

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 May 2025

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

Decision (including any steps ordered)

1. The complainant has requested information from the Home Office regarding a hotel used to accommodate asylum seekers. The Home Office relied on section 12 of FOIA (cost of compliance) to refuse part of 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 Home Office did not comply with its section 16 obligation to offer advice and assistance.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
 - provide the complainant with appropriate advice and assistance to help them submit a request that falls within the appropriate limit.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant submitted the following request to the Home Office on 25 July 2024:-

"I am requesting information regarding the Whatley Hall Hotel, Banbury, which I believe at some point in time was contracted to the Home Office, or some third party organisation, to house asylum seekers or illegal migrants. I note that the hotel has now resorted back to a hotel providing accommodation for paying guests. Please provide the following information:

- Was the Whatley Hall Hotel contracted directly to the Home Office or third party such as Serco?
 - What was the start and end date of the contract?
 - What was the total cost of the contract (to the taxpayer)? Please provide a breakdown of costs, including refurbishment of the hotel, once the migrants had left?
6. The Home Office responded to the complainant on 22 August 2024, providing some of the requested information and citing section 43(2) of FOIA (commercial interests) as a basis for non-disclosure.
7. The complainant requested an internal review on 28 August 2024 and the Home Office responded on 19 November 2024 withdrawing its original decision to apply section 43(2) of FOIA to the third part of the complainant's request and instead applying section 12 (cost limit).

Reasons for decision

Section 12 – cost of compliance

8. The following analysis covers whether complying with part 3 of the request would have exceeded the appropriate limit.
9. 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")
10. 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 Home Office is £600.

11. 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.
12. 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.
13. 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.
14. 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.
15. 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

16. The complainant does not consider that the Home Office provided a full explanation at internal review of why section 12(1) is applicable to their request.

The Home Office's position

17. The Home Office explained to the Commissioner that The Whately Hall hotel was contracted over two periods by two separate suppliers. The

contract with Calders was exited early and replaced by the one with CTM. This property was contracted on behalf of the Home Office to house Unaccompanied Asylum-Seeking Children (UASC). The final UASC hotel closed on 31 January 2024 and the UASC Hotel Operations team within the Home Office has now been disbanded as a result.

18. The Home Office states that, in the work involved in order to locate, retrieve and extract the requested information there are several difficulties:-

- it is difficult to separate out a particular hotel from the contract. The team involved with this work no longer exists and members of the team have left the Home Office.
- Properties such as this, which are used to accommodate asylum seeking cohorts, are contracted by a third party on behalf of the Home Office as set out in paragraph above. The requested information would have to be gathered from monthly invoices provided to the Home Office by this third-party supplier and a manual review of each invoice would then be required. This would show spend data for each hotel contracted through both Calders and CTM.
- The Home Office is charged through a single monthly invoice which includes each hotel under a given contract. Separate invoices are provided for accommodation and transport under a given contract. Each invoice must be manually searched for the relevant hotel. This hotel was contracted over a period of 15 months through two separate providers, which creates additional work, as there were different invoicing procedures/requirements for each provider, as they were contracted on different contract terms.

19. The Home Office has carried out a sampling exercise covering one month (December 2022) on invoices covering accommodation costs and 30 minutes was spent locating invoices and information relevant to this request. This would equate to approximately 7.5 hours to gather the accommodation costs for this hotel over the contracted period of 15 months. Transport to and from the hotel is also included in this contract. The Home Office states that transport invoices are more complex as each individual journey is listed, including the starting and ending point. Each invoice would need to be searched using the address/postcode of the hotel. However as invoices may not always include the full address or postcode of a property, a manual search would be required. This would equate to approximately 75 minutes work for each invoice/month. This would total approximately 18.5 hours.

20. Therefore the Home Office has calculated that it would take 26 hours of staff time altogether in order to locate, retrieve and extract the requested information.

The Commissioner's view

21. The Commissioner is satisfied that complying with part 3 of this request would exceed the appropriate limit.
22. 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. To respond to part 3 of the complainant's request would undoubtedly require the consideration of a large volume of information.
23. 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.

Procedural matters

Section 16 – advice and assistance

24. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
25. 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.
26. In this case, the Home Office informed the requester that they could submit a revised request, however they did not provide any additional advice or assistance on how to do this.
27. The Home Office did state to the Commissioner that the complainant could refine their request to cover a smaller period of time and accommodation costs only, however they did not communicate this to the complainant.
28. The Commissioner is therefore satisfied that the Home Office did not comply with section 16 of FOIA when dealing with this request.

29. The Home Office must now provide reasonable advice and assistance to the complainant to help them refine their request.

Other matters

30. The complainant requested an internal review on 28 August 2024 and did not receive a response until 19 November 2024. The Commissioner seeks to remind the Home Office that he expects public authorities to provide an internal review response within 20 working days.

Right of appeal

31. 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

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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF