

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 October 2024

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

Decision (including any steps ordered)

1. The complainant requested information relating to the Civil Service Pay remit guidance 2023 to 2024. The Home Office (HO) subsequently provided information or confirmed it did not hold information at the time of the request for parts 3 (a-e) of the request and relied on section 14(1) of FOIA (vexatious) to refuse the request for part 2. Some personal data at part 3(d) of the request was redacted under section 40(2) of FOIA.
2. The Commissioner's decision is that the request at part 2 was vexatious and therefore HO was entitled to rely upon section 14(1) of FOIA to refuse it. Furthermore, he considers that the HO was entitled to redact/anonymise personal information for the disclosure made at part 3(d) of the request. He also finds that the HO breached section 10(1) of FOIA by failing to provide a response to the request within 20 working days.
3. The Commissioner does not require any steps.

Request and response

4. On 29 July 2023, the complainant wrote to the public authority and requested information in the following terms:

"1. I understand that the HO has now applied the [Civil Service Pay Remit Guidance, 2023 to 2024](#) following negotiations with its recognised trade unions.

2. Now that the HO has made its policy decision in applying the pay remit guidance; and pursuant to s.1 of the FOIA, I would be grateful if you would confirm whether or not the HO holds the following items of information:

a. A pay calculator in MS Excel whereby staff within the pay remit can enter their pre-award grade (including London and National) and salary and other information such that the calculator shows the new salary and percentage uplift. If so could you please disclose the unlocked spreadsheet such that I can determine the formulae used; look-up tables etc.

3. Could you also disclosed to me, if held;

a. the pre-award pay tables by grade scale and the new award tables.

b. The baseline pay bill upon which the pay remit has been applied by the HO including the date of the pay bill.

c. the Increase in Remuneration Costs (IRC)

d. The number of staff at the baseline date broken down by pay scale within the pay remit

e. Any table or chart showing the distribution of staff between the minima and maxima, and above it

i) before the award and

ii) after the award."

5. The public authority responded on 10 August 2024 and requested clarification of the request as follows:

"For parts 3b and 3d are you able to provide more detail for 'baseline pay bill' and 'baseline date' for us to clearly identify the information you have requested."

6. The complainant responded to the HO on the 10 August 2024 and clarified his request as follows:

"The values of 3c (I assume it is known what this is, it not being queried) is applied to a baseline pay bill paid to n number of staff at a point in time.

The number of HO staff eligible for the pay remit and amounts paid is in constant flux; staff leave and are replaced, often at different

places in the pay scale. Some staff are on half pay, new posts are created and so on.

So my questions are: what is the value of that baseline upon which the IRC is based(3b) the date of the baseline; and, the number of staff to which that baseline is paid broken-down by grade(3d).”

7. The HO responded on 8 September 2023. It stated it did not hold any information for part 3c and 3(e)(ii) of the requests as this information will not be known until the final pay award is known. The HO provided some information for part 3 (a), 3(b) and 3(e)(i) of the request, but refused the remainder stating

“For part 2 of your request, we have considered your request further, and we judge that it engages the exemptions at section 14(1) of the Act.

Section 14(1) of the Act provides that the Home Office is not obliged to comply with a request for information which it considers to be vexatious; in this case because it would impose an oppressive burden on the department to respond. The spreadsheet contains the salary details of legacy and junior members of staff which if released would breach GDPR. However, by removing this information from the spread sheet would require a grossly oppressive burden on the Home Office to ensure that all personal information is removed and restore the spreadsheet to full functionality.

d) The number of staff at the baseline date broken down by pay scale within the pay remit - Section 21(1) of the FOIA exempts the Home Office from having to provide you with this information, because it is already reasonably accessible to you. This information can be found at the following link Workforce management information, 2023.

[Workforce management information, 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/workforce-management-information-2023) ”

8. The Complainant requested an Internal Review on 10 September 2023 stating

“I will go through each response in turn.

2. The response provides insufficient information for me or anyone else for that matter which to weigh-up your reliance on s.14(1) of the FOIA. The HO has provided a conclusion (in fact two conclusions: that the data is personal data and that it would place a gross burden on the HO to provide the calculator) without providing any supporting premise. In order to aid my

understanding so that I can weigh-up the veracity of the claim, could you please supply me with a screen shot of the calculator at the point in which a member of staff would access it so that I can see what inputs are required? I ask this only because I would like to see whether or not any personal identifiers are required to be inputted into the calculator by staff, such as a payroll/employee number. If no personal identifiers are required, for example as a primary key to merge (lookup) with another table, then I do not understand as to what needs to be redacted.

3(a) I thank the HO for providing the table.

3(b) The baseline pay bill upon which the pay remit is applied is to a monthly baseline, which you have confirmed to be December 2022. If that is the case, then it is very unlikely indeed that the baseline pay bill for December 2022 would be £1.9bn. For the avoidance of doubt, I am after the baseline pay bill upon which the 4.5% + 0.5% of the 2023 Pay Remit guidance is applied. This includes only those staff in the tables you helpfully supplied in 3(a). I am sorry that this was not clearer, but I thought that this would have been obvious. When HO provides this, could I please have the baseline pay bill to the penny, rather than rounded?

3(c) As you have helpfully supplied the increased pay tables under 3(a) it necessarily follows that that the HO must know what the IRC is. For example, how will your Accounting Officer be able to satisfy Parliament (which includes the NAO) that it has complied with the PR 2023? It must have known when finalising the tables in 3(a) whether or not these new pay bands pursuant to the application of the PR2023 fell within the 5% limit. On that basis can you please reconsider your response? If you provide the increased pay tables, then you must know what the IRC is to the chosen baseline.

3(d) The exemption cited and the links you helpfully supplied seemingly does not apply to what was asked. Again, I am sorry if I was not more explicit, but what I essentially wanted was a table with two columns: the grade column you provided in 3(a) as one column, and the number of staff at the baseline month in a second column. The link you have provided does not split out the volumes in the grade tables you provided at 3(a) – (in fact it conflates AA with AO) and therefore the exemption cited does not apply.

3(e) Similar to 3(d) what I wanted was a distribution by grade similar to the grade column you supplied at 3(a). The HO supplied a single overall line.”

9. The HO did not provide an Internal Review until the Commissioner made contact in relation to this complaint.

Scope of the case

10. The complainant contacted the Commissioner on 13 January 2024 to complain about the way his request for information had been handled.
11. The Commissioner accepted the complaint without an Internal Review as it had been over 40 days since it was requested.
12. The Commissioner wrote to the HO on 27 June 2024 and requested that they revisit the request.
13. The HO responded on the 6 August 2024 and provided the Commissioner with a copy of its internal review that it sent to the complainant on the same date.
14. The HO maintained its position to rely on s14(1) for part 2 of the request due to the amount of work required to edit and disclose the pay calculator and confirmed the following in relation to the remainder of the request:
 - "3(a) – this data was provided in response to the original request.
 - 3(b) – this data was provided in response to the original request.
 - Q3(c) - this data was not available at the time of the original request, however now that the pay award has been implemented, it has now been provided.
 - Q3(d) – section 21 was cited and an accessible link to workforce management data was provided in response to the original request. However, it has now been identified that the data was not broken down as requested. That data has been provided.
 - Q3(e)(i) – this data was provided in response to the original response, however on review an incorrect formula was used. A revised table has been provided.

- Q3(e)(ii) – the post award data was not available at the time of the request, however, now that the pay award has been implemented, that data has been provided.”
15. On 12 August 2024, the complainant confirmed his remaining grounds of complaint to the Commissioner, stating that he remained dissatisfied with the HO stance for part 2 of his request. He also expressed dissatisfaction with the personal data redactions made to the disclosure at part 3(d) of the request.
 16. The Commissioner therefore considers that the scope of his investigation is to look at whether the HO is entitled to rely on sections 14(1) of FOIA as a basis for refusing to provide the information falling within part two of the request. He will also consider whether section 40(2) of FOIA applied to the redactions made at part 3(d) of the request.

