

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2017

Public Authority: Department for Transport
Address: Great Minster House
33 Horseferry Road
London
SW1P 4DR

Decision (including any steps ordered)

1. The complainant requested information on the announcement of Stanford West as the preferred location for Operation Stack lorry park. The Department for Transport (DfT) refused to comply with the request on the basis that to do so would exceed the appropriate limit in costs set by section 12(1) of the Freedom of Information Act 2000 ("the FOIA"). The Commissioner's decision is that the DfT correctly applied section 12(1) and found that there is no breach of section 16(1).

Request and response

2. On 25 July 2016 the complainant made the following request for information under the FOIA:

'I hereby request that you provide me with all correspondence – internal and external – all emails, memos and other material concerning the announcement of Stanford West as Highways England's preferred location for the Operation Stack lorry park.

For the avoidance of doubt, I am requesting information concerning the decision to make the announcement of July 6th 2016. I am asking for all correspondence within Highways England and other relevant Government departments (Department for Transport, Highways England, GCS).'

3. On 19 August 2016 DfT responded. The Department interpreted the request widely to mean all information relating to the content as well as

the timing of the Secretary of State's announcement about Operation Stack. The DfT estimated that it held in excess of 5,000 pieces of correspondence within the scope of the request, interpreted in this broad way and refused to provide the requested information citing Section 12 of FOIA. It estimated that the cost of determining whether it held the information would exceed the cost threshold of £600 (£25 x 24 hours). DfT suggested it may be able to comply with a new request for a narrower category of information.

4. On 19 August 2016 the complainant requested an internal review:

'For the avoidance of doubt, I am requesting to see all correspondence relating to the timing of the 6th July announcement, and all correspondence that specifically references the 6th July announcement. This precision, I'm sure, will bring the work required to collect the data well below the £600 threshold.'

5. DfT sent the outcome of its internal review on 16 September 2016. DfT reviewed the citing of Section 12 of FOIA to both the original request that DfT had interpreted broadly and the refined request that clarified that the request was intended to cover only information related to the timing of the 6 July announcement.
6. Reviewing the original scope of the request, DfT established that the leader of the relevant policy team within the Department held in excess of 5200 pieces of correspondence.
7. DfT carried out a sampling exercise on the time to retrieve the information requested from the relevant correspondence. From this evidence, DfT stated that an average of 23 pieces of correspondence could be processed per hour or 552 emails in 24 hours.
8. The Department's Operation Stack Policy Team also looked at the clarified request with its narrower scope. Since the request concerns the timing of the announcement made on 6 July, DfT worked on the basis that relevant information would fall within a date range from 7 June 2016 to 6 July 2016.
9. DfT estimated that it holds in excess of 850 pieces of correspondence and there may be further relevant information held by teams (21 individuals) in other parts of DfT.
10. Based on the above sampling exercise, DfT was satisfied that it would exceed the appropriate cost limit to locate, retrieve and extract all of the information within the scope of the refined request.
11. The DfT also offered within the internal review, further advice to narrow the scope of the request and provided examples.

Scope of the case

12. On 22 September 2016, the complainant contacted the Information Commissioner to complain about the way his request for information had been handled.
13. The Commissioner considers the scope of this case to be to determine if DfT has correctly applied section 12 of the FOIA to the withheld information. The Commissioner also considered whether the DfT provided appropriate advice and assistance under section 16 of the FOIA.

Reasons for decision

Section 12 – The cost of compliance

14. Section 12(1) of the FOIA states that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

15. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Regulations”) sets the appropriate limit at £600 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 24 hours work in accordance with the appropriate limit set out above.
16. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
 - determining whether it holds the information;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.

Would the cost of compliance exceed the appropriate limit?

17. As is the practice in a case such as this, the Commissioner asked the DfT for a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.

18. Therefore, in her assessment of whether the DfT has correctly relied upon section 12 of the FOIA, the Commissioner has considered the submission provided by the DfT to her, as well as the refusal notice and internal review provided by the DfT to the complainant.
19. The DfT has explained to the Commissioner that the request '*related to a DfT project called Operation Stack. In order to locate the information held falling within the scope of the request, we undertook a search of the emails held by Strategic Roads, Economics and Statistics Directorate. For this search, the terms "Operation Stack", "6 July 2016", "Decision" and "Announcement" were entered into the email search tool.*'
20. DfT considered this to be the fastest and most practical way to locate all the relevant emails. The search returned 5000+ emails and with '*the complex nature of the project and the high number of interested parties meant that each email we checked was lengthy and dense with information.*' DfT provided the complainant with an estimate of 5 minutes per email.
21. A further search of emails following the revised request produced 850 emails in the Strategic Roads team.
22. Following the intervention of the Commissioner, the DfT carried out a further sampling exercise:

'We took a random sample of 10 emails which potentially fell within the scope of the refined request and it took 40 minutes to read all of these to locate and extract the relevant information contained within these. Based on a revised calculation of each email taking 4 minutes to read, we could check 15 emails per hour. At that rate, the cost limit would be exceeded after checking 360 emails.'
23. DfT noted that this would not enable the Department to provide a full response to the request as records '*held by other teams – notably Private Office and Press Office – would also need to be searched to ensure that all potentially relevant information held by the Department was located.*'
24. Given the DfT's explanation of the time taken to search a limited part of the DfT's potential information falling within the scope of this request, the Commissioner is satisfied that compliance with the request would far exceed the appropriate limit. The DfT was therefore correct to apply section 12 of the FOIA to the complainant's request.

Section 16(1) – The duty to provide advice and assistance

25. Section 16(1) of the 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 practice (the “code”)¹ in providing advice and assistance, it will have complied with section 16(1).
26. The code advises that, where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the appropriate limit, it should provide the requester with reasonable advice and assistance.
27. The Commissioner’s guidance states that the minimum a public authority should do in order to satisfy section 16 is to indicate if it is not able to provide any information at all within the appropriate limit. Communicating this to a complainant may avoid further and futile attempts to refine the request to bring it under the appropriate limit. Also, if the requestor understands the way in which the estimate has been calculated to exceed the appropriate limit, it should help them decide what to do next².
28. In this instance, both the DfT’s refusal notice of 19 August and the internal review of 16 September confirmed that the information could not be provided within the appropriate cost limit and the DfT offered suggestions on how to make a new and more specific request.
29. The Commissioner has therefore concluded that the DfT provided such advice and assistance as was reasonable, and therefore complied with section 16(1).

¹ <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-ofpractice.pdf>

²

http://www.ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/costs_of_compliance_exceeds_appropriate_limit.ashx

Right of appeal

30. If 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. 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.
32. 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

Pamela Clements
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