

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

### **Decision notice**

**Date:** 19 July 2023

**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 processing timelines for visa extensions. The Home Office relied on section 12 (cost of compliance) of FOIA to refuse the request.
2. The Commissioner's decision is that the Home Office has properly relied on section 12(1). However, he finds a breach of section 16 (advice and assistance) of FOIA.
3. The Commissioner requires the Home Office take the following step to ensure compliance with the legislation:
  - provide the complainant with advice and assistance, as far as it is reasonable to do so, in accordance with section 16 of FOIA.
4. The Home Office must take this step 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 Act and may be dealt with as a contempt of court.

#### **Request and response**

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5. Following an earlier, unsuccessful, request for information, on 14 October 2022 the complainant made a new request for information. The complainant wrote to the Home Office and requested information in the following terms:

"Approximately 18 months ago I requested information on the length of time it took the UKVI [UK Visas and Immigration] to issue the NHS visa extensions. This request and your response (refusal) can be viewed here:

[link redacted] (also pasted below).

I accept due to the length of time you are free to treat this as a new FOI request.

I sought information regarding the length of time it was taking the home office [sic] from the receipt of all necessary documents and BRP [Biometric Residence Permit] to when a new BRP was issued for visas issued under the NHS visa extension [...].

This request was refused because it was claimed that it would require you to manually inspect every case in order to determine this (clearly unreasonable burden).

I find it exceedingly unlikely that a competent Home Office maintained no information on processing times of various visa categories, particularly since you made specific claims about the expected timeframe (4 weeks) on your website. Under section 16 of the act could you please advise what would be a reasonable document or documents that I could request that would inform me about the timeframes that it took the Home Office to issue these visa extensions while not requiring you to manual [sic] check every individual case.

In addition, your prior response did not address another aspect of my original request, which I am requesting again. Please provide any documents regarding "technical issues" or similar resulting in delays in issuing these BRPs. For clarity, I am referring to documents referring to systematic issues, rather than individual cases (e.g. emails reporting no BRPs are being issued due to some technical failure, not a unique delay of a single individual). The scope here is only issues which affected the 1 year covid NHS visa extension".

6. The previous request dated 22 March 2021, which was included states:

"Previous request --

During the COVID-19 pandemic UKVI has create a pathway for free 1-year extensions to visa for eligible health workers (<https://www.gov.uk/coronavirus-health-wo...>). UKVI states the majority of cases "will be concluded in 4 weeks." ([https://hsforms.smartcdn.co.uk/form\\_250....](https://hsforms.smartcdn.co.uk/form_250....)).

This request seeks information regarding this claim for a 4 week processing time, particularly regarding the issuance of physical BRPs.

In particular, please provide:

- Information or statistics regarding the median, or other statistical measures for the timeframe between submissions received for the "free 12-month healthcare worker visa extension" visa extension and the time to issuing a physical BRP.
- Correspondence or statistics regarding "technical issues" or delays in issuing physical BRPs for these visa extensions.
- Other non-personal information that might support or disprove the stated claim that "will be concluded in 4 weeks," particularly with regard to the issuance of physical BRPs for this visa category, such as internal tracking of how well UKVI is meeting their stated goal.

For the avoidance of any doubt, this request is for information regarding processing timeframes, statistics and delays affecting this visa category. It explicitly does not seek private information regarding any particular person's case".

7. The request was made using the 'whatdotheyknow' website.
8. For the purposes of this decision notice, the Commissioner will refer to the request dated 14 October 2022 as Home Office 'case reference 1'.
9. The Home Office provided its substantive response on 23 November 2022. It refused to comply with the request, citing section 12(1) (cost of compliance) of FOIA.
10. The complainant expressed dissatisfaction with that response.
11. In subsequent correspondence, the Home Office told the complainant:  

"In a section 12 – Cost Limit response if one of several enquiries fall to expenditure then they all do. Therefore, the letter you received fully answered your enquiries at that point".
12. In further correspondence about its handling of 'case reference 1', the Home Office advised that it had taken one aspect of the request forward as a new FOI - namely that part of the request relating to 'any documents regarding "technical issues" or similar resulting in delays in issuing these BRPs. For the purposes of this decision notice, the Commissioner will refer to that new request as 'case reference 2'.

13. Following an internal review, the Home Office wrote to the complainant on 31 January 2023. It maintained its view that section 12 applies to the information in scope of 'case reference 1'.

## **Scope of the case**

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14. The complainant contacted the Commissioner on 24 February 2023 to complain about the way their request for information had been handled.
15. The complainant was dissatisfied that the Home Office had not provided information that they considered would help to understand the Home Office's actual performance in relation to processing visa extensions.
16. Nor did he consider that the Home Office had properly considered providing reasonable advice and assistance.
17. As is his practice, the Commissioner wrote to both parties setting out the scope of his investigation. The Commissioner told the complainant that his investigation will look at whether the Home Office is correct when it says that it is entitled to rely on the section 12(1) FOIA exemption. The Commissioner noted the particular aspects of the Home Office's response that the complainant was concerned about, including the lack of section 16(1) FOIA advice and assistance.
18. The complainant responded, confirming that the Commissioner had captured their primary concern.
19. In light of the above, the Commissioner considers the scope of this case is to determine if the Home Office correctly cited section 12(1) of FOIA in response to 'case reference 1'.
20. The Commissioner has also considered whether the Home Office met its obligation to offer advice and assistance, under section 16 of FOIA.
21. The Commissioner understands that the Home Office provided a separate response to 'case reference 2'. The Home Office's handling of 'case reference 2' is outside the scope of this decision notice.

