

# Requests where the cost of compliance exceeds the appropriate limit

## Freedom of Information Act

### Contents

Overview .....	2
What FOIA says about section 12 .....	3
The appropriate limit .....	4
Estimating the costs of complying with a request .....	4
Staff time .....	4
Costs other than staff time .....	5
A reasonable estimate.....	7
'Sensible and realistic' .....	7
Estimates and searches .....	8
Estimates and sampling exercises.....	9
Providing 'cogent evidence' .....	9
Example.....	11
Aggregation of requests .....	12
'Two or more requests'.....	13
'Same or similar information' .....	13
'Requests received within 60 consecutive working days' .....	13
Time at which to apply section 12.....	14
Time at which to apply section 12 for aggregated requests .....	14
The 'neither confirm nor deny' provision under section 12 .....	15
What FOIA says about advice and assistance under section 16.....	16
How to satisfy the requirements under section 16 .....	18
Indicate that no information can be provided within the appropriate limit.....	18
Indicate what information can be provided within the appropriate limit .....	18
Failure to provide advice and assistance .....	19
More information .....	20

1. The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities.
2. An overview of the main provisions of the FOIA can be found in [the Guide to freedom of information](#).
3. This is part of a series of guidance, which goes into more detail than the Guide to freedom of information to help public authorities to fully understand their obligations, and to promote good practice.
4. This guidance explains to public authorities how to calculate the costs of complying with a request and what they should do if costs would exceed the appropriate limit to comply with the request.

## Overview

Section 12 of FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:

- either comply with the request in its entirety or;
- confirm or deny whether the requested information is held.

The estimate must be reasonable in the circumstances of the case.

The appropriate limit is currently £600 for central government and £450 for all other public authorities.

Where a public authority claims that section 12 is engaged, it should, where reasonable, provide advice and assistance to help the requestor to refine the request so that it can be dealt with under the appropriate limit.

## What FOIA says about section 12

Section 12(1) – (4) are as follows:

12. — (1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are 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 estimated total cost of complying with all of them.

5. Section 12(1) of the FOIA is a provision which allows a public authority to refuse to comply with a request for information where the cost of compliance is estimated to exceed a set limit known as the appropriate limit.
6. The relevant Regulations which define the appropriate limit for section 12 purposes are The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulation 2004 SI 2004 No 3244. These are known as the ‘Fees Regulations’ for brevity.

## The appropriate limit

7. Regulation 3 of the Fees Regulations states that the appropriate limit for central government, legislative bodies and the armed forces (in other words, those bodies covered by Part 1 of Schedule 1 of the Act) is £600.
8. For all other public authorities, the appropriate limit is £450.

## Estimating the costs of complying with a request

9. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the costs 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. All public authorities should calculate the time spent on the permitted activities at the flat rate of £25 per person, per hour.
11. This means that the appropriate limit will be exceeded if it would require more than 24 hours work for central government, legislative bodies and the armed forces, and 18 hours work for all other public authorities.

### **Staff time**

12. It is likely that any estimate will be largely or completely made up of the costs of staff time in carrying out the permitted activities.
13. A public authority should note that even if it uses contract or external staff to carry out some or all of the permitted activities, it can only include their time at the rate of £25 per hour irrespective of the actual cost charged or incurred.
14. However, a public authority cannot include the staff time taken, or likely to be taken, in considering whether any exemptions

apply in the costs estimate as this activity does not fall within the list of permitted activities.

15. Also, the staff time taken, or likely to be taken, in removing any exempt information in order to leave the information that is to be disclosed, often referred to as 'redaction', cannot be included as part of the costs of extracting the requested information.
16. This approach has been confirmed by the Information Tribunal in the case of [The Chief Constable of South Yorkshire Police v the Information Commissioner \(EA/2009/0029, 14 December 2009\)](#) and also by the High Court on appeal ([2011] EWHC44 (Admin)).
17. Additional guidance is also available if you need further information on:
  - redacting information  
⇒ see ["What if we are withholding only parts of a document"](#)

### **Costs other than staff time**

18. Sometimes, a public authority may expect to incur costs other than those relating to staff time when carrying out the permitted activities. The key to deciding whether or not these costs can be included in the estimate is whether it would be reasonable to include those charges.
19. For example, if a public authority is able to evidence that its existing software is unable to do the job but that it could purchase other specialist software which would allow the requested information to be retrieved, then the full costs of purchasing that specialist software could be reasonably included in the estimate. In such cases, the Commissioner would require sight of the estimates of any proposed purchase if a complaint were made to him.
20. If a public authority uses off-site storage, it will depend on the terms of the contact between the public authority and the contractor as to whether the costs of locating, retrieving and transporting the information from deep storage can be included in the estimate. Public authorities should note that the

Commissioner may want to see the contract in order to be satisfied that such costs can be correctly included.

**Example**

A council has a contract with its storage company which provides scheduled six weekly delivery runs without any extra cost. Therefore, if the requested information is retrieved on a scheduled delivery run, then the cost of retrieving the requested information from the deep storage facility is not an additional cost and cannot be included in the estimate.

However, if the delivery run is scheduled to take place after the date for compliance with the request, the public authority would be in breach of section 10(1) of the Act if it waited for the scheduled delivery run. If a public authority is able to comply with the time limit by arranging a special delivery, the Commissioner is likely to accept that it is reasonable to include the actual additional costs of the special delivery in the estimate.

**Example**

A public authority instructs its contractors to retrieve five documents – four documents are required for its own business purposes and one document is required in order to answer a freedom of information request. The contract sets out a standard fee of £50 for the retrieval of up to 10 documents on any one visit.

The public authority would only be able to include the costs of retrieving the document required for FOI purposes and therefore should only include a fee of £10 in the estimate.

## A reasonable estimate

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.
22. What amounts to a reasonable estimate can only be considered on a case by case basis. However, the Information Tribunal in the case of [Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency \(EA/2006/0004, 30 October 2007\)](#) said that a reasonable estimate is one that is "*....sensible, realistic and supported by cogent evidence*".

### **'Sensible and realistic'**

23. A sensible and realistic estimate is one which is based on the specific circumstances of the case. In other words, it should not be based on general assumptions, for example, that all records would need to be searched in order to obtain the requested information when it is likely that staff in the relevant department would know where the requested information is stored.
24. This does not mean that a public authority has to consider every possible means of obtaining the information in order to produce a reasonable estimate. However, an estimate is unlikely to be reasonable where an authority has failed to consider an absolutely obvious and quick means of locating, retrieving or extracting the information.
25. A realistic estimate is one based on the time it would take to obtain the requested information from the relevant records or files as they existed at the time of the request, or up to the date for statutory compliance with the request.
26. For example, if the requested information is only contained within paper files at the time of the request, then it is realistic to accept that it would take longer to search paper files than to search the same information if it were stored electronically.
27. Similarly, it is realistic to accept that it will take longer to find the requested information where the relevant records are

poorly organised or filed (albeit that this may mean the public authority needs to address any records management issues in accordance with section 46 of the Act).

## **Estimates and searches**

28. A public authority is not obliged to search for, or compile some of the requested information before refusing a request that it estimates will exceed the appropriate limit. Instead, it can rely on having cogent arguments and/or evidence in support of the reasonableness of its estimate. It is good practice to give these arguments or evidence to the requestor at the outset to help them understand why the request has been refused. This reasoning is also likely to be required if a complaint is made to the Information Commissioner.
29. However, it is likely that a public authority will sometimes carry out some initial searches before deciding to claim section 12. This is because it may only become apparent that section 12 is engaged once some work in attempting to comply with the request has been undertaken.
30. If a public authority does carry out some searches, it may wish to bear in mind the following points:
  - If a public authority starts to carry out some searches without an initial estimate, it can stop searching as soon as it realises that it would exceed the appropriate limit to fully comply with the request.
  - A public authority is not obliged to search up to the appropriate limit.
  - If a public authority initially estimates that it could complete its searches under the appropriate limit, but then finds that it cannot, it can stop searching once it reaches that limit. This is because it is not obliged to continue searching just because it originally estimated that the searches could be completed within the appropriate limit.

This was confirmed by the Information Tribunal in the case of [Quinn v Information Commissioner and the Home Office \(EA/2006/0010, 15 November 2006\)](#).



31. A public authority may search up to or even beyond the appropriate limit of its own volition. Also, if a requestor asks a public authority to search up to or beyond the appropriate limit and the public authority is willing, then it can do so.
32. As a matter of good practice, public authorities should avoid providing the information found as a result of its searching and claiming section 12 for the remainder of the information. It is accepted that this is often done with the intention of being helpful but it ultimately denies the requestor the right to express a preference as to which part or parts of the request they may wish to receive which can be provided under the appropriate limit.
33. In practice, as soon as a public authority becomes aware that it intends to rely on section 12, it makes sense for it to stop searching for the requested information and inform the complainant. This avoids any further and unnecessary work for the public authority as it does not need to provide any information at all if section 12 is engaged.

### **Estimates and sampling exercises**

34. A public authority may also choose to support its claim of section 12 by providing evidence of the random or representative sampling exercise it has carried out.
35. For example, in cases where the public authority holds a large number of files of varying sizes, it may be useful to choose a random selection of those files in order to calculate an average for the time it would take to locate, retrieve and extract the relevant information.
36. Alternatively, it may be useful to pick a representative sample of files or records which fall within the scope of the request to demonstrate the application of section 12. For example, one file from each of the years referred to in the request or one file from each relevant department.

### **Providing 'cogent evidence'**

37. It is useful if a public authority explains how it has calculated its estimate by explaining:

- its search strategy, for example:
  - whether it has carried out any searches for the requested information;
  - whether it has based its estimate on a random or representative sampling exercise;
  - which departments or members of staff have been contacted;
  - the search terms used when querying electronic records;
- why it needs to search the files/records it has referred to;
- how the information is stored, for example, whether the information is held in paper or electronic files;
- how many files, boxes, documents, records or emails need to be reviewed and;
- how long it would take to determine whether the requested information is held or to locate, retrieve and extract it. For example, it is useful to detail the size of the relevant files; the average length of time it would take to review each file and the number of staff required.

38. It is not a statutory requirement to explain how the estimate has been calculated but it is beneficial to a public authority to do so for the following reasons:

- to enable the requestor to assess the reasonableness of the estimate. This may help to prevent a complaint to the ICO which will avoid further time and costs being expended on the same request;
- if a complaint is made to the Information Commissioner, then he will expect the level of detail, as set out above, to be provided. This may require the public authority to incur further costs in providing this detail. This task may also be complicated by changes in circumstances between the time of the request and the time of the ICO investigation;

- in any event, providing a suitable breakdown is likely to be required as part of a public authority's statutory obligations under section 16 to provide advice and assistance (for more detail see the relevant content below).

## Example

A public authority receives a request for all expenses claims submitted by two employees over a 10 year period.

### **Good practice**

- Consider a search strategy at the outset

The FOI officer considers who would be the most appropriate member of staff to speak to about where to start the search. The FOI officer considers contacting the relevant employees but one has recently retired and the other is on holiday until after the time for compliance with the request. The FOI officer decides to contact a member of the Finance team.

The Finance Executive advises that information relating to expense claims over four years old is stored in archived paper files off-site, whilst claims for the last four years are stored electronically. The electronic expenses files are not stored by employee name but in date order. It is estimated that it would take 5 seconds to open each claim and check whether it related to the one of the employees referred to in the request. The total estimate is approximately 1 hour 23 minutes (5 seconds x 1,000 claims).

The FOI officer then speaks to a colleague who deals with archiving. The relevant Administration Support employee advises that archived records are filed in date order. He suggests that there is an average of 10 accounts files per year of varying sizes. He advises that it would take one hour to search one file to find any relevant expenses forms for the two employees. Accordingly, he estimates that it would take

approximately 60 hours to search these files (10 files per year x 6 years @ one hour per file).

- Apply section 12 as soon as the public authority realises it intends to rely on this provision.

At this point, the public authority claims section 12 and provides the requestor with the above breakdown. This allows the requestor to understand what information could realistically be provided under the appropriate limit and make a refined request for the information they are most interested in.

### **Undesirable practice**

The public authority decides that it can provide the expenses information for the last four years under the appropriate limit from its electronic records; it discloses this information and refuses the rest of the request under section 12.

This is undesirable practice because it assumes that the requestor would rather have the information in the electronic records than receive a more limited amount of the older information held in the paper files, this assumption may be incorrect.

## Aggregation of requests

39. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied. Those conditions require the requests to be:

- made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
- made for the same or similar information; and
- received by the public authority within any period of 60 consecutive working days.

40. Public authorities should note at the outset that requests which clearly fall under different regimes, for example, the Freedom of Information Act, the Environmental Information Regulations or the Data Protection Act, cannot be aggregated.

