

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 March 2022

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

Decision (including any steps ordered)

1. The complainant requested information from the Home Office regarding unaccompanied asylum-seeking claimed minors who entered the United Kingdom in each month from July 2020 to June 2021. The Home Office refused to comply with the request citing section 12 (cost limit) of the FOIA.
2. The Commissioner's decision is that the Home Office was entitled to refuse to comply with the request in accordance with section 12(1) of the FOIA and is satisfied that the Home Office met its obligation under section 16 to offer advice and assistance. The Commissioner does not require the Home Office to take any steps.

Request and response

3. On 1 July 2021 the complainant wrote to the Home Office and requested information in the following terms:

"Please confirm the number of unaccompanied asylum-seeking claimed minors who have entered the UK in each month of the last year (July 2020 – June 2021). Please provide a figure for each separate month.

In each separate month (again providing a figure for each of the 12 months), please confirm how many of the unaccompanied claimed minors were:-

- (a) Assessed by immigration officers to be 'over 25' years of age based on appearance and demeanour.
- (b) Age assessed by Kent Intake Unit ('KIU') social workers to be adults over the age of 18.

- (c) Age assessed by KIU social workers to be children or may be children such that referral is appropriate to local authority Children's Services.
- (d) Not assessed by KIU social workers but nonetheless referred to local authority Children's Services on the basis that they did not appear to be over 25 years of age and may therefore be children as claimed.

Please also confirm to which local authorities unaccompanied claimed minors have been referred to after entering the UK via the Dover port from and including 14th June 2021, when Kent County Council refused to take any more. Please list the relevant local authorities, and provide a quantity for each in terms of unaccompanied claimed minors accommodated under the Children Act, whether that is on the basis of acceptance of age or pending local authority assessment/determination of the same.

I look forward to hearing from you with this information within the next 20 working days, i.e. by 29th July 2021, in compliance with the statutory deadline."

- 4. On 19 July 2021 the Home Office replied and cited the cost limit exemption under section 12 of the FOIA; this was later upheld via internal review on 9 August 2021.

Scope of the case

- 5. The complainant contacted the Commissioner on 23 August 2021 to complain about the way their request for information had been handled. The complainant disagrees with the Home Office's application of section 12 of the FOIA.
- 6. The Commissioner considers the scope of this case is to determine if the public authority has correctly cited section 12 of the FOIA in response to this request. The Commissioner has also considered whether the public authority met its obligation to offer advice and assistance, under section 16 of the FOIA.

Reasons for decision

Section 12 – cost of compliance

7. 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").
8. Section 12(2) of the FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.
9. 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.
10. 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 to deal with this request.
11. 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.
12. 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 in the case of "Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004", 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.

13. Section 12 of the FOIA is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under the FOIA to consider whether there is a public interest in the disclosure of the information.
14. Where a public authority claims that section 12 of the 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 the FOIA.

Would the cost of compliance exceed the appropriate limit?

15. The Commissioner noted that the Home Office had not provided the complainant with an estimate of the cost of complying with the request.
16. As is the practice in a case in which the public authority has cited the cost limit under section 12 of the FOIA, the Commissioner asked the Home Office to provide an estimate of the time and cost of responding to the request.
17. In its submission to the Commissioner the Home Office estimated that to comply with the request it would need to manually review 1,304 cases to ensure they had identified all the information in scope of the request.
18. The Home Office explained that "age dispute" cases can be identified electronically using their Case Information Database. However, because the complainant's request asked for specific breakdowns of information, in order to provide that information, detailed manual searches would need to be carried out on each case identified as a case potentially within scope.
19. The Home Office explained to the Commissioner the way in which information is recorded on cases and the work that would be required to identify the information within the scope of the request.
20. The Home Office estimated that it would take around 10 minutes to review each of the 1,304 cases to find the information requested and review it. Based on the estimate given by the Home Office it would take approximately 217 hours/£5425 to respond to the complainant's request.
21. The Commissioner considers that, even using a more conservative cost estimate of only five minutes to review cases and extract the relevant information, the Home Office would still take approximately 109.5 hours/£2712.50 to respond to the request which is clearly well in excess of the 24 hours/£600 limit. The Commissioner accepts the explanation that it would be necessary for the Home Office to review each case

manually in order to locate and extract the information it held within the scope of the request.

22. The Commissioner's overall conclusion is that the Home Office has estimated reasonably that to comply with the complainant's request would exceed the cost limit. The Home Office was therefore correct to apply section 12(1) of the FOIA to the complainant's request.

Section 16(1) – The duty to provide advice and assistance

23. Section 16(1) of the FOIA provides that a public authority should give reasonable advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1). The FOIA code of practice states that, where public authorities have relied on section 12 to refuse a request, they should:

"provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within the cost limit".

24. A public authority is not required to "lavish ingenuity" on finding ways to reframe the request, but it should be able to explain simple ways of reducing the scope – such as reducing the time parameters or identifying elements of a multi-part request that could be answered within the cost limit.
25. The Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice, however, a refusal under section 12(1) is generally a trigger for advice under section 16(1) to be given.
26. In this case, the Home Office's initial response was:
- "If you were to resubmit a more specific request of narrower scope then we would reconsider it, although we cannot guarantee that any information covered by a narrower request would be disclosed. Further information about resubmitting a more specific request can be found at:

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

If you refine your request, reducing the amount of information you ask for, we will consider it again. However, any request involving a significant amount of manual searching is likely to exceed the cost limit for the reasons explained in this letter.”

27. On internal review, the Home Office response was:

“I am unable to advise you how you can refine your request as it is estimated that the cost of meeting a refined request would still be likely to exceed the cost limit. This is because even if the information requested was reduced in scope, a manual search would still be required, as explained above.”

28. The Commissioner acknowledges that it is not always easy to provide meaningful advice on how a request can be refined, particularly if it appears quite wide-ranging in scope.

29. The Commissioner notes that the Home Office outlined to the complainant that it was not possible to offer advice about how to reduce the scope of the request, due to the broad nature of the material requested. The Commissioner considers this was an appropriate response in the circumstances given the number of files that would have to be searched. He is therefore satisfied that the Home Office met its obligation under section 16 of the FOIA.

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.

Signed

Michael Lea
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