

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 May 2018

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

#### Decision (including any steps ordered)

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1. The complainant requested information about citizenship applications refused under the good character requirement. The Home Office refused the request on cost grounds under section 12(1) of the FOIA.
2. The Commissioner's decision is that the Home Office applied section 12(1) incorrectly as it did not estimate reasonably that the cost of the request would exceed the limit. She also finds that in failing to advise and assist the complainant on how to refine his request to bring it within the cost limit, the Home Office breached section 16(1) of the FOIA. It is now required to write to the complainant with a fresh response to his request.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
  - Write to the complainant with a fresh response to the request that does not rely on section 12(1) of the FOIA.
4. The Home Office must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

## Request and response

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5. On 12 July 2017 the complainant wrote to the Home Office and requested information in the following terms:

*"I assume the Home Office is still operating a system that does not allow staff to easily locate which category of the Good Character requirement has been applied when refusing citizenship applications.*

*That being the case, and with reference to the Home Office's contention that a single check takes 8 minutes, I would like to renew this request but to ask for a breakdown of refusals for failing the good character requirement for the last 175 refusals under this category from the date of this FOI request.*

*I would like the breakdown to show refusals under each bracket of 'Annex D: the good character requirement'. Ideally I would like the breakdown to include each of the subsections in sections 1 to 9 but alternatively the figures for each of the general sections 1 to 9 can be provided."*

6. The Home Office responded on 1 August 2017. It stated that the request was refused on cost grounds under section 12(1) of the FOIA.
7. The complainant responded on 1 August 2017 and requested an internal review. The Home Office failed to respond with the internal review outcome within a reasonable period.

## Scope of the case

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8. The complainant contacted the Commissioner on 20 September 2017 to complain at that stage about the failure by the Home Office to complete the internal review promptly. The Commissioner initially contacted the Home Office about the failure to complete the internal review. When this failed to spur the Home Office into activity, the complainant confirmed that he wished the Commissioner to consider the refusal of his request without waiting any longer for the internal review to be completed.
9. The analysis below covers the citing of section 12(1). The Commissioner comments further on the various delays caused by the Home Office in this case in the Other matters section.

## Reasons for decision

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### Section 12

10. Section 12(1) of the FOIA provides that a public authority is not obliged to comply with a request where it estimates that the cost of doing so would exceed the appropriate limit, which for the Home Office is £600. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the “fees regulations”) provide that the cost of a request must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours. The fees regulations also specify the tasks that can be taken into account when forming a cost estimate as follows:
- Determining whether the requested 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.
  - Extracting the information from a document containing it.
11. A public authority is required to estimate the cost of a request, rather than form an exact calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by the Home Office was reasonable; if it estimated reasonably that the cost of compliance with the request would exceed the limit of £600, section 12(1) applied and it was not obliged to comply with the request. As noted in the Commissioner’s guidance on section 12<sup>1</sup>, a reasonable estimate is one that is “*sensible, realistic and supported by cogent evidence*”.
12. Turning to the reasoning of the Home Office in this case, the starting point for the Home Office was that the information requested by the complainant was not available in a ready-collated form, instead it would have to be gathered from multiple sources. Its cost estimate was based primarily on the time that would be spent on two activities. First it stated that the record of each case within the scope of the request would require examining to locate and extract the information specified

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<sup>1</sup> [https://ico.org.uk/media/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

by the complainant. It stated that this would involve both computer and paper files and would take an estimated eight minutes per file. Searching the 175 files specified in the request would therefore take an estimated 23 hours and 20 minutes, or approximately £583.

