

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 November 2023

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

Decision (including any steps ordered)

1. The complainant submitted a request to the Home Office for information relating to the painting over of murals at Manston Detention Centre and Kent Intake Unit.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 12(1) of FOIA to refuse the request, and that it complied with its obligations under section 16(1). However, in failing to respond to the request and issue a refusal notice, within the statutory timescale, the Commissioner has determined that the Home Office breached sections 10(1) and 17(5) of FOIA.
3. The Commissioner does not require further steps as a result of this decision notice.

Request and response

4. On 12 July 2023, the complainant wrote to the Home Office and requested information in the following terms:

“Please send me copies of all documents held by the Home Office relating to the recent painting over of murals at Manston detention centre and the Kent Intake Unit as reported in the Guardian <https://amp.theguardian.com/politics/202...>

For want of doubt this includes emails to and from the immigration minister and to and from any Home Office civil servant or advisor but also WhatsApp or any other electronic messages plus reports, minutes of meetings and any other material relating to these incidents.”

5. A response was provided on 21 August 2023 in which the Home Office refused to provide the requested information citing section 12 (cost limit) of FOIA as its basis for doing so.
6. Upon receiving this response, the complainant requested an internal review on 22 August 2023.
7. Despite this request for an internal review, the complainant did not receive a response from the Home Office.

Reasons for decision

Section 12- cost of compliance

8. 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.
9. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can make a notional charge of a maximum of £25 per hour to undertake work to comply with a request; 24 hours work in accordance with the appropriate limit of £600 set out above, which is the limit applicable to the Home Office.
10. 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.
11. 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.”
 12. 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.
 13. Where a public authority claims that section 12 of FOIA is engaged, it should, where reasonable, provide advice and assistance to help the complainant.

The Complainant’s position

14. The complainant believes that as the incident is of public interest and scrutiny that “there will already have been a process of internal investigation which would have included bringing the relevant material together”.

The Home Office’s Position

15. In its initial response to the complainant, the Home Office explained that the cost of locating, collating and extracting any relevant information would exceed the cost limit.
16. It further explained that in order to search for the information held, would require a “manual review of many hundreds of emails either issued or received, together with a review of all meeting minutes and text messages”.
17. The Home Office states that the time and resource required to complete the above task would exceed the cost limit set by FOIA.

The Commissioner’s decision

18. The Commissioner considers that the actual wording of the request would make it a very broad request and that dedicated searches alone would not necessarily find all the information within scope.

19. Therefore, he considers that the manual review of all emails, text messages and minutes of meetings, as stated by the Home Office, would be required. This would take a considerable amount of time due to the broad nature of the request.
20. The Commissioner's decision is that the Home Office estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, the Home Office is entitled to rely on section 12(1) of FOIA to refuse to comply with the request.

Section 16-advice and assistance

21. Section 16(1) of FOIA provides that a public authority should give advice and assistance to a person making an information request.
22. The Commissioner notes that in its initial response, the Home Office advises that it is "difficult for us to suggest how you could narrow your request". This was due to the very broad nature of the request. However, it did inform the complainant that it was up to them, whether to re-submit a new request for the elements of it that they still wished to pursue, thereby indicating that the complainant should specify a narrower request
23. The Commissioner's guidance¹ states that a public authority should either indicate it is not able to provide any information at all within the appropriate limit or provide an indication of what information can be provided or provide advice and assistance.
24. Therefore, if a public authority cannot offer any meaningful advice as to how to refine the request, the only advice and assistance which could be offered would be to say that no information could be provided under the appropriate limit. The Commissioner is therefore satisfied that the Home Office did meet its obligations under section 16(1) of FOIA.

Procedural matters

25. Under section 10(1) of FOIA a public authority is obliged to respond to a FOIA request within twenty working days. Section 17(5) of FOIA
-

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

requires a public authority, relying on section 12(1), to issue a response refusing the request within 20 working days.

26. In this case the Home Office breached both sections 10(1) and 17(5) of FOIA in the handling of this request.

Other matters

27. There is no obligation under FOIA for a public authority to provide an internal review process. However, it is good practice to do so and, where an authority chooses to offer one, the section 45 Code of Practice sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
28. In failing to conduct an internal review, in response to the complainant's request, the Home Office did not act in accordance with the Section 45 Code of Practice.

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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF