

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 June 2024

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 a former Home Secretary's trip to the United States in September 2023 to give a speech to the American Enterprise Institute.
2. The Home Office relied on section 12(1) (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 does not require further steps.

Request and response

6. On 27 September 2023, the complainant made the following separate requests:

"Please can you tell me how much it cost for Suella Braverman and staff to travel (and stay) in Washington for her speech to the American Enterprise Institute this week?"

"Other than her speech to the American Enterprise Institute this week what other activity did Suella Braverman and staff conduct in Washington?"

7. On 25 October 2023, the requests were refused by the Home Office on the basis of the cost exemption in section 12(1) of FOIA.
8. On internal review on 30 November 2023, the Home Office found that the initial response provided was correct, in that the requests exceeded the cost limit, but that section 12(4) should have been cited to aggregate the requests.

Scope of the case

9. 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 within the cost limit.

Reasons for decision

10. The following analysis covers whether complying with the requests would have exceeded the appropriate limit.
11. 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")
12. 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.

13. 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.
14. Regulation 5 of the Fees 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, be 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 60 consecutive working days.
15. The three criteria in Regulation 5 must be met in order for 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."
16. It is beyond doubt that both requests were made by the complainant and that fewer than 60 working days separates the dates of the first and the second requests, as the requests were made on the same day.
17. 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

18. The Commissioner accepts that the two requests seek information about Suella Braverman’s trip to Washington in September 2023. He therefore accepts that both requests relate, to some extent, to similar information and thus the Home Office was entitled to aggregate the two requests.
19. 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.
20. 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.
21. 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.
22. 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

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

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

23. 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

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

"The information is not located in one central place. The requests would require a search of the staff diaries and email accounts of all delegates to identify and collate the information. Other activities may not be recorded in the staff accounts and diary events and further searches would be required to collate this detail. Specifically, regarding costs, individual staff costs including subsistence and expenses are not held centrally in an easily identifiable way. The request would require searches at a local level."

25. The Commissioner's notes the complainant's view that:

"Both requests relate to narrowly defined requests. The response states that each request would require in excess of 24 hours of work. I do not accept this as it merely requires a straightforward exercise by a member of accounts staff and someone with access to the minister's diary."

26. 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.
27. In this case, the Home Office did not provide the complainant with a quantifiable estimate as to how long complying with the aggregated requests would take.
28. The Commissioner therefore requested that the Home Office provide a reasonable estimate of the time/cost of searching for all of the requested information.
29. In respect of the first request about costs, the Home Office explained:

"The estimate to locate and retrieve this information for one person is 1 hour.

Individuals attending would have to examine and compile costs incurred for travel, accommodation, and subsistence in expenses claims. Staff in visits team would also need to compile overall costs incurred which are charged and held in finance returns, cross-referencing these against individual costs to ensure all costs accounted for. Staff would then have to produce an overall return referencing all claims in one document for the requester.

There were 10 members of staff (including the Home Secretary) and so the total time is 10 hours."

30. In its response to the Commissioner, the Home Office explained that the interpretation of the second request was the main factor for refusal. In particular the phrase "other activity" posed difficulties as this could include any number of things, including social events outside of work time. By way of example, the Home Office stated that:

"One interpretation would include all planned meetings, changed meetings, impromptu meetings with staff (including those following conversation), and any other events contributing to the meeting."

"Another interpretation of 'other activity' was to provide pre-planned itineraries for all staff for which we can spend time commenting on last minute changes. However, it would still take a large period of time to consider the many emails to consider what had changed. Our sampling activity of one staff member demonstrated that there was 150+ emails to consider. However, we would argue that this is not a clear and obvious interpretation of this particular request but is something that we could expect to have been asked on requests like this."

"The smallest possible interpretation is to collate planned itineraries. However, this is not an accurate outline of 'other activity' given the planned itinerary changed substantially."

31. The Home Office advised that they had carried out a search of the inbox of one of the attendees and that this returned around 150 emails potentially in scope of the request. The Home Office estimated it would take around 5 to 6 hours to read through the emails and determine whether they were in scope. The Home Office also explained that the search criteria was tricky as not everything would be named "US Trip" or "Washington".
32. In addition to electronically searching staff diaries, the Home Office explained that it would:

“need to seek the requisite staff and ask at least 10 staff (potentially more, when including their auxiliary staff) to identify, report and collate information (estimated time required 3-4 hours per attending staff member). Here, some activities may not merely be recorded in the staff accounts and diary events (e.g., impromptu events, events just not recorded, likely an additional 1-2 hours per individual) Therefore, the time and cost to collate the report exceeds the limit. For one individual (and based on the example above) it would take 5-6 hours.”

33. Based on there being 10 members of staff involved, the Home Office estimated that to comply with the second request would take around 50 to 60 hours.
34. Therefore, the Home Office estimated that, in total, to comply with both requests would take 60 to 70 hours.

The Commissioner's view

35. The Commissioner is satisfied that complying with the requests would exceed the appropriate limit.
36. The Commissioner is satisfied by the Home Office's explanation as to the issues which arise from the vagueness of the phrase "other activity" and the Commissioner is also satisfied that the Home Office has carried out a suitable search exercise which demonstrates the validity of the estimate.
37. The Commissioner notes that, even if the Home Office's estimate was reduced by half, the work involved in identifying the information in scope of the requests would still exceed the 24-hour limit.
38. Complying with the requests would therefore exceed the cost limit and so the Home Office was entitled to rely on section 12(1) of FOIA to refuse the request.

Section 16 – advice and assistance

39. 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.
40. 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).

41. 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.
42. 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.
43. The Commissioner notes that in its internal review response, the Home Office has advised the complainant:

“If you were to submit a revised request, we would be happy to consider it. Given that ‘the activity of staff’ could cover a wide range of information you may wish to narrow this part of your request. You could also request cost information about a smaller number of people. Even if a revised request were to fall within the cost limit, it is possible that other exemptions in the Act might apply.”
44. The Commissioner therefore considers that the Home Office has complied with its obligations under section 16 of FOIA as regards the requests.

Procedural matters

Information Notice

45. As the Home Office failed to respond to the Commissioner’s enquiries in a timely manner it was necessary for him to issue an Information Notice in this case on 30 April 2024, formally requiring a response. The Information Notice will be published on the Commissioner’s website.
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² <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

46. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our FOI and Transparency Regulatory Manual³.

³ https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1_0.pdf

Right of appeal

47. 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

48. 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.
49. 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

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