13. Secondly, the Home Office stated that it would be necessary to spend 15 hours, or £375, on *"file handling"*. It defined this as inputting *"the 175 requests into the report and physically handle/allocate the files on receipt"*.
14. Turning to the Commissioner's view on this estimate, she does not have any grounds on which to dispute that the requested information is not readily available, so does not. As to the detail of the estimate, the Commissioner previously issued a decision notice<sup>2</sup> relating to a similar information request made by the complainant. In that case, the Commissioner accepted an estimate of three minutes per file for similar work as would be required by the current request. Evidently the Home Office now estimates that it would take more time to gather the requested information than it estimated previously. The Commissioner is not aware of any reasoning explaining this increased estimate, so finds it difficult to accept the estimate of eight minutes per file.
15. On the second main point of the cost estimate – file handling – the representations from the Home Office included little detail. Whilst the Home Office stated that this would involve 15 hours work, the Commissioner has been given no detail on what this time would be spent doing. Whilst the Commissioner can accept that handling the paper files and gathering the necessary information from them would take some time and can be regarded as one of the activities covered by the fees regulations, she has difficulty in accepting the £375 estimate given the lack of detail in the representations provided to her. Given this difficulty, she does not accept that estimate.
16. There were also other elements to the cost estimate. These were the time required to prepare a report within which the requested information would be disclosed and a contractual cost for the retrieval of the paper files. On the time to prepare a report, the Commissioner's understanding was that this was covered under *"file handling"*, the description of which included a reference to inputting the requested information into a report. As to the contractual cost, the Commissioner does not dispute

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<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014898/fs50652544.pdf>

this element of the estimate and notes that the total given by the Home Office for this element was £74.90.

17. Given the lack of detail in the reasoning of the Home Office, the Commissioner does not consider herself to be in a position where she can accept that the estimate made by the Home Office was sensible, realistic and supported by evidence. This was despite being informed of the following in this case:

*"The approach of this office is to give a public authority one more opportunity to justify its position before issuing a decision notice; protracted correspondence with public authorities will not be entered into. You should therefore ensure that your final position in relation to this request is set out fully in your response to this letter."*

18. In light of the lack of detail in the description of its cost estimate, the Commissioner's view is that she has no choice other than to find that the cost estimate made by the Home Office was not reasonable and that compliance with the request would not exceed the cost limit. Her conclusion is, therefore, that the Home Office relied on section 12(1) incorrectly and at paragraph 3 above it is now required to provide a fresh response to the request that does not rely on section 12(1).

## Section 16

19. Section 16(1) of the FOIA provides that all public authorities are under a duty to provide advice and assistance to any person who has made or who intends to make an information request to it. The Commissioner's aforementioned published guidance on section 12 sets out the following minimum advice and assistance that a public authority should provide to a requester when refusing a request on cost grounds:
- either indicate if it is not able to provide any information at all within the appropriate limit; or
  - provide an indication of what information could be provided within the appropriate limit; and
  - provide advice and assistance to enable the requester to make a refined request.
20. In the refusal notice of 1 August 2017 the Home Office stated to the complainant that *"to provide any information based on reasons for refusal against good character will break the costs exemption"*. The Commissioner is not aware of the basis of this statement and it does not accord with the representations provided to the Commissioner by the Home Office in this case. These suggested that there is a level at which

the scope of a request similar to that above would be within the cost limit.

21. In failing to offer any advice and assistance to the complainant on how to refine his request so that it was within the cost limit, the Home Office breached section 16(1) of the FOIA. As the requirement to remedy this breach has been superseded by the step in relation to the section 12(1) finding, no remedial step in relation to this breach is required.

### **Other matters**

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22. The approach of the Commissioner is that internal reviews should be completed within a maximum of 40 working days. In this case, the Home Office failed to carry out an internal review prior to the intervention of the Commissioner. The Commissioner has made a separate record of this delay and this will contribute to the overall picture she maintains of the timeliness with which the Home Office is meeting its obligations under the FOIA.
23. The Home Office was responsible for a further delay during the investigation of this case. After being informed by the Home Office that its position was to change and it would comply with the complainant's request, the Commissioner agreed to pause her investigation whilst the reconsidered response to the complainant was prepared. Regrettably, after some time had passed the Home Office subsequently stated that it maintained the refusal of the request above under section 12(1) of the FOIA, meaning that the pause in the Commissioner's investigation had been for no reason. This was unhelpful and the Home Office must avoid any repeat.

## Right of appeal

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24. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

25. 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.
26. 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** .....

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**