

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 October 2023

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

Decision (including any steps ordered)

1. The complainant requested from the Home Office information concerning the UK Frontier Worker permit scheme. The Home Office stated that to comply with the request would exceed the cost limit and therefore applied section 12(1) (cost of compliance) of FOIA to the request.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 12(1) of FOIA to refuse to comply with the request. He also finds that the Home Office complied with its obligations under section 16(1) of FOIA to offer advice and assistance. Therefore, the Commissioner does not require the Home Office to take any steps as a result of this decision.

Background

3. Official information online¹ explains that individuals need a Frontier Worker permit if they want to work in the UK but live in another country, and states:

"Your permit allows you to enter the UK as a frontier worker. It proves your right to access benefits and services, including NHS healthcare, if you meet the relevant eligibility requirements. If you have a digital version of your permit you can also use this to prove your right to work or rent ...".

Request and response

4. On 21 December 2022 the complainant wrote to the Home Office and requested information in the following terms:

"This is a request for information on the Frontier Worker scheme. There were approx. 17,619 applications for a Frontier Worker permit (FWP) from 2020 Q4 to 2022 Q3, according to Home Office statistics.

Please provide the following:

1) The total number of applications for a Frontier Worker Permit made by people with an 'Ireland' address and whose employer address in the UK begins with the postcode BT (i.e. Northern Ireland).

2) Please break this figure down by:

- Quarter, from Q4 2020 to Q3 2022;
- Outcome (issued, refused, withdrawn);
- Nationality of applicant.

Note a - The application form for a FWP asks for a country of residence. I am asking for all those who selected 'Ireland'. The application form also asks for postcode for the address of employer. I'm asking for all those whose postcode began with BT (i.e. Northern Ireland).

¹ <https://www.gov.uk/frontier-worker-permit>

Note b - Please provide only what is available under cost limits and other expectations. If it is only possible to provide the total figure of applications, rather than by quarter, please do so. If it is only possible to provide the number of applications by home address (i.e. Ireland) but not work address (i.e. BT/Northern Ireland), please just provide the former. Similar for questions on nationality of applicant etc - please disregard if necessary."

5. On 17 January 2023 the Home Office provided its response and applied section 12(1) of FOIA to the request.
6. On 16 March 2023 the complainant asked for an internal review.
7. On 24 April 2023 the Home Office provided its review response. It maintained its position that to comply with the request, would exceed the appropriate cost limit under section 12(1) of FOIA.

Reasons for decision

8. This reasoning covers whether the Home Office was entitled to rely on section 12(1) of FOIA to refuse to comply with the request. It will also consider whether the Home Office met its obligation to offer advice and assistance under section 16(1) of FOIA.

Section 12 – cost of compliance

9. 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".
10. The appropriate limit for section 12 purposes is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations).
11. The Fees Regulations state the appropriate cost limit is £600 for central government. The appropriate limit for the Home Office is therefore £600.
12. The Fees Regulations also specify 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 Home Office.

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. In its internal review, the Home Office emphasised that information about employer postcodes and residential address postcodes is not recorded in a reportable format. It said each application record would need to be interrogated to collate the relevant information in scope of the request.
15. It said the search activity required would take a number of officials significantly longer than 24 hours to locate, retrieve and extract the relevant information requested.
16. The Home Office was asked by the Commissioner to provide a detailed estimate of the time or cost to determine whether relevant information is held and to locate, retrieve and extract the information within scope of this request.
17. The Home Office, as background information, explained:

“the system used for Frontier Worker permit applications is not set up to track and collate data from an application form in a way that allows easy retrieval. Each application is received and uploaded to our systems as a specific case type. Numbers of case types such as ‘Frontier Worker permit’ applications are collated and retrievable. However, specific information provided within the application process, while contained within each application profile, is not easily retrievable. It is therefore not possible to retrieve the information to answer this specific request without accessing each application profile to obtain the information.”
18. The Home Office further explained that in order to comply with this request, an official would need to complete the following steps for all Frontier Worker permit applications:
 - Search its electronic systems for the relevant Unique Application Number and then access each case individually.

