

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 November 2023

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

Decision (including any steps ordered)

1. The complainant has requested information relating to a report on the Independent Review of the UK Government's Prevent Strategy.
2. The Home Office relied on section 12 (cost limit) of FOIA to refuse the request.
3. The Commissioner's decision is that the Home Office was entitled to refuse to comply with the request in accordance with section 12(1).
4. The Commissioner finds that the Home Office has complied with its obligations under section 16 of FOIA to offer advice and assistance.
5. The Commissioner does not require further steps.

Request and response

6. On 19 May 2023, the complainant made the following request on behalf of RSI:

"RSI seeks the following information under the FOIA:

- a. Please provide copies of any communications (such as emails, WhatsApp or text messages) between the Home Secretary, Home Office ministers and/or other senior Home Office officials and the Independent Reviewer ([name redacted]) or members of the Independent review team relating to amendments to or

comments on the draft report on the Independent Review of Prevent between 8 February 2022 and publication of the final report on 8 February 2023. For the avoidance of doubt, RSI requests communications both sent and received by Home Office officials relating to comments/amendments to the draft report during the relevant period.

- b. Minutes of the meetings that took place between the Independent Reviewer or members of the Prevent Review Team and the Home Secretary, Home Office ministers and/or other senior Home Office officials regarding the Prevent Review on 6 May 2022, 19 May 2022, 20 July 2022 and 18 August 2022.
7. The Home Office responded on 19 June 2023, refusing the request on the basis of the cost exemption in section 12(1) of FOIA.
8. On 25 July 2023, the complainant requested an internal review and stated: "In order to comply with your invitation to refine the request, our client limits its request to communications with the Home Secretary and senior Home Office ministers."
9. In its internal review response dated 23 August 2023, the Home Office upheld section 12 in respect of part (a) of the request but stated that it would deal with part (b) of the request as a new and separate request and would aim to respond within 20 working days.

Scope of the case

10. The complainant contacted the Commissioner on 17 October 2023 to complain about the way their request for information had been handled.
11. The Commissioner considers the scope of this case to be to determine if the Home Office has correctly cited section 12(1) of FOIA in respect of part (a) of the request (part (b) now being dealt with separately by the Home Office). The Commissioner has also considered whether the Home Office met its obligations to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

12. Section 12 of FOIA states that 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”).

13. 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 Home Office relied on section 12(1) in this case.
14. 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 Home Office is £600.
15. 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 Home Office.
16. 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.
17. 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.
18. 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.

19. 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

20. The Home Office has explained to the complainant that:

“the information requested is not stored centrally. In order to respond to your request for information, officials would need to conduct detailed searches across a number of mailboxes within the Department. It is estimated that this task would significantly exceed 24 hours due to the time spent by officials needing to search through various sources in order to locate, identify and retrieve any information that relates to the draft report on the Independent Review of Prevent. Further work would then be required to isolate the material in scope as each record identified from an initial search would need to be reviewed individually to ascertain whether or not it falls within scope of the request. The exercise would need to be repeated for each current Minister and ex-Minister or senior official involved in the work during the specified time period.

If we were to limit the search to communications with the Home Secretary and senior Home Office ministers, as you have suggested, it is estimated that the cost limit would still be exceeded (for the reasons already provided).”

21. The Commissioner’s notes the complainant’s view that:

“we note that the information requested is not particularly broad in scope. It relates to a specific document (i.e. a draft of the Independent Review of Prevent report) or versions of that document and a less than 12-month time span. The fact that it relates to a specific document means it should be easy to carry out keyword searches to identify relevant communications.”

22. When citing section 12, the Commissioner expects the public authority to provide a reasonable estimate as to how long compliance with the request would take. This estimate should be based on cogent evidence, on the quickest method of gathering the requested information and usually will involve the public authority carrying out a sampling exercise.

23. In this case, the Home Office has not provided a quantifiable estimate as to how long complying with the request would take. The Commissioner recognises that there will be occasions (such as this) where a request is so broad that it would be impossible to quantify the total cost of compliance - but this does not mean that the public authority should simply dispense with that part of the process. In this case, the Home Office should have searched for a sample of the relevant communications and then, based on that sample, tried to estimate the time/cost of searching for all of the requested information. If a public authority can demonstrate that even a relatively focussed search would incur significant cost and would not come near to providing all of the information requested (because multiple similar searches would be required), that will usually be sufficient to demonstrate that the overall cost will exceed the limit.
24. However, looking at the scope of the request, in terms of the number of individuals and range of communications involved, and the fact that the information is not held centrally and would involve multiple searches of inboxes across a range of devices, the Commissioner accepts that there would be a large volume of records that would need to be searched in order to comply with the request.
25. Whilst the Home Office has not put forward an estimate, due to the broad nature of the request, it is the Commissioner's view that compliance with the request would take more than the 24 hours / £600 limit to provide the information requested. The Home Office 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

26. 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).
27. The Commissioner notes that in its initial response and in its internal review response, the Home Office has advised the complainant to revise

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

the request by reducing the number of participants and the range of communications, but that this might not necessarily result in the Home Office being able to comply with the request within the cost limit. Furthermore, the Home Office has offered to deal with part (b) as a separate request.

28. The Commissioner is satisfied that the Home Office has met its obligations under section 16 of FOIA as regards the request.

Right of appeal

29. 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

30. 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.
31. 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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