

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 November 2024

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

Decision (including any steps ordered)

1. The complainant has requested information about flights chartered for the purposes of deporting or administratively removing people from the UK. The Home Office relied on section 12(1) of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that the Home Office 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 the Home Office to take any remedial steps.

Request and response

4. On 23 June 2024, the complainant wrote to the Home Office and requested information in the following terms:

"Similar to requests you have fulfilled (FOI2023/06120) I request the following information regarding flights chartered for the purposes of deporting or administratively removing people from the UK from 1 January 2018 to 1 January 2020.

- 1) The number of people removed (broken down by males and females)
- 2) The number of foreign national offenders onboard each flight
- 3) The total number of escorts onboard each flight
- 4) The number of use of force incidents recorded on each flight
- 5) The operational codename for each flight
- 6) Each flight's destination

For any flights which were cancelled please provide:

- 1) The number of Removal Directions issued for each flight
- 2) Intended destination
- 3) Date

For the period between 1 April and 1 June 2023 please provide:

- 1) The number of Removal Directions issued for each flight.

Please note that in response to FOI2023/06120 you disclosed the actual number of persons in the above categories, and did not use 'less than five'. I request you do the same in response to this request."

5. The Home Office responded on 10 July 2024. It relied on section 12(1) of FOIA to refuse the request – a position it upheld following an internal review on 18 September 2024.

Reasons for decision

Section 12 – cost of compliance

6. Section 12(1) of 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").
7. 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.
8. 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 public authority.

9. 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.
10. 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.
11. 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.
12. 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 complainant's position

13. The complainant argued that the Home Office had previously disclosed the information in response to similar requests without claiming that the cost of compliance would exceed the appropriate limit.
14. The complainant further argued that the current request is only for the number of removal directions for chartered removal flights between 2018-20 which were cancelled, as well as the limited number of flights between 1 April and 1 June 2023, which they anticipate to be significantly fewer than the number of flights which the Home Office has previously disclosed numbers of removal directions for within the cost limit.

The Home Office's position

15. For context, the Home Office explained that charter operations support the effective operation of immigration controls by removing foreign criminals who no longer have leave to remain in the United Kingdom and other individuals who no longer have a right to remain, such as overstayers and failed asylum seekers.
16. The Home Office confirmed that during the period covered by the request, it began transitioning from an old operating system to a new one, meaning the way in which data is retrieved now differs. A member of staff must first establish the cases in scope and then interrogate them individually, including those who did not travel, to identify if they were served removal directions. This includes accessing the new operating system in order to cross-check multiple points within it.
17. The Home Office further confirmed that it is not immediately identifiable on cases who did not travel whether or not they were served Removal Directions. Also, there is no central record of Removal Directions served or not, meaning that it would be necessary to interrogate over 5300 records in order to comply with the request.
18. The Home Office explained that it is able to retrieve the relevant data for many of the questions asked in the request, and highlighted that it has in fact already done so on a regular basis for the complainant, as well as other requesters. However, in this case it is the removal directions which takes compliance with the request over the appropriate limit. The Home Office clarified that it had previously disclosed the number of referrals for a charter instead of the number of Removal Directions served.
19. In order to demonstrate the amount of work required to comply with the request, and ultimately reach its conclusion that the appropriate limit would be exceeded, the relevant business unit within the Home Office tested a sample of cases to understand how long it takes to identify if they were served Removal Directions. The Home Office confirmed that the manual checking of each case was the quickest and only method by which it would be able to obtain all of the information within the scope of the request.

The Commissioner's conclusion

20. In determining whether the Home Office has correctly applied section 12(1) of FOIA in this case, the Commissioner has consider the rationale and supporting information provided.
21. Whilst the Commissioner accepts that the Home Office has previously disclosed related information in response to similar requests, it is clear that the format and information sought by the current request does

differ somewhat to those previous requests. It is the work required by the Home Office to consider that further information described by the current request that would cause the cost of compliance to exceed the appropriate limit.

22. In its submission to the Commissioner, the Home Office explained in detail the burden which would be imposed by complying with the request. To support that assertion, the Home Office also provided the Commissioner with a detailed time/cost estimate which demonstrated that the appropriate limit would be greatly exceeded.
23. The Commissioner has found no clear grounds for believing that the Home Office has overestimated the amount of work required to comply with the request. The request is clearly broad in scope and compliance would undoubtedly require the consideration of a large volume of information. However, even if it was feasible for the Home Office to reduce its estimate to allow just one tenth of the current estimated time to consider each relevant case, it would still far exceed the appropriate limit.
24. The Commissioner accepts the Home Office's estimate of the cost of compliance as reasonable, and he is satisfied that it is supported by cogent evidence. The Commissioner therefore finds that the Home Office was entitled to rely on section 12(1) of FOIA to refuse the request.

Section 16 – advice and assistance

25. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
26. 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.
27. In this case, in its initial response to the request, the Home Office advised as follows:

“If you refine your request, for example, by narrowing the timescales, and be more specific about the type of information that you are specifically interested in, for example, the number of removals directions served rather than removal directions issued, we may be able to comply with a future request.”

28. The Home Office reiterated its advice in its internal review response as follows:

“I am advised that if you were to refine the scope of your request so it focused on less information and significantly reduce the date range, a future request may be more manageable. Even if a revised request were to fall within the cost limit, it is possible that other exemptions in the Act might apply.”

29. The Commissioner is therefore satisfied that the Home Office did comply with section 16 of FOIA when dealing with this request.

Right of appeal

30. 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

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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