

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 November 2024

Public Authority Address: Department for Energy Security and Net Zero
1 Victoria Street
London
SW1H 0ET

Decision (including any steps ordered)

1. The complainant requested information relating to unpublished economic impact assessments from the Department for Energy Security and Net Zero (DESNZ). DESNZ refused to provide the requested information as to do so would exceed the appropriate limit at section 12(1) (cost of compliance exceeds appropriate limit) of FOIA.
2. The Commissioner's decision is that DESNZ was entitled to rely on section 12(1) to refuse to comply with the request.
3. The Commissioner also finds that DESNZ did not comply with its section 16(1) obligation to offer advice and assistance in relation to the request but as it has now provided advice to assist in narrowing the request, no further steps are therefore required.

Request and response

4. On 14 April 2024, the complainant made the following request to DESNZ for:

"A list of the titles of unpublished economic impact assessments that are considered to be 'complete' and which have been undertaken by your Department (including any records held from the organisation that preceded it) from 2021 onwards."

5. On 23 April 2024, the request was refused by DESNZ on the basis of section 12 of FOIA. DESNZ suggested the complainant narrow the scope of the request by specifying a particular topic and reduce the time period of the request. The complainant refined his request that same day by narrowing the time period as follows:

"Thanks - in which case, please can you treat this as a refined request for the same information but from 2023 onwards?"

6. On 3 May 2024, DESNZ stated that, while the time period had been reduced, the request was still refused on the basis of section 12 of FOIA. As for section 16 of FOIA (advice and assistance), DESNZ suggested the request be narrowed further as regards the time period and to a particular topic or DESNZ run scheme associated with the unpublished economic impact assessments.
7. On 3 May 2024, the complainant requested an internal review disputing the application of section 12 to the request.
8. In an internal review response dated 17 May 2024, DESNZ maintained its response to rely on the cost exemption in section 12 of FOIA. DESNZ said:

"I can confirm there is no central database of completed but unpublished economic impact assessments undertaken by DESNZ. In order to confirm if the Department holds information in scope of your request would require a trawl of each policy area's records across the whole of the Department covering a 16-month period. As I am sure you can appreciate, DESNZ's portfolio of responsibilities and policy areas is wide. It would not be feasible for one member of staff to trawl the entire records of the Department covering a 16-month period within 3.5 working days. I am therefore satisfied that to process your request as drafted would exceed the cost limit as set out under Section 12 of the FOI Act."

9. As regards the provision of advice and assistance in section 16 of FOIA, DESNZ said that,

"...if a specific subject or DESNZ run scheme related to the unpublished economic impact assessments is specified this would allow the Department to focus its records search to a particular policy area of DESNZ that is relevant to that subject or scheme."

Scope of the case

10. The complainant contacted the Commissioner on 1 June 2024 to complain about the way their request for information had been handled saying:

“The public authority appears to be evasive. They initially suggested I reduce the timeframe of the request, which I did and it still refused. They’ve said they have no central database and it would require a search of all policy areas in the department but I’m sceptical that this would take as much time or would be as burdensome as they suggest, unless they’re literally churning out hundreds upon [sic] or hundreds or even thousands of complete impact assessments over the past years - even in that case, you’d expect such activities to be controlled/monitored. Also, they haven’t even given a list of policy areas that I could narrow the request to in order to be helpful with advice or assistance.”

11. The Commissioner considers that the scope of his investigation is to determine whether DESNZ was entitled to refuse to comply with the request by way of section 12(1) of FOIA. The Commissioner will also consider if there has been a breach under section 16 (advice and assistance) of FOIA.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

12. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
13. When considering whether section 12(1) applies, the public 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 set out at Regulation 4(3) and 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.”

14. The appropriate limit is set in the Regulations at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for DESNZ is £600.
15. The 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 DESNZ.
16. If the public authority estimates that compliance with one part of the request would exceed the appropriate limit, it is not obliged to comply with the entire request. There is no public interest to consider.
17. 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 decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency* (EA/20017/0004), the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence".
18. 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.
19. As is the Commissioner's practice, during the course of his investigation, he asked DESNZ to provide a more detailed explanation of its position and to provide more detailed information about its costs and any sampling exercises undertaken. The Commissioner also specifically asked DESNZ to address the complainant's argument that DESNZ did not provide them with a list of policy areas so that they might narrow the request.
20. DESNZ explained in its submissions to the Commissioner that DESNZ does not centrally hold a repository of all economic impact assessments produced by it nor does it hold a list of those impact assessments which were "unpublished" and considered "complete".
21. To respond to the request, DESNZ explained that its Knowledge and Information Management (KIM) Team conducted a search of DESNZ's central file repository (SharePoint) using the search terms "economic impact assessment" AND "impact assessment" and the timeframe 01/01/2023 – 23/04/2023 (ie the timeframe for the refined request). KIM said this was the quickest method to use to determine whether DESNZ held any relevant information – as DESNZ has over 150 teams and contacting each team would have taken longer.
22. This search resulted in a total of 1,237 records being found which would need to be checked for relevance to the refined request. Overall, DESNZ

estimated it would take 112 hours to locate, review, extract and collate any information that fell in scope of the request.

23. DESNZ explained in its submission that the total of 112 hours was broken down into two main tasks.
24. First, it explained that the 1,237 records identified as potentially falling in scope of the request were listed in an Excel spreadsheet, providing the document path, subject title, sender/creator and location name. However, it further explained that the spreadsheet does not give access to each record. To gain access, the sender/creator of each record needed to be contacted. It acknowledged that some senders/creators will hold more than one record and so the senders/creators were grouped together. This resulted in a list of nearly 500 people who would need to be contacted to obtain access to each record so it may be reviewed. DESNZ said this contact would be done via the sending of a unique email to each of the 500 senders/creators, with details of all the records each held and a request for access to them. DESNZ's estimate of how long this would take was that it could send 1 email in 6 mins, which equates to 50 hours (500 emails x 6 mins = 3,000 mins/50 hours). DESNZ explained that it was not possible to send one email to nearly 500 senders/creators, attaching the Excel spreadsheet containing the results provided by the KIM Team "because there may be sensitive records (identified by the subject title of the record) on the spreadsheet which colleagues would not want others to see." The Commissioner accepts that this is a reasonable assumption.
25. Second, DESNZ explained that once obtained, each record would need to be opened, read and the relevance to the request determined. Based on an estimate of 3 minutes per record, KIM estimated that it would take 3,711 minutes (61.85 hours) to open, read and determine the relevance of each record to the request (1,237 records x 3 mins = 3,711 minutes/61.85 hours).
26. DESNZ therefore concluded that both tasks combined (61.85 + 50) equated to 112 hours work to respond to the refined request. The Commissioner notes for completeness that in addition to this the time taken by the KIM Team to do the initial search (estimate of 30 mins) would also need to be included as well as the time taken to collate the records falling in scope of the request into a list of titles to be disclosed to the complainant.
27. Overall, DESNZ's view is that to search for the information in the refined request would far exceed the threshold of 24 hours, and be disproportionate.

28. The Commissioner agrees with DESNZ that the cost of identifying, extracting and collating the information requested in the refined request would exceed the appropriate limit.
29. The Commissioner accepts that the situation is more complex, and the work required by DESNZ more involved, than was initially apparent from the responses provided to the complainant.
30. DESNZ are expected to search those areas where it is reasonable to expect that the information (if it existed) would be found. The broader the request, the more areas they are likely to be required to search. Case law¹ in this area confirms that DESNZ are required to search for all the information it holds – not just the information which can most easily be found or the information it thinks is most relevant to the request. Therefore the Commissioner accepts that DESNZ are required to search for records anywhere within its organisation where it considers the information may be held.
31. Given the wide nature of the request, the way the information is not held centrally, and the number of records and senders/creators involved, the Commissioner is not convinced that responding to this request could realistically be brought down to a reasonable size to bring it within the cost limit. On its face, the 112 hour estimate is grossly above the 24 hour limit. Even if the cost estimate was reduced by half to 56 hours it would still far exceed the cost limit.
32. With this in mind the Commissioner is persuaded that complying with this request would exceed the appropriate cost limit.
33. Complying with the request would therefore exceed the cost limit and so the public authority was entitled to rely on section 12(1) of FOIA to refuse the request.

Section 16 – advice and assistance

34. When refusing a request under section 12, a public authority needs to offer reasonable advice and assistance to the requester. 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

¹ Reuben Kirkham v Information Commissioner [2018] UKUT 126 (AAC)

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

providing advice and assistance, it will have complied with section 16(1).

35. The aim of this advice and assistance is to help the requester refine their request to one that can be dealt with within the appropriate limit. The Commissioner notes that in its initial responses and internal review response, DESNZ advised the complainant to narrow the request by specifying a particular topic or DESNZ run scheme and reducing the time period of the request.
36. The Commissioner considers that, on the face of it, these appear to be appropriate responses in the circumstances given the broad nature and lengthy timeframe of the original request. However, within its refusal notice and internal review, it is noted that DESNZ did not at any point provide the complainant with advice and assistance in order that the complainant might actually identify a specific subject or DESNZ run scheme related to the unpublished economic impact assessments. Instead, DESNZ simply told the complainant to specify the subject or DESNZ run scheme but it did not inform them of the types of information available.
37. In its submissions to the Commissioner DESNZ has addressed this issue further but did not respond directly to the complainant about this which is disappointing.
38. DESNZ explained to the Commissioner that:

"Details of DESNZ's policy areas, topics or DESNZ run schemes are publicly accessible via our gov.uk page. We had assumed that [the complainant] would have been able to find this via an internet search... However, to be helpful, and in hindsight, a link to our gov.uk page should have been included in our earlier response - <https://www.gov.uk/government/organisations/department-for-energy-security-and-net-zero> ."
39. The Commissioner does not consider that DESNZ complied with its obligations under section 16 to provide adequate advice and assistance during its handling of the complaint, as evidenced by the more specific advice it has suggested to the Commissioner. However, as DESNZ has now suggested ways the complainant could narrow their request, the Commissioner does not consider that any further steps need to be taken by DESNZ. Should they wish to do so, the complainant is therefore encouraged to refine their request using the link above provided by DESNZ.

Right of appeal

40. 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

41. 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.
42. 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

Susan Hughes
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