

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 October 2023

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

Decision

1. The complainant has requested information concerning Strategic Review Management Board meeting minutes and papers in relation to Accommodation and Support Contracts with contractors Mears, Serco and Clearsprings Ready Homes. The Home Office refused to comply with the request, citing section 14(1) (vexatious requests) of FOIA, based on the grossly oppressive burden that complying with the request would impose.
2. The Commissioner's decision is that the Home Office has correctly relied upon section 14(1) of FOIA to refuse to comply with the request.
3. No steps are required as a result of this notice.

Request and response

4. On 1 March 2023 the complainant requested information of the following description:

"The Home Office's Asylum Accommodation and Support Contracts stipulate that Strategic Review Management Board meetings should be held at least quarterly.

Please provide all Strategic Review Management Board meeting minutes and papers (including quarterly performance reports prepared by providers) produced in relation to each of the seven Asylum Accommodation and Support Contracts, with contractors Mears, Serco, and Clearsprings Ready Homes.

I'm seeking all documents produced since the contacts comments in January 2019.

Please note that the ICO has ruled that time required to redact documents should not count towards the FOI time/cost limit."

5. The Home Office responded to the request on 22 March 2023 refusing to respond citing section 14(1) of the FOIA.
6. On 11 May 2023 the Home Office provided an internal review maintaining its position.

Scope of the case

7. The complainant contacted the Commissioner on 11 May 2023 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the Home Office was entitled to rely on section 14(1) of the FOIA to comply with this request.

Reasons for decision

Section 14(1) – vexatious request

9. A public authority may apply section 14(1) of FOIA if it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation.
10. The Commissioner considers the threshold for reliance on such a refusal to be a high one and to only be appropriate where:
 - The requester has asked for substantial volumes of information and
 - The authority has real concerns about potentially exempt information, in which it will be able to substantiate if asked to do so by the ICO and

- Any potentially exempt information cannot be isolated because it is scattered throughout the requested material.
11. In the Commissioner's view, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
 12. The Home Office provided the Commissioner with some background of the information requested stating:

"This request asks for documents relating to the Strategic Migration Boards, which span a period of three and a half years. The boards meet each quarter, with attendance from senior officials from the Home Office and similarly graded representatives from the contractors. Each contractor has its own board meeting and there are three contractors in total; they are Mears, Serco and CRH. The purpose of the meetings is to assess KPI achievement, discuss in depth any concerns or issues and also to highlight any changes or obstacles surrounding the delivery and management of the accommodation contracts. There were 36 meetings in this time period."
 13. The Home Office went on to explain that the number of meetings held during this time is considerable, generating voluminous amounts of information. It stated that it has considered primarily the burden of answering the request in full and this is the main reason for refusing the request. It then went on to summarise the work required to respond.
 14. The Home Office stated that the meeting minutes cover the period 2019-2022 and relate to three contractors and that this has produced 36 sets of meetings/documents. It estimated that the total pages relating to the documents requested over the three year period stands at just over 5500 pages.
 15. The Home Office argued that the documents contain information potentially exempt from disclosure under sections 31, 38(1), 40(2), 41 and 43 of the FOIA.
 16. In its submission to the Commissioner, the Home Office explained, and provided detail, of information that will be dispersed throughout the material, arguing that it will be a time intensive exercise as officials

would need to analyse the material to consider the information for sensitivities and consider against any exemption and appropriately redact.

