

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 30 May 2019

**Public Authority:** HM Treasury  
**Address:** 1 Horse Guards Road  
London  
SW1A 2HQ

### **Decision (including any steps ordered)**

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1. The complainant requested evidence in support of claims by some politicians that immigrants contribute more to the British economy than they take out. The public authority refused to comply with the request relying on section 12(1) FOIA.
2. The Commissioner's decision is that the public authority was entitled to rely on section 12(1) FOIA.
3. No steps are required.

## Request and response

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4. On 20 September 2018 the complainant submitted a request for information to the public authority in the following terms:

"We hear politicians regularly asserting that immigrants contribute more (taxes) to the British economy than they take out (benefits – healthcare, housing subsidies, unemployment pay etc).

Is this assertion correct?

Would you please provide a copy of the evidence for such claims?"

5. The public authority provided its response to the request above on 15 October 2018. In that response the public authority confirmed that it held information within the scope of the request which it considered exempt by virtue of section 35(1)(a) FOIA.
6. The public authority also advised the complainant that the Migration Advisory Committee was commissioned by the government to report on the current and likely future patterns of European Economic Area (EEA) migration and the impacts of that migration. A link to the Migration Advisory Committee's report on EEA migration in the UK, including analysis relating to the fiscal impact of immigration on the UK was provided. The public authority also provided a link to data published by HM Revenue & Customs on income tax, national insurance contributions, tax credits and child benefit statistics for EEA nationals.
7. The Commissioner understands that on 19 October 2018 the complainant requested an internal review of the public authority's response to his request.
8. The public authority did not complete that review until 18 February 2019. It revised its original response to the request following the review. It explained that since the request referenced statements made by politicians generally and asked for evidence held relating to the evidence for the claims, it had become clear that to identify all the information the public authority holds within the scope of the complainant's request "would take considerable effort". On that basis the public authority concluded that section 12 FOIA should be applied to the request.
9. The public authority however invited the complainant to consider amending the scope of his request by, for example, providing an example of a statement made by a Treasury Minister in order for the public authority to consider any evidence it holds further to such statement.

## Scope of the case

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10. The complainant initially contacted the Commissioner on 29 October 2018 to complain about the way his request for information had been handled. However, the complaint was not accepted for investigation until the public authority had concluded its internal review on 18 February 2019.
11. At the outset of the investigation, the Commissioner asked the complainant whether he would consider refining the scope of his request as suggested to him by the public authority.
12. The complainant initially suggested that the Commissioner should order the public authority to disclose "the latest studies they have on the matter in date order to the limit of the amount permitted." However, when the Commissioner advised him that he had to submit any new request on the matter directly to the public authority, he invited the Commissioner to make a determination on the application of section 12 FOIA to his request of 20 September 2018.
13. Therefore, for the avoidance of any doubt, the scope of the Commissioner's investigation was to determine whether the public authority was entitled to rely on section 12 FOIA.

## Reasons for decision

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### Section 12 FOIA

14. Section 12 FOIA states:

"(1) Section 1(1)<sup>1</sup> 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

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<sup>1</sup> Two duties are set out in section 1(1) FOIA; subject to other provisions in the FOIA (such as in section 12), to confirm or deny whether requested information is held and to disclose requested information.

estimated cost of complying with that paragraph alone would exceed the appropriate limit.<sup>2</sup>

15. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004<sup>3</sup> (the Fees Regulations) at £600 for central government departments. The Fees Regulations also specify that the cost of complying with a request must be calculated at a flat rate of £25 per hour. This means that the public authority may refuse to comply with a request for information if it estimates that it will take longer than 24 hours to comply.
16. In estimating whether complying with a request would exceed the appropriate limit, 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:
  - determining whether it holds the information;
  - locating the information or a document containing it;
  - retrieving the information or a document containing it; and
  - extracting the information, or a document containing it.
17. Section 12 explicitly states that public authorities are only required to estimate the cost of compliance with a request, not give a precise calculation. However, the Commissioner considers that such an estimate must be one that is sensible, realistic and supported by cogent evidence.<sup>4</sup>

#### The public authority's position

18. The public authority's submission is summarised below.
19. The request asks for the evidence the public authority holds relating to claims made by politicians asserting that immigrants contribute more (taxes) to the British economy than they take out (benefits).