- Access the contact details to note the address of the applicant.
 - Note the address of the applicant.
 - Access the application form housed on the case created form to note the address of the employer as this information is not automatically uploaded to its systems.
 - Note the employer's address.
 - Record the case if relevant to the information request.
19. The Home Office conducted a sampling exercise, and estimated that on average it would take five minutes to complete these steps for each case or application. It said that at the time of the request, the total number of applications was recorded as 17,619. This means a total of 88,095 minutes, or 1,468 hours.
 20. The Home Office confirmed that the information is held on its IT systems and the estimates are based on searching its electronic records. It said this would be the quickest way to search, locate and identify the information.
 21. The complainant expects the Home Office to be able to search its electronic records "easily and quickly", however the Home Office has explained why it is unable to do so in this instance.
 22. The complainant is unhappy that the Home Office did not explain to him in detail how it had calculated its cost estimate. However, it is not a statutory requirement to explain how an estimate has been calculated. Furthermore, the Home Office did explain the need for manual searching and the complainant knew the volume of applications involved.
 23. The Commissioner notes that even if the above estimated average time per application were drastically reduced, say to one minute per application, in total the Home Office would still be spending much more than 24 hours on complying with the request.
 24. The Commissioner is satisfied that compliance with this request would exceed 24 hours or £600. He therefore considers that the Home Office was entitled to rely on section 12(1) of FOIA to refuse the request.

Section 16 – advice and assistance

25. Section 16(1) of FOIA states 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 the authority to do so.
26. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 Code of Practice², it will have complied with section 16(1) of FOIA.
27. The section 45 FOIA Code of Practice states that a public authority's advice and assistance obligation will be triggered when it relies on section 12 to refuse a request. In those circumstances the public authority should either suggest ways in which the requester could refine their request so as to bring it within the cost limit or explain that the request cannot be meaningfully refined.
28. The Commissioner notes that within the request itself, the complainant proposed ways to narrow the request. The complainant has also said to the Commissioner that "if it was too expensive to provide both the residence and employer information, the request could be narrowed to either form of information".
29. As noted above, the Home Office has explained that such information is not held in a reportable format. The Commissioner notes that even providing the total application numbers by either home or work address, as the complainant has suggested, would involve searching all applications manually.
30. The Commissioner asked the Home Office to confirm its position regarding whether it considers the request can be meaningfully refined.
31. The Home Office said "due to the way the information is stored on our systems and the work that would be required to locate, identify and retrieve it, I can confirm that we do not believe the request can be 'meaningfully refined'".
32. The Home Office has also told the Commissioner that given the volume of records involved, even a shorter period such as one quarter (rather than the eight the complainant specified) will likely engage section 12.

² <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

33. The Commissioner notes that at internal review stage, the Home Office informed the complainant it was unable to advise him on how he could refine his request. It said any request involving a significant amount of manual searching is likely to exceed the cost limit (a point it had also made in its initial response).
34. The Commissioner's guidance³ recognises there will be occasions when there are no obvious alternative ways of restating a request, which will limit a public authority's ability to help the requester narrow it down.
35. That guidance also cites a decision notice⁴ regarding a case where a public authority had refused a request and informed the requester that it could not suggest any practical way of modifying his request to bring it within the cost limit. The Commissioner found that in the circumstances the public authority had complied with its duty to advise and assist under section 16 of FOIA.
36. The Commissioner also highlights another previous decision notice⁵, cited on page 17 of his 'cost of compliance' guidance⁶. In that case, the public authority claimed section 12 of FOIA and did not provide any advice and assistance. The Commissioner found that it had complied with section 16 of FOIA because no meaningful advice could have been offered as to how to refine the request.
37. Here, given the breadth of the request and the work involved, the Commissioner is sceptical that the request can be meaningfully refined to bring it within the appropriate limit.
38. In light of the above, the Commissioner finds that the Home Office has complied with its obligations under section 16(1) of FOIA in its handling of the request.

³ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-16-advice-and-assistance/#clarify>

⁴ https://ico.org.uk/media/action-weve-taken/decision-notices/2013/932720/fs_50503796.pdf

⁵ https://ico.org.uk/media/action-weve-taken/decision-notices/2009/505904/FS_50203058.pdf

⁶ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

Right of appeal

39. 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

40. 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.
41. 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

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