

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 May 2023

Public Authority: HM Revenue & Customs
Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant requested information from HM Revenue & Customs (HMRC) relating to the total number of opened enquiries into individuals. HMRC refused to comply with the request citing section 12 (cost limit) of FOIA.
2. The Commissioner's decision is that HMRC was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA.
3. The Commissioner has also decided that HMRC complied with its duty under section 16 to provide advice and assistance when a complaint exceeds the cost limit.
4. The Commissioner does not require HMRC to take any steps.

Request and response

5. On 19 January 2023, the complainant made the following request for information to HMRC:

"What is the total number of opened enquiries into individuals per year from year 2002 through to 2022?"
6. HMRC responded on 6 February 2023. It stated that it did hold some of the requested information, but that the cost of complying with the request would exceed the cost threshold.
7. HMRC upheld its decision in its internal review on 9 March 2023.

Scope of the case

8. The complainant contacted the Commissioner on 7 February 2023 to complain about the way their request for information had been handled before requesting an internal review. The complainant disagrees with HMRC's application of section 12 of FOIA.
9. The Commissioner considers the scope of this case to be to determine if HMRC has correctly cited section 12(1) of FOIA in response to the request. The Commissioner has also considered whether HMRC met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

10. Section 12(1) of the 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").
11. Section 12(2) of the 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. HMRC relied on section 12(1) in this case.
12. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for HMRC is £600.
13. 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 HMRC.
14. 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.
15. 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.
 16. 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.
 17. 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?

18. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked HMRC to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
19. In its submission to the Commissioner, HMRC stated that in 2021-2022 alone, HMRC opened 265,000 enquiries. HMRC advised that although all compliance interventions are recorded, they are not recorded in a way that would indicate whether the intervention has been made to an individual, partnership or company.
20. HMRC further advised that as it uses different case management systems, it would be difficult identifying each intervention made to individuals rather than those made to partnerships and businesses. HMRC informed the complainant that in order to determine whether an intervention was made to an individual, additional work by members of the compliance and data teams would be required.
21. HMRC also explained that due to the time period of the request, some information may be held on legacy systems and would require additional

researching time and staff time to determine who the intervention was made to.

22. HMRC conducted a sampling exercise on 30 cases, it advised it took on average a minute per case, to access the data and check what type of entity the enquiry was carried out against. It concluded that this would amount to 60 cases per hour or 1,440 cases within 24 hours (which is the cost limit for HMRC). To comply with 2021-2022 alone HMRC stated that it had opened 265,000 enquiries, at one minute per case this would massively exceed the appropriate limit in terms of cost and time.
23. Therefore, the Commissioner considers that HMRC estimated reasonably that it would take more than the 24 hours / £600 limit to respond to the request. HMRC 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

24. When refusing a request under section 12, a public authority needs to offer meaningful advice and assistance to the complainant where it is reasonable to do so. The aim of this advice and assistance is to help the complainant refine their request to one that might be able to be dealt with within the appropriate limit.
25. The Commissioner notes that HMRC did explain to the complainant it was unable to provide any advice or assistance on how to reduce the scope of the request, so that it did not exceed the cost limit. It did provide some relevant links to the complainant which showed compliance information.
26. The Commissioner agrees with HMRC that the request can't be meaningfully refined. Therefore, the Commissioner is satisfied that in this instance it complied with its duties under section 16(1).

Right of appeal

27. 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

28. 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.
29. 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

Janine Gregory
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF