

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 July 2023

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

Decision (including any steps ordered)

1. The complainant made six requests on the subject of how the Home Office manages migrant vessels in the Channel, received over an eight day period in February 2023. The Home Office aggregated the requests, as they were similar in context and overall scope, and refused to provide any of the requested information on the basis that to do so would exceed the cost of compliance (section 12(1) of FOIA).
2. The Commissioner's decision is that the Home Office was entitled to aggregate the requests under section 12(4) of FOIA and has properly relied on section 12(1) of FOIA to refuse the requests. The Commissioner considers that the Home Office has complied with its obligations under section 16(1) of FOIA to provide adequate advice and assistance.
3. The Commissioner does not require any steps to be taken as a result of this notice.

Requests and responses

4. The six requests are as set out in Annex A at the end of this decision notice.
5. The Commissioner notes that the first request was received by the Home Office on 6 February 2023, with the sixth request being received

on 13 February 2023, meaning that six requests were received within an eight day period.

6. The Commissioner has also noted that the Home Office aggregated the six requests in accordance with section 12(4) of FOIA and that it responded on 7 March 2023, refusing to provide any of the requested information citing section 12(1) of FOIA.
7. The complainant requested an internal review on 8 March 2023. He stated that he considered that the aggregation and refusal of his requests was not correct, because the aggregation was used as justification to not answer any of the questions raised in his requests. In addition, he argued that the information in scope of all the requests should be readily available and should be disclosed.
8. Following its internal review the Home Office wrote to the complainant, late, on 21 April 2023. It said it had considered the complainant's concerns but maintained it was entitled both to aggregate the requests and to rely on section 12(1) of FOIA. The Home Office further explained that the Commissioner's section 12 guidance¹ states that if any one part of a request triggers the cost limit, then the request can be refused in its entirety.

Scope of the case

9. The complainant contacted the Commissioner on 26 April 2023 to complain about the way his request for information had been handled. He raised concerns about the Home Office aggregating his requests and thereby refusing them on cost grounds.
10. The Commissioner has considered whether the Home Office was entitled to aggregate the six requests in accordance with section 12(4) of FOIA.
11. He has also examined whether the Home Office properly relied on section 12(1) of FOIA and whether it complied with its obligations under section 16 of FOIA (advice and assistance).

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

Reasons for decision

Section 12(4) – Aggregation of related requests

12. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”)² can be satisfied.

13. Section 12(4) of FOIA states:

“The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

14. Similarly, Regulation 5 of the Fees Regulations states:

“(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concern or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which – (a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and (b) those

² <https://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

requests are received by the public authority within any period of sixty consecutive working days.

(3) In this regulation, "working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom."

15. The Commissioner has reviewed the complainant's six requests aggregated by the Home Office. These requests were submitted between 6 and 13 February 2023. He is satisfied that all six of the requests were made by the same complainant and within 60 working days of each other, fulfilling the criteria at regulations 5(1)(a) and 5(2)(b).
16. The Commissioner must now consider whether these requests relate, to any extent, to the same or similar information. The Commissioner's view on aggregating requests can be found in the guidance on requests where the cost of compliance exceeds the appropriate limit (see footnote 2 above).
17. Paragraphs 44 and 45 of this guidance state:

'Regulation 5(2) of the Fees Regulations requires that the requests which are aggregated relate "to any extent" to the same or similar information. This is quite a wide test, but public authorities should still ensure that the requests meet this requirement.

A public authority needs to consider each case on its own facts, but 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.'
18. The Fees Regulations' wording of "relate, to any extent, to the same or similar information" makes clear that the requested information does not need to be closely linked to be aggregated, only that the requests can be linked.
19. Having reviewed the wording of the complainant's requests, the Commissioner is satisfied that there is an overarching theme in that they all request information on how the Home Office manages migrant vessels in the Channel.
20. The Commissioner, therefore, finds that the Home Office was entitled to rely on section 12(4) of FOIA to aggregate the six requests.

Section 12 – Cost of Compliance Exceeds Appropriate Limit

21. The reasoning below examines whether the Home Office was entitled to rely on section 12(1) of FOIA to refuse to provide the requested information.
22. Section 12(1) 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.
23. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are:
 - (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.
24. The applicable cost limit in this case is £600, which is equivalent to 24 hours' work.
25. Section 12 of FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise 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; in other words whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £600, that section 12(1) therefore applied and that it was not obliged to comply with the request.
26. The Commissioner asked the Home Office to provide an estimate for the costs of complying with the aggregated requests; it noted that there are almost 50 pieces of information being requested across the series of requests.
27. The Home Office explained that having considered the first of the six requests:

“it was clear that to continue to try and locate the remaining information required to answer all of [the complainant's] request would involve approximately hundreds of hours of work, taking the entire endeavor [sic] significantly over the appropriate limit

threshold and work stopped at this point. This is in line with the Commissioner's guidance as noted above".

28. The Home advised that the requested information is not held centrally; rather it is split across various teams (or 'commands') and searches would need to be conducted across each, in order to obtain the requested information. The Home Office provided the following minimum estimate for each of the six requests, noting that if the work was completed in full that it is very possible that the actual time "could increase significantly":

Request 1	36:30 hours
Request 2	07:30 hours
Request 3	59:00 hours
Request 4	54:00 hours
Request 5	08:00 – 24:00 hours
Request 6	158:00 hours
Total	323:00 hours

29. Specifically in relation to Request 1 (see Annex), the Home Office said for that for the first part of the request, the information is held and could be readily retrieved in approximately 15 minutes.
30. For the second part of Request 1, it explained:

"The information is held in disparate areas and across various teams in the Home Office. To provide the information requested would necessitate a complex costing exercise requiring an in-depth analysis not only of the budget of the team concerned, but also of the circumstances of individuals, and an audit of capital and estates costs. It is difficult to specify a particular amount of time that such an exercise is likely to entail but the following estimates are likely to be required:

- Stakeholder mapping (i.e. units where information may be held) (30 minutes)
- Identification of estates in scope (30 minutes)

- Initial budgetary analysis (understanding which costs are already captured in financial reporting about the unit in question) (15 minutes)
- Writing out to stakeholders (1 hour)

The scoping aspects would therefore require at least 2 hours 15 minutes facility time. The actual costing exercise itself is expected to take more than 24 hours given the numbers of stakeholders in scope and the fact that the information requested is not normally held in a reportable format.”

31. For part three of Request 1, the Home Office advised:

“The information in the first part of the request is readily retrievable within FOIA cost and time limits. However, the percentage of staff time dedicated to evaluating unsolicited commercial propositions is not held.”

32. For the fourth part of Request 1, the Home Office said:

“...the gathering of internal documentation related to this would entail a search for such documentation across different areas of the Home Office, as documentation in scope would apply to facilities/estates as well as to the unit engaged in evaluating unsolicited ideas related to Channel crossings. Time estimate 4 hours to search for and locate the information”.

33. The Home Office provided the Commissioner with a breakdown of the estimated cost and time to respond to each part of the remaining five requests, summarised in the table above.

Conclusion

34. In determining whether the Home Office has correctly applied section 12 of FOIA in this case, the Commissioner has considered the Home Office’s rationale provided to him during the investigation.
35. The Commissioner accepts that the Home Office has reasonably estimated that the cost of complying with the request would exceed the appropriate limit.
36. Therefore, even if the Commissioner were to consider that the Home Office’s estimate may not be completely accurate, he does not consider that the estimate could be reduced to the point at which it would fall within the cost limit.
37. It is further noted that a public authority is not obliged to search for, compile or disclose some of the requested information before refusing a

request that it estimates will exceed the appropriate limit. Therefore, the Home Office was also not obliged to conduct searches up to the costs limit.

38. The Commissioner is therefore satisfied that the Home Office was entitled to rely on section 12(1) of FOIA to refuse the request.

Section 16 – advice and assistance

39. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making or wishing to make requests for information.

40. The Section 45 FOIA Code of Practice (the 'Code')³ states that, where a public authority is relying on section 12 to refuse a request, it should help the requester to refine their request within the cost limit.

41. The Home Office's refusal notice advised the following:

"It is difficult for us to suggest how you could narrow your request. However, if you wish to submit a revised request we would be happy to consider it, but I should also point out that if you submit a revised request it is possible that other exemptions in the Act might apply."

42. At the internal review stage, the Home Office said:

"If you were to submit a refined and narrower request, for example by focusing on one particular topic, we may be able to comply with it. However, I cannot guarantee that this would be the case. I should also point out that if you submit a revised request it is possible that other exemptions in the FOIA might apply."

43. Having considered the available evidence, the Commissioner is satisfied that the Home Office offered reasonable advice and assistance. He therefore finds that it complied with its section 16 of FOIA obligations.

Other matters

44. Although not complained about by the complainant, the Commissioner has made a record of the delay in the Home Office providing its internal
-

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

review response outside the recommended 20 working days' time period.

Right of appeal

45. 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

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

46. 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.
47. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Annex

48. The complainant submitted the following six requests to the Home Office in February 2023:

Request 1 – Received 6 February 2023

'Would you under freedom of information provide me with the following. These relate to information sent directly to me by the Home Office.

"The Home Office has a team dedicated to exploring and testing all of the available options for managing migrant vessels in the Channel."

Could you provide the size in terms of directly positioned staff within the team that is dedicated to exploring and testing all of the available options for managing vessels in the Channel.

Could you provide the staff cost for this team within the Home Office, inclusive of wages, pension contribution, buildings and/or office space, training, and other cost associates with running this team.

Could you confirm that these personnel work exclusively on this project, in a dedicated manner. If not what is the time percentage of these personnel that is dedicated to the role within that exploring and testing.

Could you confirm the what [sic] testing facilities and exploration facilities and buildings are used in this capacity. With internal paperwork and documentation to support this function.'

Request 2 – Received 7 February 2023

'Would you under freedom of information provide me with the following. These relate to information sent directly to me by the Home Office.

"The Home Office has a team dedicated to exploring and testing all of the available options for managing migrant vessels in the Channel."

Would you be able to provide the budget that is associated with this team.

Would you provide details for the budget that has been allocated specifically for the testing of said options. Where this testing takes place. Would you be able to provide details of the budget for the exploration work of this team. And where this exploratory work takes place.

Would you be able to confirm the amount of individual projects that are currently being either explored or tested by this team. And a list of where these are all taking, or have taken, place.

Is there independent validation of the explored and tested solutions and options and who these testing bodies are.'

Request 3 – Received 8 February 2023

"The Home Office has a team dedicated to exploring and testing all of the available options for managing migrant vessels in the Channel. "

Would you be able to provide a summary of the current and past explored and tested projects that have fallen within the Home Offices dedicated team looking at available options for managing migrant vessels in the Channel, as per the attached document from the Home Office.

Paragraph two details existence of a Home Office team and as such there will be an overarching list of project names or series of project names that have been explored or tested, please could you provide these. Within the last year, then specifically back five years before this. If there are any notable projects before this please do include these.

If summaries are available in written format of these could these be provided.

Would you be able to provide a list of enacted solutions from this exploration and testing, from this dedicated team from the Home Office.

Would you be able to provide a linked and verified amount of illegal migrants whose passage has been halted, or indeed slowed, via the solutions that were tested and explored via this team.

Would you also be able to provide the amount of vessels that have been halted from crossing the Channel. With specific interest taken out of the full numbers provided, towards the amount that can be verified to have been halted or managed via the testing and/or exploration work carried out by this team.'

Request 4 – Received 9 February 2023

"The Home Office has a team dedicated to exploring and testing all of the available options for managing migrant vessels in the Channel.

As you will appreciate, the Home Office receives a number of unsolicited ideas for support and endeavours to respond to each of these where possible.

Would you be able to confirm how many unsolicited ideas for support the Home Office received this year in relation to options for managing the migrant vessels in the Channel. And what percentage of these are responded to and in what timeframes.

Would you be able to provide the number and type of unsolicited ideas for support in relation to managing the migrant vessels in the Channel going back five years. And what percentage of these are responded to.

Would you be able to provide the number and type of unsolicited ideas for support in relation to managing the migrant vessels in the Channel of note that predate this. And what percentage of these are responded to.

Would you be able to provide how many of these unsolicited ideas for support have resulted in support from the Home Office."

Request 5 – Received 10 February 2023

'Would you under freedom of information provide me with the following. These relate to information sent directly to me by the Home Office.

"The Home Office has a team dedicated to exploring and testing all of the available options for managing migrant vessels in the Channel."

"As you will appreciate, the Home Office receives a number of unsolicited ideas for support and endeavours to respond to each of these where possible."

Would you be able to confirm how many solicited or advertised ideas for support the Home Office received this year in relation to options for managing the migrant vessels in the Channel.

Would you be able to provide the number and type of solicited or advertised ideas for support in relation to managing the migrant vessels in the Channel going back five years.

Would you be able to provide the number and type of solicited or advertised ideas for support in relation to managing the migrant vessels in the Channel of note that predate this.

Would you ask be able to provide how many of these solicited or advertised ideas for support have resulted in support from the Home Office.

Would you be able to provide the details of any public requests for solutions or competitions for solutions that have been run by the government, and specifically the Home Office, in order to address the migrant vessels in the Channel.

Would you be able to give a summary list of the ideas supported from these solicited or advertised ideas for support, and to what financial amount or extent from the Home Office. Would you be able to provide details of what these are and where they are located. With a total amount of migrant vessels that have been halted or dissuaded from travel these have been directly responsible for.'

Request 6 – Received 13 February 2023

'Would you under freedom of information provide me with the following. These relate to information sent directly to me by the Home Office.

"The Home Office has a team dedicated to exploring and testing all of the available options for managing migrant vessels in the Channel. This includes working with public and private partners across the defence sector."

1. Would you be able to provide the data surrounding any private calls for solutions that the Home Office have engaged in to manage the migrant vessels in the Channel. Would you be able to provide details of the solutions these are working on and at what stage of development or deployment they are at.
2. Would you be able to provide documents in relation to the public sector partners involved in solutions to the managing of the migrant vessels in the Channel. Would you be able to provide details of the solutions these are working on and at what stage of development or deployment they are at.
3. Would you be able to provide documents in relation to the private sector partners involved in solutions to the managing of the migrant vessels in the Channel. Would you be able to provide details of the solutions these are working on and at what stage of development or deployment they are at.
4. Would you be able to provide documents in relation to the specifically defence sector partners involved in the solutions to the managing of the migrant vessels in the Channel. Would you be able to provide details of the solutions these are working on and at what stage of development or deployment they are at.
5. Would you be able to provide details of the scale of unsolicited ideas for support, and what percentage are responded to. In the last year and then going back five years before this.'