For more details, please refer to the following guidance:

- [Calculating costs where a request spans different access regimes](#)

### **'Two or more requests'**

41. Public authorities can aggregate two or more separate requests.
42. They should also note that multiple requests within a single item of correspondence are separate requests for the purpose of section 12. This was confirmed by the Information Tribunal in the case of [Ian Fitzsimmons v ICO & Department for Culture, Media and Sport \(EA/2007/0124, 17 June 2008\)](#).
43. Therefore a public authority should ensure that each request can be aggregated in accordance with the conditions laid out in the Fees Regulations. Any unrelated requests should be dealt with separately for the purposes of determining whether the appropriate limit is exceeded.

### **'Same or similar information'**

44. Regulation 5(2) of the Fees Regulations requires that the requests which are to be aggregated relate "*to any extent*" to the same or similar information. This is quite a wide test but public authorities should still ensure that the requests meet this requirement.
45. A public authority needs to consider each case on its own facts but 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.

### **'Requests received within 60 consecutive working days'**

46. The Fees Regulations state that requests received within 60 consecutive working days can be aggregated.

### Time at which to apply section 12

47. A public authority should consider whether it would exceed the appropriate limit to comply with the request based on the circumstances as they existed either on the day on which the request is deemed to be received, or on any day up to the time for statutory compliance.

### Time at which to apply section 12 for aggregated requests

48. Where a public authority wishes to aggregate the costs of dealing with more than one request, it is noted that the Fees Regulations do not cover how to reconcile the ability to aggregate requests received over 60 consecutive working days with the public authority's obligation to respond to requests within 20 working days as required by section 10(1) of the Act.
49. The Commissioner's approach is to allow the aggregation period to only run up to 20 days 'forward' from the date of any single request under consideration to take into account the requirements of section 10(1).
50. The aggregation period will however be able to run up to 60 days 'backwards' from the date of any single request under consideration.
51. The total aggregation period, (running either forwards or backwards or a combination of both) from the date of any single request must not exceed 60 working days.

#### **Example 1**

A public authority receives a request on 1 September. The public authority also receives requests from the same requestor on the same subject matter on 14, 18 and 21 September. The public authority estimates that the cost of

complying with all four requests would exceed the appropriate limit.

Outcome: As the public authority has until 29 September to comply with the request of 1 September; it is able to include the costs of responding to the other three requests when refusing this request. This is because these later requests were all received within the period 20 days 'forward' from 1 September.

**Example 2**

In the same scenario, the public authority had also already received the following requests:-

9 June (in respect of which it issued a refusal notice claiming section 43) and;  
18 August (in respect of which it disclosed all relevant information).

The authority can include the costs of dealing with the request of 18 August when refusing the requests of 1, 14, 18 and 21 September. This is because it was received within the period 40 days 'back' from 1 September. As the other requests were received within the period 20 days 'forward' from 1 September, the total aggregation period does not exceed 60 days.

The authority could not however include the costs of dealing with the 9 June request as this was received outside the period 40 days 'back' from the request of 1 September.

## The 'neither confirm nor deny' provision under section 12

52. If a public authority estimates that it would exceed the appropriate limit to confirm whether or not the requested information is held then, under section 12(2) of the Act, it does not have to deal with the substance of the request.

53. If a public authority knows that it does hold the requested information it should confirm this to the requestor even if it estimates that it would exceed the appropriate limit to comply with a request. It does not, however, have to comply with the request.
54. In either scenario, a public authority needs to provide a refusal notice stating the fact of its reliance on section 12.
55. As indicated earlier in this guidance, it is not a statutory requirement to provide a breakdown of how the estimate has been calculated but it is useful to do so for a number of reasons. One such reason is that it is likely to be required as part of the work involved in meeting a public authority's section 16 duties to provide advice and assistance.

## What FOIA says about advice and assistance under section 16

Section 16(1) – (2) states as follows:

16. – (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

56. Paragraph 14 of the section 45 Code of Practice states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

*"...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee."*



57. Where a public authority has satisfied the requirements of the section 45 Code of Practice; it will be deemed to have complied with section 16. Although this should not be taken to mean that a public authority should not go beyond the provisions of the Code as public authorities should try to be as helpful and flexible as possible.
58. Public authorities should also note however that the duty to provide assistance and advice under section 16 is expressly qualified by the words "*only in so far as it would be reasonable to expect the authority to do so.*" This suggests that although compliance with the section 45 code is likely to mean the public authority has complied with section 16; it does not necessarily mean that a failure to meet the requirements of the Code will inevitably lead to a breach of section 16 if it was not reasonable to provide advice and assistance.

**Example**

[Ofcom \(FS50203058, 21 December 2009\)](#)

The requestor made a series of requests regarding the number of complaints received from viewers/listeners which were deemed not to have broken any broadcasting code and which were subsequently overturned on review.

Ofcom confirmed that it would need to examine 78,000 complaints cases in order to answer the request. Based on a sampling exercise, Ofcom estimated that it would take approximately 9,750 hours to review all cases at a cost of £243,750.00. Ofcom claimed section 12 and did not provide any advice and assistance.

Outcome: The Commissioner upheld Ofcom's section 12 claim. The Commissioner also accepted that given the scope of the request and the way in which Ofcom held the information; it could not offer any meaningful advice as to how to refine the request. Accordingly, the only advice and assistance which could be offered would be to say that no information could be provided under the appropriate limit.

## How to satisfy the requirements under section 16

59. In cases where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:

- either indicate if it is not able to provide any information at all within the appropriate limit; or
- provide an indication of what information could be provided within the appropriate limit; and
- provide advice and assistance to enable the requestor to make a refined request.

### **Indicate that no information can be provided within the appropriate limit**

60. There is likely to be a breach of section 16 where a public authority has failed to indicate that it is unable to provide any information within the appropriate limit. This is based on a plain English interpretation of the phrase "*...what, if any, information could be provided...*"

61. In any event, it is useful to inform the requestor of this as it may avoid further and futile attempts to refine the request to bring it under the appropriate limit. Also, if the requestor understands the way in which the estimate has been calculated to exceed the appropriate limit, it should help them decide what to do next. For example, if the requestor accepts that the estimate is reasonable then they may decide to refocus their request in another direction. However, if they believe the estimate is not reasonable, then they may decide to appeal against the refusal instead.

### **Indicate what information can be provided within the appropriate limit**

62. A public authority should inform the requestor of what information can be provided within the appropriate limit. This is important for two reasons: firstly, because a failure to do so may result in a breach of section 16. Secondly, because doing so is more useful than just advising the requestor to 'narrow' the request or be more specific in focus. Advising requestors to

narrow their requests without indicating what information a public authority is able to provide within the limit, will often just result in requestors making new requests that still exceed the appropriate limit.

**Example**

[Northampton General Hospitals NHS Trust \(FS50210439, 17 August 2009\)](#)

The requestor sought copies of all job evaluations which took place during a period of 8 months and 3 days. The public authority claimed section 12 and claimed that it could not offer any advice and assistance to reduce the costs of complying with the request.

Outcome: The Commissioner upheld the application of section 12.

However, the Commissioner found the Trust had breached section 16 for failing to provide advice and assistance, for example, by suggesting that the requestor could refine the request to only cover specific departments or only job evaluations post September 2008 when the Trust centralised its records on an electronic database.

**Failure to provide advice and assistance**

63. The Information Tribunal in the case of [Alasdair Roberts and the Information Commissioner \(EA/2008/0050, 4 December 2008\)](#) confirmed that a failure to provide advice and assistance does not invalidate the original costs estimate. Although, such a failure may of course mean that the public authority has breached section 16.
64. The Commissioner considers that the implication of the original estimate remaining valid is that the refined request becomes a new request. This means that the statutory time for compliance commences on the date of the receipt of that new request.

65. However, public authorities should note that the original and refined/new requests should not be aggregated for the purposes of calculating the costs of dealing with the new request as to do so would frustrate the purposes behind sections 12 and 16.
66. Additional guidance is also available if you need further information on:
- The fees that may be charged where the cost of compliance does or does not exceed the appropriate limit
    - ⇒ see: [Fees that may be charged where the cost of compliance exceeds the costs limit.](#)
    - ⇒ see: [Fees that may be charged where the cost of compliance does not exceed the costs limit.](#)

## More information

67. This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.
68. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
69. If you need any more information about this or any other aspect of freedom of information or data protection, please [Contact us: see our website \[www.ico.org.uk\]\(http://www.ico.org.uk\)](#)