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<sup>2</sup> The full text of section 12 FOIA - <http://www.legislation.gov.uk/ukpga/2000/36/section/12>

<sup>3</sup> <http://www.legislation.gov.uk/uksi/2004/3244/contents/made>

<sup>4</sup> Following the approach set out by the Information Tribunal in *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency* (EA/2006/004)

20. The background evidence is not held in a single source and indeed any politician making such claims could have access to any number of documents or other information prior to making such a statement. Evidence feeding into any such statements as summarised in the request could be found in any number of sources – in submissions to Ministers, minutes of meetings, provided as background to different policies or in statistics based work or within papers or reports written by the public authority, other parts of government or written by third party external organisations and held by the department. Statements may also be made about any number of types of immigration, for example, long-term migration or immigration related to specific regions such as EEA migrants.
21. The request did not contain a date range or provide any indication of a date range by referencing a particular statement or indicating when the statements by the politicians were made. This might have helped narrow the search. In the absence of the request indicating otherwise, the public authority concluded that wide searches of any material related to the subject matter would be required.

### **Searches required**

22. Information held relating to the subject matter of the request is not filed by topic. Therefore, in order to locate all the information held by the public authority within the scope of the request, officials would need to: identify and locate any information that might fall within the scope of the request by carrying out key word searches in areas where information might reasonably be held and, consider the information identified by the key word search to determine if it related to evidence for claims identified in the request.

### Searches of the departmental record management system

23. The public authority holds information relating to the subject matter covering a very wide time period. The request did not specify a date range or a particular statement that was being referred to and so to understand the volume of information held, officials undertook initial searches using key words for three different date ranges – with no restricted time period; a five year period from the date of the request and a two year period from the date of the request. The results are listed below:

A search of the departmental record management system for documents generated without including a date range:

- Search term “migration” – 1,671,218 results

- Search term "migration" and "fiscal" and "contribution" – 112,295 results
- Search term "migrant" – 59,996 results
- Search term "migrant" and "fiscal" and "contribution" – 18,794 results
- Search term "Immigrants" – 15,393 results
- Search term "immigrants" and "fiscal" and "contribution" 1,685 – results
- Search term "immigration" – 62,192 results
- Search term "immigration" and "fiscal" and "contribution"- 9,978 – results

A search of the departmental record management system for documents generated between 20/09/2013 and 20/09/2018:

- Search term "migration" –128,858 results
- Search term "migration" and "fiscal" and "contribution" – 18,775 results
- Search term "migrant" – 25,543 results
- Search term "migrant" and "fiscal" and "contribution" – 7,868 results
- Search term "Immigrants" – 3,795 results
- Search term "immigrants" and "fiscal" and "contribution" –1,134 results
- Search term "immigration" – 51,348 results
- Search term "immigration" and "fiscal" and "contribution" – 8,101 results

A search of the departmental record management system for documents generated between 20/09/2016 and 20/09/2018:

- Search term "migration" – 49,548 results
- Search term "migration" and "fiscal" and "contribution" – 8,378 results
- Search term "migrant" – 9,468 results
- Search term "migrant" and "fiscal" and "contribution" – 3,859 results

- Search term "Immigrants" – 1220 results
- Search term "immigrants" and "fiscal" and "contribution" – 372 results
- Search term "immigration" – 21,985 results
- Search term "immigration" and fiscal and contribution" – 4,533 results

#### Searches of personal systems

24. Policies relevant to the information within the scope of the request are managed by several teams across the public authority. Information relating to the request could therefore also be held in numerous personal mailboxes and personal drives across the department – both of policy officials and in Ministerial offices.
25. One policy official involved in fiscal analysis was asked to undertake a search of their personal folders. The official carried out a keyword search of their personal Outlook folder and Drive from the period beginning July 2018 only to identify emails that would need to be considered. The search produced the following results:
  - Search term "migrant" – 975 results
  - Search term "migration" – 2,000 results
  - Search term "Immigrants" – 129 results
  - Search term "immigrants" and "fiscal" and "contribution" – 77 results
  - Search term "immigration" – 707 results
  - Search term "immigration" and "fiscal" and "contribution" – 333 results
26. The public authority acknowledged that it was likely that many of the search terms would result in duplication of results. However, in its view, the numbers demonstrate the time resource that would be required to search and locate the information held relating to the request. The information would then need to be separately considered to determine any parts relevant to the request.
27. It argued that a full search of its systems would be required given the wide nature of the request. Some documents will be lengthy and some relatively short. Even allowing only 1 minute to consider each document would mean that a search of over 1,440 documents would exceed the cost limit. If for example the request was narrowed to only the past 2 years and included 'migrant', 'migration', 'immigrants' or 'immigration' plus 'fiscal' and 'contribution' in the search terms, the volume of