Reasons for decision

Section 14(1) – vexatious requests

17. The following analysis considers whether the request was vexatious.
18. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
19. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s guidance on section 14(1)¹ states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
20. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
21. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.

22. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("Dransfield")². Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
23. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
24. The four broad themes considered by the Upper Tribunal in Dransfield were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
25. However, the UT emphasised that these four broad themes are not a checklist and are not exhaustive. It stated:

"all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA" (paragraph 82).

The complainant's view

26. The complainant believes that the HO has not provided sufficient information to support its reliance on section 14 (1). The complainant wished to weigh up the veracity of the burden claim by identification of which personal data would be the primary keys

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

to merge information with another table (formulas and look up) and which personal identifiers would require redaction.

The HO's position

27. In its submissions to the Commissioner, the HO confirmed that the current excel spreadsheet within the scope of the complainant's request was not team specific and could be used by all staff within HO to determine their new uplifted salary.
28. In terms of the burden that complying with the request would place on HO, it considered that to disclose an unprotected excel spreadsheet (pay calculator), providing cell formulas and look up tables would require 50+ hours staff resource to redact, rebuild and produce a revised working calculator, which did not disclose third party personal data, exempt under section 40(2)(personal data).
29. HO explained that it would

"need to essentially remove all personal data from seven different data sets which feed into the calculator based on individual circumstances. Taking this action would have had a detrimental impact on the calculator. By removing this data in the background, this is a deletion of data which would take 1 hour, however, this would mean that the calculator no longer functions as the formulas cannot run to calculate an individual pay award."
30. The HO further explained that they would have to additionally:
 - create 60 formulas for each individual pay range within the department, which they calculated to take a minimum of 30 hours work.
 - quality check the functionality and accuracy of the calculator for each pay range by checking that pay range formula works as expected and that there are no errors for the different inputs which would take up to 11 hours.
 - If any errors were identified, the HO estimated (based on previous experience of the error rate), they would require a further 3-5 hours to rectify the problem.
 - The revised and amended calculator would need to be presented to SCS for sign off. The HO estimated this would take a further 6 hours.

The Commissioner's decision

31. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
32. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority³. This is the position that has been adopted by HO in this case.
33. Having reviewed the explanations of the HO on the required actions and time estimates to complete them, and the volume of data and other files that would need to be reviewed, the Commissioner accepts the estimate to be a reasonable estimate of time and therefore considers that the burden that would be imposed upon HO to comply with part 2 of the request to be significant.
34. The Commissioner considers that the request for an unprotected spreadsheet is of interest primarily to the complainant only. As this is an internal HO document that only employees of the HO would use, their interest would be satisfied with the calculation of future uplifted salaries and not the formulas and look up tables hidden in the cells used to provide this information.
35. The Commissioner believes that HO was entitled to rely on section 14(1) of FOIA to refuse part 2 of the request because it was vexatious by the nature of the burden imposed.
36. Turning to the information redacted/anonymised under section 40(2) of FOIA for part 3(d) of the request, the Commissioner considers that the complainant was pursuing a legitimate interest which it was necessary to meet under FOIA. However, he considers that the balancing test favours withholding the information as the numbers involved were sufficiently small that the information represents personal data and there are insufficient grounds to disclose it.

³ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/how-do-we-deal-with-a-single-burdensome-request/>

Other matters

37. There is no obligation under FOIA for a public authority to provide an internal review. 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.⁴
38. 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.
39. The Commissioner reminds the HO of the Code of Practice and urges it to respond in a timely manner.

⁴ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmentalinformation-regulations/section-45-code-of-practice-request-handling/>

Right of appeal

40. 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

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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