## **Reasons for decision**

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### **Section 12 – cost of compliance**

22. 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"

as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).

23. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the Home Office is £600.
24. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours for the Home Office.
25. The Commissioner notes that the request contains several parts which may be considered as separate requests. However, as the information all relates to visa extensions, they may be aggregated under section 5 subsections (1) and (2) of the Fees Regulations. This means that the cost limit the Commissioner will use is £600 for the whole request.
26. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
  - determining whether the information is held;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
27. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”.
28. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.

**Would the cost of compliance exceed the appropriate limit?**

29. The Home Office told the complainant that the information in scope of the request "is not held in a reportable field on Home Office computer systems". It said that, to find the information would require a case-by-case review and that the cost of locating and collating any relevant information and extracting the information would exceed the appropriate limit of £600.
30. Following an internal review, it clarified that "a manual trawl of over 20,000 cases would be required".
31. Explaining why they would have to go through that number of visa extension cases to establish which ones relate to NHS extension cases, in its submission to the Commissioner, the Home Office explained:

"The way NHS extensions were implemented means they weren't tied to a specific visa category ...The Home Office's case working systems and MI therefore only shows an extension [...] and not whether or not it was an NHS extension".
32. It also told him:

"The NHS extension was delivered in multiple tranches and the process changed as it developed. The initial tranche had no form requirement for the individuals. The subsequent tranches 4-week timescale was an estimate derived from lessons learned and based on the duration expected for each of the component actions needed to enact the 1 year extension".
33. By way of background to the process, the Home Office explained that the four weeks was to start:

"... once the Home Office had received the three required pieces of data for each case which was the completion of a standalone Stakeholder Management and Relationship Tool (SMART) this is not an application form sent in to Home Office, rather a means of capturing information".
34. As is his practice in a case such as this, the Commissioner asked the Home Office to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request. In response, it told him:

"To obtain the data requested on the 4 weeks the Home Office would have to manually open approximately 20k cases individually and check 3 component factors ... just to ascertain the date the 4 weeks began. The Department would then need to use that date, go into each record individually and work out when it [sic] the case was concluded".

35. With regard to estimating the work involved, the Home Office told the Commissioner:

"A dip sample of 10 cases undertaken by the business area identified it would take approximately 15 minutes per case, and as such with the approximate figure of 20k records in total this would take approximately 5000 hours. Even if this could be reduced to a very conservative 3 mins per record this would still require 1000 hours work, and therefore £25k".

36. Addressing the part of the request about information relating to BRP technical issues, the Home Office told the Commissioner:

"To provide this, in addition to the estimate 5,000 hours on the NHS extension data, the HO would require a significant number of staff from across the Department to manually search email archives for the period from March 2020 until late 2021".

37. When dealing with a complaint to him under FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, the Commissioner's role is simply to decide whether the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.

38. As noted above, the Commissioner considers that the Home Office was entitled to aggregate the separate requests for information within 'case reference 1' to determine whether compliance would exceed the appropriate limit.

39. In essence, therefore, this case turns on whether the estimate provided by the Home Office was reasonable.

40. Even if the Home Office's estimate of the time taken to conduct a manual review of each case was excessive, from the evidence he has seen, the Commissioner is satisfied that the cost limit is met due to the volume of records needed to be reviewed, and the fact that a manual review is required.

41. Section 12(1) does therefore apply and the Home Office is not required to comply with the request.

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

42. Section 16(1) of FOIA sets out a duty for a public authority to provide advice and assistance to anyone who has made, or is thinking of making, a request for information.

43. Where a public authority claims that section 12 of 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 FOIA.
44. In its correspondence with the complainant, the Home Office said that it is unable to suggest a way in which the request might be reworded or redefined in such a way that it would fall within the cost limit.
45. Similarly, in its submission to the Commissioner, the Home Office explained:

“The Department endeavoured to assist [the complainant] to refine his request, but as the information cannot be captured by standard reporting it was difficult to give any meaningful specific advice and assistance to him”.
46. The Commissioner notes that, when asking for assistance in formulating their request, the complainant specifically asked the Home Office to advise what would be a reasonable document or documents that they could request, that would give information about timeframes without requiring the Home Office to manually check every individual case.
47. The Commissioner acknowledges that the complainant considers that the Home Office could, for example, suggest an alternative source of information regarding their performance, such as an email exchange or management review.
48. The Commissioner accepts that the Home Office explained why it was not able to provide any meaningful advice about how to refine the request to bring it within the cost limit. However, he considers that it failed to address the specific point made by the complainant in relation to an alternative source of information regarding performance.
49. The Commissioner has therefore recorded a breach of section 16 of FOIA. He now requires the Home Office to respond to the complainant's specific request to be provided with advice and assistance to help them formulate their request.



## Right of appeal

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50. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

51. 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.
52. 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 .....**

**Laura Tomkinson  
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