

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 March 2023

Public Authority: Crown Prosecution Service
Address: 102 Petty France
London
SW1H 9EA

Decision

1. The complainant requested information relating to any documentation sent between the Crown Prosecution Service ("CPS") and the Foreign and Commonwealth Office ("FCDO") in respect of assurances given by the United States regarding the conditions of incarceration of persons extradited from the United Kingdom to the United States.
2. The Commissioner's decision is that the CPS was entitled to apply section 12(2) of FOIA, and he is satisfied that the CPS met its obligations under section 16(1) to offer advice and assistance. No steps are required.

Request and response

3. On 24 September 2022, the complainant made the following request:

"I am asking you under the terms of the FOI Act for any documentation giving details of any request made by the CPS to the Foreign Office during the last 20 years to investigate whether any assurances given by the United States authorities apropos conditions of incarceration extradited from the United Kingdom to the U.S. and which the CPS made on behalf of US authorities in a British court have been honoured."

"To ask under the FOI Act for any documentation sent by the FCDO to the CPS during the last twenty years indicating whether assurances

given by the U.S. authorities to the United Kingdom apropos persons extradited from the UK to the US have been honoured or not.”

4. The CPS refused both parts of the request under section 12(1) of FOIA.
5. On internal review, the CPS upheld its original position as regards section 12.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

6. The CPS has not been consistent on which subsection of section 12 of FOIA it is relying. Section 12(1) and section 12(2) are two separate exemptions. Section 12(1) exempts a public authority from complying with a request for information if to do so would exceed the appropriate limit. Section 12(2) exempts a public authority to confirm or deny whether it holds the requested information if to do so would exceed the appropriate limit.
7. In its initial response the CPS cited section 12(1) stating that: “We believe the cost of locating cases that involve US export extradition across a twenty-year timeframe would exceed the appropriate limit.”
8. However, in its internal review response the CPS stated: “We thought it useful to clarify that we are not withholding disclosure of the requested material, but are unable to determine whether we hold information within the scope of your request because a manual search would meet the exemption under s 12 of the FOI Act” but then went on to say that it had found 201 extradition cases involving the United States using its search facility which allowed a search by country of extradition cases since 2019.
9. It appears that the CPS is relying upon section 12(1) of FOIA. Therefore, the Commissioner’s analysis will consider whether the CPS was entitled to do so.
10. 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.
11. 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 CPS.

12. 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 CPS to deal with this request.
13. 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.
14. 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”.
15. Section 12 FOIA 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 the public interest.
16. 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.
17. The Commissioner notes the requestor’s complaint to the Commissioner is that the CPS has failed to engage with the complainant’s argument that, as a matter of legal duty, the CPS should have been collating all reports of ill-treatment or any behaviour by the United States authorities that would appear to violate assurances given by the United States in extradition cases since at least 1996 and that, if they had been doing so, there would be no cost implications for the FOI request.
18. However, the Commissioner’s remit does not extend to determining such disputes and the focus of this Decision Notice is to determine whether section 12(1) of FOIA has been correctly applied in this case.

19. In its initial response, the CPS explained that its Extradition Unit does not hold a centralised record of all cases involving extraditions to the United States over the last 20 years and that to establish whether documentation existed in scope of the request a manual search for, and then review of, each individual case file held by the Extradition Unit (in digital and paper records) across a 20-year period, would be required.
20. In its internal review, the CPS clarified that CPS case records would only be retained for a period of six years unless they met the 'Long-Term Interest Criteria' (such criteria being available to view on the CPS website).
21. In addition, the CPS explained that it was only possible to search for extradition cases by country name since 2019 (when a new system was introduced) and that having conducted this search, 201 extradition cases involving the United States were identified for the period 2019 to January 2023. The CPS explained that, in order to respond to the request, a manual review of the 201 cases would be required which would take more than 24 hours to complete due to the volume of documentation on each case.
22. Based on the information provided, the Commissioner accepts that the CPS found 201 cases for the four-year period 2019 to January 2023 where a search was possible using the name of a country.
23. The Commissioner also accepts that the CPS would need to manually review the 201 extradition cases involving the United States that it has already located in order to extract the specific information that the complainant has requested
24. The Commissioner accepts that finding any other extradition cases involving the United States prior to 2019 would involve a manual search of files.
25. The Commissioner also accepts that the CPS would need to manually review any other cases pre-dating 2019 that it might find following a manual search in order to extract the specific information that the complainant has requested.
26. The Commissioner considers that the CPS' estimate that to comply with the request would take more than 24 hours is a proportionate and logical response. He accepts that, in any case, the cost limit is met due to the volume of records requiring review, and the fact that a manual review is required. As information within scope is not recorded centrally, it is apparent that, were anything held, even to retrieve it would necessitate time-consuming searches.

27. In reaching this decision, the Commissioner is informed by previous Decision Notices where manual searches of large volumes of documents were required:

<https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4023938/ic-208601-y8s7.pdf>

<https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024246/ic-202105-n4z1.pdf>

<https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024255/ic-213327-k9j6.pdf>

28. The Commissioner is satisfied that the CPS was entitled to rely on section 12(2) of FOIA to refuse the complainant's request, rather than section 12(1), as it determined that the cost of ascertaining whether it held information within scope would exceed the cost limit.

Section 16(1) - advice and assistance

29. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section, it will be taken to have complied with its obligations.
30. The Commissioner accepts that due to the wide nature of the request, and due to the length of time it would take to search and manually review each record, the request could not be meaningfully refined to allow the information to be provided within the cost limit. As such, the Commissioner is satisfied that there was no breach of section 16(1) of FOIA.

Other Matters

31. The Commissioner suggests that in future the CPS makes it clear in its responses to requestors whether it is relying on Section 12(1) or section 12(2), as they are two separate exemptions. The CPS may find the Commissioner's detailed guidance on section 12 of FOIA helpful in this respect.

Right of appeal

32. 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

33. 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.
34. 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
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