceed the appropriate limit and that section 12(1) has been correctly applied in this case.

Section 16 – advice and assistance

24. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request, so far as it would be reasonable to expect it to do so. In general, where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
25. In its internal review, the Home Office explained to the complainant that if he refined his request, for example, by confining the request to parts 1 and 2 only, it may be able to comply with a future request. However, it highlighted that even if a revised request were to fall under the cost limit, that it is likely that an exemption might apply to at least some of the information.
26. Also, in response to the Commissioner's investigation, the Home Office reconsidered its advice and assistance, and added the following information:

“As it would exceed the appropriate limit to comply with questions 2, 4 or 5, we have refused to comply with the entire request in line with ICO guidance, however we are obliged to provide advice and assistance wherever possible.

The complainant may wish to submit a fresh request omitting these questions; however, I can confirm that we have been unable to identify information falling within the scope of Q3, but further comprehensive searches would likely engage the appropriate time limit.”

27. The Commissioner is satisfied that the Home Office has complied with its section 16 of FOIA obligations.

Other matters

Internal review

28. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather, they are matters of good practice which are addressed in the Code of Practice issued under section 45 of FOIA.
29. However, the Commissioner has issued guidance in which he has stated that, in his view, internal reviews should take no longer than 20 working days to complete, and even in exceptional circumstances the total time taken should not exceed 40 working days.
30. In this case, the internal review was not completed in accordance with that guidance. The Commissioner expects the Home Office to ensure that the internal reviews it handles in the future adhere to the timescales he has set out in his guidance. This delay has been noted for monitoring purposes.

Right of appeal

31. 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

32. 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.
33. 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

**Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**