

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

### **Decision notice**

**Date:** 7 July 2021

**Public Authority:** Department for Transport  
**Address:** Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

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

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1. The complainant has requested information about the closure of the UK's borders in response to the COVID-19 pandemic. The Department for Transport (DfT) has refused to comply with the request as it says the cost of doing so would exceed the appropriate limit under section 12(1) of the FOIA.
2. The Commissioner's decision is as follows:
  - DfT is entitled to rely on section 12(1) of the FOIA to refuse to comply with the complainant's request as the cost of doing so would exceed the appropriate limit.
  - DfT provided adequate advice and assistance and there was no breach of section 16(1) in DfT's handling of the request.
3. The Commissioner does not require DfT to take any remedial steps.

### **Request and response**

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4. On 2 November 2020 the complainant wrote to DfT and requested information in the following terms:

*" Please can you provide me with the following information:*

- 1. The specific guidance - Scientific, economic and Behavioural that you consulted to come to your decision re: late closure of UK Borders. This is to include a full, referenced bibliography.*
- 2. The specific guidance that you consulted to come to your decision that the late closure of the UK borders would not negatively affect the Infection rate and subsequent deaths. This is to include a full, referenced bibliography."*
5. DfT responded on 1 December 2020. It refused to comply with the request under section 12 of the FOIA as it considered the cost of doing so would exceed the appropriate cost limit. DfT advised the complainant that he could submit a new, more specific request and offered suggestions as to how the request could be refined to bring complying with it within the cost limit.
6. Following an internal review DfT wrote to the complainant on 19 January 2021. It upheld its original response.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 20 January 2021 to complain about the way his request for information had been handled.
8. The Commissioner's investigation has focussed on DfT's reliance on section 12(1) of the FOIA to refuse to comply with the complainant's request. She has also considered DfT's duty to offer the complainant advice and assistance, under section 16(1) of the FOIA.

### **Reasons for decision**

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#### **Section 12 – cost exceeds the appropriate limit**

9. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to him or her if it is held and is not exempt information.
10. Section 12(1) of the FOIA says that a public authority is not obliged to comply with section 1(1) if the authority estimates that the cost of doing so would exceed the appropriate limit.

11. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 24 hours work in accordance with the appropriate limit of £600 set out above, which is the limit applicable to DfT. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
  - determine whether it holds the information
  - locate the information, or a document which may contain the information
  - retrieve the information, or a document which may contain the information, and
  - extract the information from a document containing it.
12. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the applicant refine the request so that it can be dealt with under the appropriate limit, in line with section 16(1) of the FOIA.
13. In its submission to the Commissioner, DfT confirmed that it undertook a sampling exercise and that this was based on the quickest method of gathering the requested information.
14. DfT notes that the complainant requested "guidance used (scientific, economic and behavioural) that was consulted to reach the decision regarding the late close of UK Borders" and "guidance that was consulted to reach the decision that the late closure of the UK borders would not negatively affect the infection rate and subsequent deaths." The complainant also requested a full, referenced bibliography.
15. DfT says that when it received the request, it sought to interpret the request and the types of information that the request reasonably covered. DfT concluded that the request was broadly framed and potentially included significant amounts of material. It reached the view that while framed as two separate and distinct requests, the information sought by the complainant in point (2) of his communication (relating to guidance consulted to reach the decision that the late closure of the UK borders would not negatively affect the infection rate and subsequent deaths) was in real terms a subset of the information sought in point (1) of his request (guidance used (scientific, economic and behavioural) that was consulted to reach the decision regarding the late close of UK Borders) and would in any event be captured by the point (1) request.
16. DfT has explained that it considered it had to take a broad approach, and this was necessary so as not to narrow the request down on behalf

of the complainant. DfT considered that this would have been inconsistent with the principles of FOIA, as narrowing the search on the applicant's behalf may not lead to the type of information the applicant is actually seeking. DfT has noted that it provided advice to the complainant about how to reduce the breadth of his request, with a view to bringing complying with it within the cost limits, but it has not received a response from the complainant to those suggestions.