17. It stated that, as a very conservative estimate, it estimates it would take 2 minutes per page to read, consider and redact material for sensitivities and that this would total 183 hours.
18. The Home Office acknowledged the inherent public interest in transparency and that release of the information requested would provide an additional insight into the work of the Strategic Review Management Board. It argued, however, that, with regard to any request received, it has to consider the disruption, irritation or distress that compliance would impose at the time the request was received against any value that the request represents.
19. The Home Office stated that in order to comply with the request it would be necessary to engage a member of staff full-time over a lengthy period. It also stated that dealing with disproportionately burdensome requests would place a strain on the capacity of officials, which would hinder their ability to deliver other public services for which the Home Office is mandated. The Home Office argued that the time burden is disproportionate to the value of the information requested.
20. In asking for such a large value of documentation the Home Office stated that it appears that the complainant is fishing for information, with no real focus to the request and the resource expended in answering it would be unjustified.
21. The Home Office argued that once the redactions are completed, and as has been evidenced in other requests of this type, the information that is eventually released is so heavily redacted as to be almost meaningless. It argued that the data will have little context as no site, person or contractor can be identified and the resulting information would be of so little value to the reader that the resource spent on it would be entirely unjustifiable.
22. In its submission, the Home Office referred to Dransfield and the four broad themes explaining that it has considered the motive of the requester and the value of the requests, stating that it believes the two are interlinked.
23. The Home Office explained that the complainant has made 16 separate requests to the same business unit since January 2023 and requests prior to 2023. It stated that the requests consistently ask for substantial amounts of information. It explained that the scope of the requests

range from wanting High Profile Notification information relating to the deaths of service users and subsequently using that information to request copies of the completed forms for specific service users.

24. The Home Office states that the complainant has made requests spanning large periods of time, such as one request for all complaints to Migrant help since 2019, as well as a separate request for contractor's complaints database for the same time period.
25. The Home Office went on to explain that the complainant was advised to submit a refined request and was given advice on how he might do so. The Home Office stated that it believes a suitably refined request, focusing on the material that is of most interest to the complainant, would result in a better use of public resources.

The Commissioner's view

26. The Commissioner is satisfied that the complainant has requested a very large volume of information as it relates to 5500 pages. He is also satisfied that the Home Office would need to undertake a significant amount of work in order to determine the information that falls within the scope of the request and whether any of the information held is exempt. The Commissioner accepts that it would be necessary to carry out the steps Home Office has referred to in order to determine whether any of the information held could be disclosed or whether any exemptions are applicable.
27. Section 12 of the FOIA provides an exemption from the duty to comply with a request where doing so would exceed the appropriate limit. This is £600 for a central government department such as the Home Office which equates to 24 hours of work at £25 per hour. This limit is laid down by The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations).
28. The 183 hours estimate is substantially above the 24 hour limit which would be applied in cases involving section 12 of the FOIA. Whilst the limit laid down by the Fees Regulations is not directly relevant to the application of section 14 FOIA, this gives a clear indication of what Parliament considered to be a reasonable charge/duration of work that staff should be expected to undertake. The Commissioner notes that, even if the Home Office's estimate for compliance with the request was halved, it would still be significantly above the appropriate limit. Even though the threshold is high for refusal of a request under section 14 FOIA, due to the grossly oppressive burden compliance would impose, given the time estimate in this case, the Commissioner considers this threshold can be met.

29. Where it is established that compliance with a request would impose a grossly oppressive burden, the public authority must still balance the impact of the request against its purpose and value to determine if the request is vexatious or not.
30. In the complainant's internal review request to the Home Office, he argued that according to the Home Office's own news release, the AASC (Asylum Accommodation and Support Contracts) contracts have an approximate value of £4bn and that the public has a right to access information about the operation of such sizeable contracts.
31. The Commissioner understands that there is a great deal of public interest in the issue of accommodation for asylum seekers and government contracts.
32. However, the Commissioner is satisfied that the complainant has requested a very large volume of information and that the Home Office would need to consider a number of exemptions in the event that it complied with the request in full. The Commissioner is also satisfied that the exempt information would be scattered throughout the information and could not be easily isolated. The necessity of undertaking manual reviews of the information within scope lends further weight to the burden of this request. In this case, the Commissioner is satisfied that the Home Office is entitled to refuse to comply with the request, citing section 14(1) as its basis for doing so.
33. As the Home Office has already advised in its internal review, it is open to the complainant to submit a refined request.

Right of appeal

34. 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

35. 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.
36. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF