

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 September 2017

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

Decision (including any steps ordered)

1. The complainant requested information about a specified grant. The Home Office refused to disclose this information under section 12(1) of FOIA as it estimated that the cost of compliance with the request would exceed the appropriate limit.
2. The Commissioner's decision is that the Home Office applied section 12(1) of FOIA correctly and so it was not obliged to comply with the complainant's information request. No steps are required.

Background

3. The Home Office explained that, following a series of terrorist attacks on the Jewish community in Europe (Toulouse, Brussels, Paris, Copenhagen, Marseille, Burgas), it was determined that funding to support enhanced security measures for the UK Jewish community, beyond ongoing extensive policing and security and intelligence agencies' efforts, was required to improve the security of and to provide reassurance to the Jewish community in the UK.
4. In March 2015, the then Prime Minister announced Government funding to provide for security measures at a range of Jewish locations nationally. In March 2016 and 2017 the Home Secretary announced the continuation of the funding, with the Office for Security and Counter Terrorism (OSCT) managing the grant, to enable security guarding at Jewish schools, colleges, nurseries and a number of other communal locations including synagogues across the whole country.

5. The Jewish Community Protective Security ('JCPS') Grant is delivered through the Community Security Trust ('CST'), which is a national charity specialising in providing security advice, support and some funding for the security of the Jewish community in the UK. The JCPS funds security guarding at Jewish state, free and independent schools, colleges and nurseries that are recognised by the Department for Education ('DfE') or OFSTED. All such educational establishments have been offered funding for security as priority recipients. DfE have been funding security guards at Jewish state and free schools in England and Wales since 2010-11 through the Schools Security Grant. In 2016-17 it was agreed between relevant secretaries of state that the Home Office would absorb administration of the Schools Security Grant within the JCPS Grant and that DfE would transfer the annual funding for this to the Home Office.
6. The CST wished to be the appropriate organisation to administer the JCPS Grant, as it is the only Jewish organisation with a national coverage and representation of all parts of the Jewish community. The CST was already the Grant Recipient for the Schools Security Grant.
7. The Commissioner understands that the request which is the subject of this notice was preceded by three earlier requests on the same subject matter; all were refused on cost grounds.

Request and response

8. On 13 April 2017 the complainant wrote to the Home Office and requested information in the following terms:
 - 1. A copy of any impact equality assessment conducted pertaining to the grant;*
 - 2. A copy of the grant form pertaining to the grant;*
 - 3. Communications between CST and OSCT regarding the giving of the grant;*
 - 4. Minutes of meetings regarding the grant;*
 - 5. Documents supplied by CST in relation to the grant. And;*
 - 6. Deliverables, outputs, criteria and/ or any other requirements pertaining to the grant."*
9. The Home Office responded on 28 April 2017. It refused to provide the requested information, citing section 12(1) of FOIA, the cost exclusion.
10. The complainant requested an internal review on 30 May 2017. The Home Office provided the outcome of its internal review, late, on 12 July 2017. It upheld its original position.

Scope of the case

11. The complainant contacted the Commissioner on 17 July 2017 to complain about the way his request for information had been handled. He said:

"All government departments, funding bodies, and granting giving organisations, are required to maintain accurate records of the funding given out to charities and similar organisations.

In the case of the £13.5m grant given to the Community Security Trust (CST), it either solicited the grant, or was approached by the Home Office and commissioned to undertake activity to the value of the grant.

Either way, as someone who has applied for many grants in my work in the voluntary and statutory sectors, and also having managed three separate funding programmes for two local authorities, I am aware that for auditing and public accounting purposes, information on the grant given to the recipient has to be kept for not less than seven years in an organized manual or recorded filing system.

It therefore goes without question, that the grant given to CST is in a filing system, either on a central computer or some other system under its own name. This information will contain what the grant is for, correspondence, deliverable, budgets, evaluation etc.

Whilst I accept some correspondence and communications related to it may be located elsewhere, I do not accept that the search for information in what is likely to be a centralized, organised filing system and kept in this way, in any way exceeds the search cost limit imposed under the Act.

As set out in a previous email to you, I should reiterate that my request has an impact on racial equality laws; in that other, equality organisations, have not had access to such funding, whether or not their need is the same or greater, meaning that the Home Office is in fact breaching the law and government policy by giving CST special treatment."

12. In support of his complaint the complainant submitted a 120 page report¹ by the Equality and Human Rights Commission which the Commissioner has viewed. This report covers an evaluation of the strategic funding programme for grants with various parts highlighted by the complainant, for example, project submissions and needs analysis.
13. The Commissioner has considered whether the Home Office is entitled to rely on section 12(1), the cost exclusion, in relation to this request.

Reasons for decision

Section 12 – cost of compliance

14. 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.
15. The appropriate limit in this case is £600, as laid out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”). This must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours’ work.
16. When estimating whether disclosing the requested information would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in disclosing the information. The estimate must be reasonable in the circumstances of the case. It is not necessary to provide a precise calculation.
17. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
 - determining whether the information is held;
 - 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.

