

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 May 2018

Public Authority: Office of the Independent Anti-Slavery Commissioner

Address: 5th Floor
Globe House
89 Eccleston Square
London
SW1V 1PN

Decision (including any steps ordered)

1. The complainant submitted multiple requests for copies of correspondence, meeting minutes and agendas involving the Independent Anti-Slavery Commissioner and current and former members of its Advisory Panel. The Office of the Independent Anti-Slavery Commissioner estimated that compliance with the requests would exceed the appropriate costs limit and refused them under section 12(1) of the FOIA.
2. The Commissioner's decision is that the Office of the Independent Anti-Slavery Commissioner was entitled to rely on section 12(1) of the FOIA to refuse to comply with the requests.

Request and response

3. On 11 November 2017, the complainant wrote to the Office of the Independent Anti-Slavery Commissioner ("the IASC") via the *Whatdotheyknow* website, and submitted four separate requests for information:

4. Request 1

"(a) The minutes and agenda of all meetings of the IASC's Advisory Panel

(b) All correspondence between the Advisory Panel and the office of IASC and Kevin Hyland."

5. Request 2

"(a) All communications between Sandra Horley CBE and the Office of the Independent Anti-slavery Commissioner, Kevin Hyland.

(b) Agendas and minutes of any meetings between Sandra Horley and the Office of the Independent Anti-slavery Commissioner, Kevin Hyland.

From the date of the appointment of the Independent Anti-slavery Commissioner, Kevin Hyland, in November 2014 to present date."

6. Request 3

"(a) All communications between Fiona Hill and the Office of the Independent Anti-slavery Commissioner, Kevin Hyland.

(b) Agendas and minutes of any meetings between Fiona Hill and the Office of the Independent Anti-slavery Commissioner, Kevin Hyland.

From the date of the appointment of the Independent Anti-slavery Commissioner, Kevin Hyland, in November 2014 to present date."

7. Request 4

"(a) All communications between the Bishop of Derby, The Rt. Rev. Dr. Alastair Redfern and the Office of the Independent Anti-slavery Commissioner, Kevin Hyland.

(b) Agendas and minutes of any meetings between Bishop of Derby and the Office of the Independent Anti-slavery Commissioner, Kevin Hyland.

From the date of the appointment of the Independent Anti-slavery Commissioner, Kevin Hyland, in November 2014 to present date."

8. The IASC responded on 8 December 2017. It stated that it was treating the four requests as one, as they had been received on the same day, and it cited section 12 of the FOIA (cost of compliance), saying that it was not obliged to comply with the aggregated request as it estimated that the total cost of doing so would exceed the appropriate cost limit of

£600. It invited the complainant to refine the request, although it said that breaking it down into a series of smaller requests might still exceed the cost limit.

9. The complainant replied the following day, refining the scope of the requests:

"...please can you provide details that relate or mention any of the following: myself, Unseen, the Modern Slavery Helpline. I believe these parameters will enable you to come under the £600 threshold.

Please also note that this request is to be treated separately and not amalgamated as you have suggested in relation to my other FOI's."

10. The IASC wrote to the complainant on 10 January 2018. In response to part a) of Request 1, it disclosed copies of its Advisory Panel meeting agendas and minutes. With regard to the remaining requests, it said it was still not possible to comply with them within the cost limit, which it stated as being £450.
11. The complainant requested an internal review on 10 January 2018, stating that the IASC had acted incorrectly by seeking to treat the requests as one for cost calculation purposes. The IASC responded on 8 February 2018, upholding its handling of the request and commenting that compliance with the refined request alone would exceed the cost limit.

Scope of the case

12. The complainant contacted the Commissioner on 8 February 2018 to complain about the way his request for information had been handled. He referred the Commissioner to the concerns set out in his correspondence with the IASC.
13. The Commissioner has considered in this decision notice whether the IASC has applied section 12(1) of the FOIA correctly and in particular, whether it was entitled to aggregate the requests.
14. Request 1(a) is excluded from the scope of this decision notice, as that information was disclosed.

