

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 3 July 2018

**Public Authority:** Department of Health & Social Care

**Address:** 39 Victoria Street

London

SW1H 0EU

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from the Department of Health and Social Care (the Department) relating to any complaints it may have made to the BBC over a five month period relating to any of its radio, TV or on-line production. The Department responded to the request, citing section 12 of the FOIA.
2. The Commissioner's decision is that the Department is entitled to rely on section 12 of the FOIA in this case. She therefore does not require any further action to be taken.

#### **Request and response**

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3. On 28 August 2017, the complainant wrote to the Department and requested information in the following terms:

"I would like to request the following information under the Freedom of Information Act....

Please note that I am only interested in information which was generated between 1 March 2017 and 1 August 2017.

Please note that the reference to the Department should be taken to include the Secretary of State, the Secretary of State's private office and the department's press and public relations team.

Please note that the reference to BBC programmes should include all of the BBC's output irrespective of whether its on TV or Radio or online and irrespective of whether its broadcast at home or abroad. It should also include content delivered via the BBC's website and online services.

1...During the aforementioned period did the Department complain in writing to the BBC about any of its news or current affairs coverage either on TV, radio or online.

2...If the answer is yes can you please provide a copy of this written complaint. Can you also provide copies of any subsequent correspondence and communications relating to the complaint. Please note that I am interested in receiving both sides of the correspondence and communications including emails.

3...During the aforementioned period did the Department complain in writing to the BBC about any other other BBC programme or any other BBC online content.

4...If the answer is yes can you please provide a copy of this written complaint. Can you also provide copies of any subsequent correspondence and communications relating to the complaint. Please note that I am interested in receiving both sides of the correspondence and communication.”

4. The Department responded on 26 September 2018 citing section 12 of the FOIA.
5. The complainant requested an internal review on 4 October 2018.
6. The Department carried out an internal review and notified the complainant of its findings on 5 February 2018. It upheld its previous application of section 12 of the FOIA.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 5 February 2018 to complain about the way his request for information had been handled. He stated that he does not accept the information cannot be disclosed within the time and cost constraints laid down by the FOIA and he has submitted identical requests to other government departments which were able to process the request. He also advised that he is unhappy with the time taken by the Department to carry out the internal review.

8. The Commissioner considers the scope of this investigation is to determine whether the Department is entitled to rely on section 12 of the FOIA in this case.
9. The complainant's concerns with regards to the internal review will be addressed in the 'Other matters' section of this notice.

## Reasons for decision

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10. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to comply with it.
11. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 24 hours work in accordance with the appropriate limit of £600 set out above, which is the limit applicable to the Department. A public authority can take into account the time and cost involved in carrying out the following activities under section 12 of the FOIA:
  - (a) determine whether it holds the information;
  - (b) locate the information, or a document which may contain the information;
  - (c) retrieve the information, or a document which may contain the information; and
  - (d) extract the information from a document containing it.
12. Where a public authority claims that section 12 of the FOIA is engaged it should, *where reasonable*, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.
13. The Department confirmed that it estimates that it would take 33 hours to comply with the complainant's request. This estimate is based on one official within the Media and Campaigns team (the equivalent of a 'press and public relations team') carrying out a search of their electronic documents and emails using the search term 'BBC'. The search returned 173 results under documents and 1823 results under emails. It estimates that if it took just one minute to review each document and email individually to determine whether it was in the scope of the request it would take 1996 minutes in total which equates to

approximately 33 hours. It explained that this exceeds the appropriate limit prescribed by the FOIA of 24 hours or 3.5 working days. In addition, it argued that due to the way the complainant's request is framed, it would require the Secretary of State, the Secretary of State's private office and the Media and Campaigns team (46 individuals) to carry out searches.

