

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2024

Public Authority: Homes England
Address: 6th Floor
Windsor House
42-50 Victoria Street
Westminster
London
SW1H 0TL

Decision (including any steps ordered)

1. The complainant has requested from Homes England information relating to home valuations. The above public authority ("the public authority") relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that the public authority was entitled to rely on section 12(1) of FOIA to refuse the request. The Commissioner also finds that the public authority complied with its section 16 obligation to offer advice and assistance.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 1 September 2023 the complainant wrote to Homes England and requested information in the following terms:

I would like to receive additional information in connection with information you have already made available in response to previous FOI requests.

RFI3999

How many borrowers were unable to get a valuation due to cladding and/or fire safety issues in their building? For borrowers who were

unable to get a valuation, how many redemption requests has Homes England accepted and issued authority for the customer to redeem?

5. Homes England responded to the complainant's request on 28 September 2023. It stated that it was applying section 12(1) of FOIA.
6. The complainant requested an internal review on 29 September 2023. Homes England responded to this on 25 October 2023, stating that it upheld the original application of section 12(1) of FOIA.

Scope of the cas

7. On 25 October 2023, the complainant contacted the Commissioner to complain about the way their request was handled by Homes England.
8. The Commissioner has considered whether Homes England was entitled to rely on section 12 of FOIA to refuse the requested information.

Reasons for decision

Section 12 – cost of compliance

9. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
10. Section 12(1) of the 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")
11. 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 public authority is £450.
12. 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 18 hours for the public authority.
13. 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.
14. 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. 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.
15. 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.
16. 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.

The public authority's position

17. The four activities:

- **Determining whether the information is held**

The Home Ownership team, which is the relevant information owner at Homes England, were asked to confirm what information they held in respect of the request. They confirmed that they did hold the information, but that it would take some time to retrieve the information from historical records. Homes England stated that it was aware that some Help to Buy: Equity Loan customers were experiencing difficulty in obtaining a valuation on their property, due to the outcome of the EWS1 assessment, and that it would have held some information about borrowers affected by this issue and the number of successful redemptions without a RICS valuation.

- **Locating the information, or a document which may contain the information;**

Homes England explained that it does not maintain a central record of the requested information. The requested information is held in each Help to Buy: Equity Loan account in a Customer Relationship Management database and would be held within the correspondence, notes or call recordings held on the account. Homes England explained that there is no other way to retrieve this information than the interrogation of each account. It further explained that, at the time of the request, there were 383,903 Help to Buy: Equity Loan customer accounts. It estimated that it would take an average of 31,992 hours to locate the requested information within the customer records, based on a calculation of five minutes to review the notes and correspondence on each account.

- **Retrieving the information, or a document which may contain the information and extracting the information from a document containing it;**

Homes England explained that once the requested information had been located within each customer account, retrieving and extracting the information would be a short but numerous exercise. Its final calculation is that this would take one minute per account, totalling 6,398 hours.

18. When considering the cost of determining whether or not the information is held, locating, retrieving and extracting the information, the total time estimated to comply with the request is 38,390 hours. At £25 per hour, it estimated that compliance with the request would cost £959,750.
19. Homes England confirmed that it did not undertake a sampling exercise to determine the above time calculations. The estimates were provided by members of staff who regularly interact with customer accounts and are reasonably qualified to provide an accurate estimate. It also confirmed that the estimate was based upon the quickest method of gathering the requested information. It stated that although the information is held in a database from which reports can be drawn, the requested information does not form one of those reporting points. It is also not possible to add a reporting point in a way that would be able to interrogate the notes and correspondence where the requested information is held. Therefore it was determined that a manual search of the records is the only way that Homes England could locate and retrieve the requested information.

The Commissioner's view

20. The Commissioner has considered the explanation above and accepts the reason why a manual search would be needed in order to ensure that Homes England located all of the relevant information it holds.
21. The Commissioner also notes that Homes England has reduced the extraction time of 5 minutes per record to 1 minute and it would still take it 6398 hours of officer time to manually extract the relevant information from each record.
22. The Commissioner has therefore decided that Homes England was correct to apply section 12 of FOIA to refuse the request in this case.

Procedural matters

Section 16 – advice and assistance

23. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
24. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain to the requester how they could refine their request such that it would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.
25. In this case, the public authority informed the complainant that it would have to look through all relevant records to ascertain whether it held the requested information. It invited the complainant to consider narrowing the scope of their request.
26. The Commissioner is therefore satisfied that the public authority did comply with section 16 of FOIA when dealing with this request.

Right of appeal

27. 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

28. 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.

29. 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

Deirdre Collins

Senior Case Officer

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

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