information generated by these key word searches would still be considerable. It is estimated that the work involved in locating all information held would be well in excess of the cost limit.

28. In conclusion the public authority noted that it had invited the complainant to submit a more focused request and had also provided links to recently published Home Office white paper providing statistical data on EEA migration.

#### The Commissioner's considerations

29. Given the nature of its submission above, the Commissioner considers that the public authority is specifically relying on the provision in section 12(1) FOIA.
30. As mentioned, by virtue of section 12(1) FOIA a public authority is not required to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
31. Therefore, the Commissioner has considered whether the estimated cost of locating the requested information or a document containing it, retrieving the information or a document containing it, and extracting the information, or a document containing it would exceed the appropriate limit.
32. The complainant has asked for a copy of the evidence in support of claims by politicians that immigrants contribute more to the British economy than they take out.
33. The public authority has explained that such evidence is not held in a single source and indeed any politician making such claims could have access to any number of documents or other information prior to making such a statement. The Commissioner has found no reason to dispute this statement which in her view is reasonable in the circumstances.
34. Consequently, she accepts that the public authority would have to conduct a wide ranging search of its systems in order to locate and extract the inevitably multiple evidential sources relied upon by politicians who claim that immigrants contribute more to the British economy than they take out.
35. Given that the term "immigration" on its own will generate a significant amount of information from the public authority's systems, the Commissioner accepts that the cost of reviewing that information and subsequently extracting information within the scope of the request would exceed the appropriate limit.



36. The public authority was therefore entitled to rely on section 12(1) FOIA.

### **Section 16 FOIA**

37. Section 16 FOIA states:

“(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.”

38. Further to the above provision, so far as it would be reasonable to expect it to do so, a public authority relying on section 12 FOIA is expected to provide advice and assistance to an applicant in order to enable the applicant narrow the scope of their request so that the work involved in complying with the refined request does not exceed the appropriate limit.
39. As mentioned, the public authority invited the complainant to consider submitting a more focused request. For example, by providing an example of a relevant statement made by a Treasury Minister in order for the public authority to consider any evidence it holds further to that statement.
40. The Commissioner is satisfied that the public authority has discharged its duty to the complainant under section 16(1) FOIA.

## Other Matters

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41. The FOIA does not contain a time limit within which public authorities have to complete internal reviews. However, the ICO guidance explains that in most cases an internal review should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances.
42. The internal review was requested on 19 October 2018 and completed on 18 February 2019, taking the public authority a total of 84 working days.
43. The public authority explained that whilst the response time exceeded that which it would aim for, it was important that a proper review of the case was undertaken, that the issues were considered in full, and that it arrived at the correct conclusions. The response was issued as soon as the review had been concluded. The public authority assured the Commissioner that internal review requests were taken seriously and responded to as promptly as possible.
44. The public authority also explained that the recent delays in completing internal reviews are as a result of the fact that it lost 3 staff in its Information Rights Team in close proximity and at very short notice and had to embark on a recruitment exercise which took some time. However, the team is now fully resourced and working hard to deal with the backlog of internal reviews.
45. The Commissioner accepts that in some cases it might take longer than 20 working days to complete internal reviews. In her view the majority of internal reviews should not take longer than 40 working days. It is therefore regrettable that it took the public authority 84 working days to complete the internal review in this case. However, she appreciates that the sudden departure of 3 staff in the public authority's Information Rights Team was bound to have an impact. She notes that the team is now fully resourced to deal with the backlog of internal reviews.

## Right of appeal

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46. 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: 0300 1234504

Fax: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

47. 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.
48. 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 .....**

**Terna Waya**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**