14. For the above reasons it is satisfied that section 12 of the FOIA applied comfortably to the complainant's request.
15. The Commissioner asked the Department to explain in more detail exactly where the requested information would be held and what would be involved in locating, retrieving and extracting the requested information. She also asked whether there was a central location for the requested information, who within the Department would be involved in such matters and whether more refined searches could be undertaken to meet the scope of the request.
16. The Department explained that there is no central location within the Department where the requested information would be stored. The request has asked for the Secretary of State, the Secretary of State's private office and the Media and Campaigns team, of which there is 46 members of staff, to be searched. All complaints of the nature specified would be run past the Media and Campaigns team as such complaints could generate publicity and press. A member of that team was asked to establish exactly how many records or documents they hold which could potentially fall within the scope of the request and the results were communicated to the complainant. The member of staff used the search term 'BBC' and retrieved 173 documents and 1823 emails. Using a very conservative estimate of 1 minute per document/email, the Department estimates that it would take approximately 33 hours to review these results and extract any recorded information falling within scope. This was only one member of staff within the Department and it is likely that other members of staff would have to be asked to carry out a similar exercise making the true cost of compliance even higher.
17. The Department explained how complaints of this nature would be dealt with. It confirmed that the policy area would raise any complaint and deal with it. So for example, any complaint about the BBC in terms of social care would be raised by the social care policy team. The complaint would be dealt with by a senior member of staff in that team and run past the Minister for social care. It would also run the complaint past the Media and Campaigns team because such complaints are likely to generate publicity and press.
18. In terms of the scope of the request, it spanned a period of 5 months and was far reaching in terms of trying to search and identify any

relevant information. It advised the Commissioner that there was no way of refining the search based on the wording of the complainant's request. It can only search using the term 'BBC' and if it searches using the term 'complaint' as well, it identifies all records which refer to the 'BBC' and all records that refer to a 'complaint' and identifies a lot more information.

19. The Commissioner is satisfied that there is no central location for the storage of this type of information, from which the requested information could be extracted more easily and in a less time consuming manner. The Department has explained that the relevant policy area would raise and deal with any such complaint, run this past its Minister and inform the Media and Campaigns team in all cases due to the likelihood of such a matter generating publicity, interest and press. A member of staff within that team has already searched their records to see how many potential emails and documents they hold. The Commissioner accepts that it can only search using the word 'BBC', as there is no possibility of using more refined search terms from the wording of the request. A substantial amount of emails and documents were retrieved. The Commissioner considers one minute per email or document is a fairly conservative estimate in the circumstances and in reality at least some may take longer than this to review. But even based on one per minute it would take well in excess of 24 hours to comply with the request. She accepts that it may be required for other members of this team to carry out similar searches and tasks too because it is unlikely that just one of the 46 members of staff within this team would deal with such complaints from all policy areas. This would increase the time it would take to comply with the request even further.
20. The Commissioner is satisfied from the submissions she has received from the Department that there is no other means of locating, retrieving and extracting the requested information in a less costly manner. Therefore, for the above reasons, she is satisfied that section 12 of the FOIA applies to this request.
21. With regards to the complainant's comments that other government departments have been able to process identical requests, this may indeed be the case. But it is the Commissioner's view that different public authorities will have different methods of raising and addressing such complaints and different means of storage. The relevant consideration here is how the Department holds the requested information and whether it can locate, retrieve and extract that information within the cost limit.
22. In terms of section 16 and the duty to provide advice and assistance, the Commissioner notes that the Department informed the complainant that it *may* be able to process a request within the cost limit if it was

more refined. As an example it stated that the complainant could consider narrowing the request to particular teams or policy issues.

23. The Commissioner is satisfied that the Department provided advice and assistance to the complainant in accordance with its obligations under section 16 of the FOIA.

### **Other matters**

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24. The Commissioner notes that the complainant is unhappy with the length of time the Department took to carry out the internal review. It was requested on 4 October 2017 but the complainant was not notified of the outcome until 5 February 2018; some four months later.
25. The Commissioner considers the delay is excessive in this case and unacceptable. The section 45 code of practice recommends that public authorities carry out an internal review within 20 working days of receipt. The Commissioner permits a further 20 working days in particularly complex or voluminous cases. However, the Commissioner considers this particular request to be fairly straightforward; not complex or voluminous in anyway. It had already conducted a sampling exercise and was comfortable that the request exceeded the cost limit. This only needed checking again to ensure that it was accurate and there was no other means of complying with the request and a final response sent. The Commissioner considers this could have been comfortably completed within 20 working days.

## **Right of appeal**

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26. 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: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

27. 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.
28. 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 Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**