Reasons for decision

Section 12(1) – Cost of compliance exceeds appropriate limit

Section 12(4) – aggregation of related requests

15. Section 12(1) of the FOIA allows a public authority to refuse a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 SI 2004 No 3244 ("the Fees Regulations.").
16. Under section 12(4) of the FOIA, when a public authority is estimating whether or not the cost of compliance with the legislation would exceed the appropriate limit, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied.
17. Those conditions require the requests to be:
 - made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
 - made for the same or similar information; and
 - received by the public authority within any period of 60 consecutive working days.
18. The ICO guidance on the application of section 12 FOIA¹ considers the aggregation of requests. The wording of Regulation 5 of the Fees Regulations – that the requests need only to relate "to any extent" to "the same or similar information" - provides for a broad interpretation when considering aggregation. The guidance says:

"...requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested".

1

https://ico.org.uk/media/fororganisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

19. The IASC said that the requests had been aggregated because they were received on the same day, from the same individual and were considered to be for similar information. It said that the individuals named in requests 2) – 4) are or were members of the IASC's Advisory Panel. It said that requests 2) - 4) were essentially a refinement of request 1), and that the complainant had submitted them in an attempt to circumvent the provisions of section 12(1) of the FOIA to the initial request.
20. The Commissioner notes that the requests contain the overarching theme, or common thread, of retrieving information relating to the complainant, Unseen and the Modern Slavery Helpline contained in correspondence, meeting minutes and agendas involving the IASC and its Advisory Panel. Taking into account the nature of the information requested, and the fact that requests 2) – 4) appear, between them, to request some of the information covered by request 1), the Commissioner considers that there was an overarching theme and common thread linking each of the requests.
21. The Commissioner considers that, although its content might vary, the nature of the information requested was *"the same or similar"* across each request. Therefore, taking into account the circumstances of the requests, and in line with other comparable ICO decisions, the Commissioner decided that the IASC was entitled to aggregate the requests for the purposes of calculating the cost of compliance as set out in section 12(4) of the FOIA.
22. The Commissioner has gone on to consider whether the estimated cost of complying with the aggregated requests was reasonable.
23. The appropriate limit is set in the Fees Regulations at £600 for central government departments and £450 for all other public authorities. The IASC initially cited the higher limit of £600, before stating that the £450 limit applied in the internal review. The Commissioner is satisfied that the IASC does not fall within the definition of a central government department and therefore that the lower limit of £450 applies.
24. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour of staff time, meaning that section 12(1) of the FOIA effectively imposes a time limit for the IASC of 18 hours work for an individual request.
25. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;

- locating a document containing the information;
 - retrieving a document containing the information; and
 - extracting the information from a document containing it.
26. The four activities are sequential, covering the information retrieval process of the public authority.
27. The IASC explained that it is a small office, comprising seven members of staff. Most are specialist leads on strategic topics in the field of modern slavery and human trafficking and the workload is exceptionally high. They have no administrative support. Dealing with requests for information takes staff members away from their primary work and can impact on their effectiveness.
28. It set out the estimated cost of dealing with the aggregated requests as follows:
- "In order to determine whether the information is held, locating, retrieving and extracting the information 13 email accounts would have to be searched and 90 hard files examined containing hundreds of documents. There are also electronically held files which run into many hundreds of documents. There are up to 6 search permutations for this request.*
- On one random email account with one search permutation 80 potential emails were identified. Taking an average of reading each one at 3 minutes this would take 4 hours. For that account to be searched on the other permutations would take 24 hours. The cost for one account is £600. For a search of 13 email accounts would take an estimated 312 hours."*
29. The IASC confirmed that there was no quicker way of obtaining the requested information other than as described above.
30. The Commissioner considers the cost estimate provided by the IASC to be cogent, well evidenced and reasonable. Even if the estimate of three minutes to examine each email was reduced to just 1 minute, compliance with the aggregated requests would still exceed the appropriate limit of 18 hours or £450 by some degree. The Commissioner therefore considers that the IASC was not required to comply with the aggregated requests by virtue of the provisions of section 12(1) of the FOIA.

Right of appeal

31. 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

32. 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.
33. 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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF