

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 December 2023

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

Decision (including any steps ordered)

1. The complainant made two requests for information regarding the Home Office's Asylum Accommodation and Support Contracts ("AASCs").
2. The Home Office relied on section 12 (cost limit) of FOIA to refuse both requests as the aggregated cost of responding would have exceeded the appropriate limit.
3. The Commissioner's decision is that the Home Office was entitled to consider the combined cost of responding to both requests and that it has reasonably estimated that combined cost as exceeding the appropriate limit. Consequently, the Home Office was entitled to refuse to comply with the requests in accordance with section 12(1).
4. The Commissioner finds that the Home Office has complied with its obligations under section 16 of FOIA to offer advice and assistance.
5. The Commissioner considers that the Home Office has breached section 10(1) of FOIA as it did not confirm that it held information within the statutory time limit. It has also breached section 17(5) of FOIA as it did not provide the complainant with its refusal notice within the statutory time limit.
6. The Commissioner does not require further steps.

Request and response

7. On 3 May 2023, the complainant made the following request:

"Please accept this request under the Freedom of Information Act.

The Home Office's Asylum Accommodation and Support Contracts (AASCs) state that providers are required to submit a KPI report for each payment period, including an assessment of performance against each KPI, the number of 'points' accrued due to failures against KPIs, and a calculation of Service Credits accrued due to these failures.

For each AASC, please provide:

- The total number of points accrued by the relevant provider in relation to failures against KPIs, broken down by payment period and by KPI.
- The total Service Credit value accrued by the relevant provider in relation to failures against KPIs, broken down by payment period and by KPI.

8. On 15 June 2023, the complainant made the following request:

"Please accept this request under the Freedom of Information Act. I'm seeking:

- A current list of the key performance measures against which Asylum Accommodation and Support Contract (AASC) providers are measured.
- The standards and targets that AASC providers are expected to meet in relation to each key performance measure listed in response to question one.
- The actual performance of each AASC provider (Serco, Mears, Clearsprings) against each of the key performance measures (for example: the percentage of asylum seekers transported to their accommodation in accordance with the Home Office's requirements, or the number of emergency maintenance issues that were not resolved within the Home Office's expected timeframe). Please provide figures for each quarter since the contracts became operational."

9. The Home Office provided an aggregated response on 7 August 2023, refusing the requests on the basis of section 43(2) of FOIA and section 21 of FOIA.

10. On 8 August 2023, the complainant requested an internal review.
11. When the complainant wrote to the Commissioner on 11 October 2023, the Home Office had not provided an internal review response.
12. Following the intervention of the Commissioner, the Home Office provided an internal review response on 2 November 2023, in which it relied on section 12(4) to aggregate the requests and section 12(1) to refuse the aggregated requests.

Scope of the case

13. The Commissioner considers that the scope of his investigation is to determine whether or not:
 - a) the Home Office is entitled to aggregate the two requests and, if so;
 - b) whether the combined cost of the aggregated requests would exceed the appropriate limit – or, if the requests cannot be aggregated, whether either of the requests would individually exceed the cost limit and;
 - c) whether the Home Office provided adequate advice and assistance to help the complainant refine his request/s within the cost limit.

Reasons for decision

14. Section 12 of FOIA states that 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”).
15. Section 12(2) of FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. The Home Office relied on section 12(1) in this case.
16. The appropriate limit is set in the Fees Regulations 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.

17. 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.
18. Regulation 5 of the Regulations states that:
 - (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 concert 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 requests are received by the public authority within any period of sixty consecutive working days.
19. Regulation 5 of the Regulations sets out three criteria which must be met in order for several requests to be aggregated. Firstly, the requests must be made by either the same person or a group of people acting together. Secondly, the most recent request must have been submitted within 60 working days of the oldest request. Finally, the requests must all relate to the same or similar information “to any extent.”
20. It is beyond doubt that both requests were made by the complainant and fewer than 60 working days separates the dates on which the first and the second requests were made.
21. The Commissioner’s guidance interprets the phrase “to any extent” to be a fairly wide test. However, he goes on to note that:

“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

22. The Commissioner accepts that the two requests seek information about AASCs and about the KPIs relating to them. He therefore accepts that both requests relate to similar information and thus the Home Office was entitled to aggregate the two requests.
23. Where requests can be aggregated, the public authority is entitled to consider the total combined cost of complying with all the aggregated requests when deciding whether it can comply with them.
24. 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.
25. 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”. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
26. 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. It is worth noting that if one part of a request triggers the section 12 exemption, then that will apply to the entirety of the

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

request and there is no requirement for the Commissioner to consider any other exemptions cited by the public authority.

27. 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.

Would the cost of compliance exceed the appropriate limit

28. The Home Office has explained to the complainant that:

“the specific information you have requested for your requests is not held centrally by the Department. To provide the information on performance, officials would need to go back through each provider report and identify the agreed performance for each KPI. This information would need to be analysed further to calculate how many points have been accrued and the level of service credits this represents. Further information would need to be extracted from the provider invoice for each month to calculate the cost of any service credits. This task would need to be conducted individually for each contract region and for each month that the AASC contract has been in operation.”

29. The Commissioner’s notes the complainant’s view that:

“According to the House of Commons Library, the Home Office spent around £3.6 billion on asylum support costs in 2022/23. It seems a remarkable admission that the Home Office holds no easily retrievable information about the performance of its asylum support providers – so remarkable that I assume there has been a mistake.”

30. When citing section 12, the Commissioner expects the public authority to provide a reasonable estimate as to how long compliance with the request would take. This estimate should be based on cogent evidence, on the quickest method of gathering the requested information and usually will involve the public authority carrying out a sampling exercise.
31. In this case, the Home Office has not provided a quantifiable estimate as to how long complying with the aggregated requests would take. The Commissioner recognises that there will be occasions (such as this) where information is held in such a way that it would be impossible to quantify the total cost of compliance - but this does not mean that the public authority should simply dispense with that part of the process. In this case, the Home Office should have searched for a sample of the relevant information and then, based on that sample, tried to estimate the time/cost of searching for all of the requested information. If a

public authority can demonstrate that even a relatively focussed search would incur significant cost and would not come near to providing all of the information requested (because multiple similar searches would be required), that will usually be sufficient to demonstrate that the overall cost will exceed the limit.

32. However, looking at the scope of the requests, in terms of the work required to provide the information requested because the information is not held centrally, the Commissioner accepts that there would be a significant volume of records that would need to be searched in order to comply with the requests.
33. Whilst the Home Office has not put forward an estimate, it is the Commissioner's view that compliance with the requests would take more than the 24 hours / £600 limit to provide the information requested. The Home Office was therefore correct to apply section 12(1) of FOIA to the complainant's requests.

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

34. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice² in providing advice and assistance, it will have complied with section 16(1).
35. A public authority is not required to "lavish ingenuity" on finding ways to reframe the request, but it should be able to explain simple ways of reducing the scope – such as reducing the time parameters, or identifying elements of a multi-part request that could be answered within the cost limit.
36. Equally, there will sometimes be requests that are so broad, voluminous or multi-faceted in their scope that it is simply not possible for it to be refined in such a way as to bring it within the cost limit whilst still retaining the thrust of the original request. In such circumstances the public authority should simply explain that it cannot provide meaningful advice and assistance.

² <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

37. The Commissioner notes that in its internal review response, the Home Office has advised the complainant:

“Because of the way the information is stored, it is difficult to suggest how you might refine your request, but if you do decide to submit a new request, we will of course consider it.”

38. The Commissioner therefore considers that the Home Office has complied with its obligations under section 16 of FOIA as regards the requests.

Procedural matters

39. The Commissioner considers that the Home Office has breached section 10(1) of FOIA as it did not confirm that it held information within the statutory time limit. It has also breached section 17(5) of FOIA as it did not provide the complainant with its refusal notice within the statutory time limit.

Other matters

40. There is no obligation under FOIA for a public authority to provide an internal review process. However, it is good practice to do so and, where an authority chooses to offer one, the section 45 Code of Practice sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
41. In this case, the Home Office failed to provide an internal review until the Commissioner’s intervention and it was then provided almost three months after an internal review had been requested by the complainant.

Right of appeal

42. 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

43. 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.
44. 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

Michael Lea
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