¹ <https://www.equalityhumanrights.com/sites/default/files/research-report-93-the-strategic-funding-programme.pdf>

18. The Home Office advised that the request relates to a matter on which there has been a great deal of communications and on which it holds a large amount of information.
19. It explained that electronic searches based on key words will locate a lot of information potentially within scope of a request, but such searches are too wide in themselves to differentiate the information which falls within scope from that which is in the broader area but not within the exact terms of the request (for example because it is about wider or unrelated issues or because it post-dates the request). The Home Office estimated that locating, retrieving and extracting the information within scope would exceed the cost limit.
20. This was based on information provided by OSCT in terms of the number of records that would need to be examined to assess if they are relevant. The Home Office said that the grant manager in OSCT, who is the lead in terms of communication with CST, had advised he would need to review his email in-box which had 4,812 items in it, with 3,589 sent items, some of which would be within scope. He also held specific email folders for this subject area, all of which will be relevant, containing 767 emails. There were an estimated 100 additional documents on a shared drive on this specific subject. There would be some duplication among these records, but without examining them it was not possible to assess which fall within the scope of the request and which do not.
21. In terms of physical documents, the grant manager had a folder with at least 250 pages, all related solely to this subject area.
22. The Home Office stated that there would also have been some further electronic records relating to this subject held by at least five more senior officials, up to and including Head of Unit and the Director General of OSCT, since all were known to have been in contact with CST regarding this grant.
23. Overall, the Home Office estimated that there would be at least 5,000 emails and other records that would need to be examined individually to assess whether they are in scope; and possibly significantly more given that it does not know how many emails are held by the more senior officials.
24. It said a minimum estimate for examining individual emails or other documents is around one minute. Some would be much quicker, but some might require more consideration as to whether they fall within scope. Based on 5,000 records, that gives an estimate of over 80 hours' work.

25. In addition, the Home Office advised that the estimate has been based upon the quickest method of gathering the requested information.
26. The Commissioner queried why the estimate of the number of records potentially in scope increased from 5,000 in its initial response to 9,500 following its internal review. The Home Office told her that the internal review estimate of 9,500 seems to have been based on a sum of all the numbers of records referred to earlier in this notice (ie 4,812 + 3,589 + 767 + 100 + 250). It stated that this figure might seem a little excessive, in that it would be likely that electronic searches could reduce the total number of records which needed to be examined individually. Set against that, this total does not include any records held by more senior officials. On balance the Home Office considers that 5,000 is a reasonable, if conservative, estimate which in itself takes the request over the cost limit.
27. The Commissioner raised the following point submitted to her by the complainant:

"It therefore goes without question, that the grant given to CST is in a filing system, either on a central computer or some other system under its own name. This information will contain what the grant is for, correspondence, deliverable, budgets, evaluation etc.

Whilst I accept some correspondence and communications related to it may be located elsewhere, I do not accept that the search for information in what is likely to be a centralized, organised filing system and kept in this way, in any way exceeds the search cost limit imposed under the Act."

28. In reply the Home Office said:

"It is true that information about the grant given to CST would be in a filing system, but it is not necessarily true that all of the information within scope of the request would be. Information is not always filed as soon as it should be and some might not be filed at all (e.g. if it is ephemeral or duplicate). We consider that we are required to search any source where non-duplicate information within scope might be held, including email accounts and the paper records referred to earlier in this letter.

The problem is that the request is very broad in scope and is not limited by date. Parts 3 and 5 of the request in particular open up the scope significantly, particularly in encompassing all communications between OSCT and CST about the grant. It is possible that we would be able to locate some information within

scope of the request quite easily – for example any equality impact assessment (although I do not know whether one exists). However, in applying section 12(1) we have considered the request as a whole. This is in line with the ICO guidance on section 12², which says that:

'As a matter of good practice, public authorities should avoid providing the information found as a result of its searching and claiming section 12 for the remainder of the information'."

29. It is clear that the Home Office has approached the appropriate personnel in an effort to locate the information requested. As stated in her guidance: *"a public authority is not obliged to search for, or compile some of the requested information before refusing a request that it estimates will exceed the appropriate limit. Instead, it can rely on having cogent arguments and/or evidence in support of the reasonableness of its estimate"*. The Commissioner has considered the arguments submitted by the Home Office and is satisfied that its estimate is reasonable, given the amount of records potentially in scope.

Conclusion

30. From the information provided, the Commissioner has concluded that the Home Office was correct to rely on section 12 in relation to this request. She finds nothing included in the report submitted by the complainant that would lead her to conclude that section 12(1) is not engaged.

Section 16 – advice and assistance

31. If a public authority estimates that the cost of determining whether or not information is held would be above the appropriate limit, it is not required to conduct searches but should consider providing advice and assistance with a view to helping the requester bring his/her request under the cost limit.
32. Under section 16 of FOIA, therefore, public authorities have an obligation to advise what, if any, information may assist requestors with their requests.
33. In this case the Home Office said it suggested in the responses to the complainant's earlier requests that he might narrow the scope of the

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

request by being more specific about what information he requires, but he did not do so. It explained that all four requests he has submitted on this subject are worded slightly differently, but are all essentially the same in terms of their scope.

34. By trying to assist the complainant in narrowing his request the Commissioner is satisfied that the Home Office has complied with its section 16 obligation in this case.

Other matters

Internal review

35. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As she has made clear in her '*Good Practice Guidance No 5*', the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 31 working days for an internal review to be completed, despite the publication of her guidance on the matter.

Right of appeal

36. 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

37. 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.
38. 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

Carolyn Howes
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