17. DfT says that it sought to limit the scope of the request of 2 November 2020 by limiting the time period of the search to that necessary to capture the information within scope of the request and exclude irrelevant information. It interpreted the request as being related to the borders policy pursued by the Government in response to the COVID-19 pandemic and guidance related to it. DfT therefore limited the search for relevant information to when policy on this subject began to be formulated ie January 2020. To this extent, several hours of staff time were spent determining whether the information requested is held and identifying which teams and individuals would be required to search their records in order to comply with the request.
18. DfT then undertook an initial search of the emails held by the International Travel Programme and the Director of Aviation as the most senior official in DfT with day-to-day involvement with the International Travel Programme. The search terms used were "borders + guidance", which returned emails containing both of these words.
19. In DfT's view this was a reasonable and proportionate way to pinpoint relevant emails and correspondence held by the International Travel Programme team that fell within the scope of the request. DfT says that there is no centralised database of information that could have been used for this purpose. These searches alone indicated over 15,000 emails would need to be searched to determine if they were in fact relevant to the request. DfT notes that this search was not extensive, and further information would almost certainly be held by other teams across the Department.
20. As a result of this investigation, DfT says that the team carried out the search again and selected 27 emails at random. Officials looked through the emails selected to determine how long it would take to extrapolate the relevant details contained within them. It took 35 minutes for the randomly selected emails to be reviewed. This established that it would take a minimum of one minute to read each email and verify whether it contained any information pertinent to the request. Due to the complicated nature of the task, and the significant number of people involved across the Department, each email flagged by the search would need to be checked individually due to the amount of potentially relevant information they contained.

21. As a result of the sampling exercise DfT calculated that with more than 15,000 emails, each taking at least one minute to identify and retrieve relevant information, it would take a minimum of 250 working hours to identify all relevant information within the sample search results. DfT notes again that this search was conducted within a limited field of individuals and a more extensive search covering officials from multiple teams across the Department would be necessary to meet the request. Using the estimate of at least one minute per email, DfT estimated that the appropriate limit would be exceeded after working through approximately 1,440 e-mails – just less than 10% of the total in the initial sample search. DfT says that even if some of the emails held by the Department could be checked quicker to ascertain whether they contain information relevant to the request, the Department considered it reasonable to conclude that processing all of the emails returned in the sample search would have taken significantly longer than 24 hours' worth of work to which the appropriate cost limit of £600 equates.
22. DfT says that, having determined this, it did not search other filing systems or emails held by other teams, as it was clear that the appropriate limit had far been exceeded. DfT observes that other teams are, however, likely to hold information in scope of the request.
23. DfT concluded its submission by noting that, in its initial response to the request, it pointed out that while the initial request was being refused on the grounds of costs, DfT would consider a request with a narrower scope (included limited for example by search term or date) provided it did not exceed the statutory cost limit. DfT had not received a further revised request for information from the complainant at the point of providing its submission to the Commissioner.
24. The Commissioner noted that the request is for "guidance" but that DfT had focussed its sampling exercise on email correspondence and had not referred to any relevant policies, reports or other such material. She queried this with DfT. DfT explained that, as it had set out at the review stage, it felt it needed to take a broad interpretation of the request in order to assist the complainant. One of the reasons for this is that, at the time of the request, there was no specific "guidance" about how to deal with the COVID-19 pandemic and what decisions to take about the UK borders. DfT says that is not the way such complex matters work. In practice, a number of government departments consulted a range of scientific evidence sources and advice, including meetings of the government's SAGE committee (Scientific Advisory Committee for Emergencies), which would likely have been shared by key individuals at DfT by email. Such information would have come to DfT through emails, which would necessitate the detailed search of a large number of inboxes which has been discussed above.

25. The Commissioner remained surprised that, at the point of the request on 2 November 2020, DfT had not gathered into one central place key material that the decision makers in DfT drew on to inform the major decision they finally made on the closure of the UK borders. Information relevant to the complainant's request may be more straightforward to identify if DfT had more targeted areas to search. On 15 June 2021, the Commissioner asked DfT to confirm whether, for example, it had identified those key decision makers, whether they had been consulted about the request and whether their email accounts had been searched. She noted that DfT had referred to information from SAGE committee meetings was likely to have been shared with DfT. The Commissioner also asked DfT to consider whether, for example, key information from meetings had been collated and was filed centrally.
26. On 6 July 2021, DfT responded. It told the Commissioner that its approach did not assume that all the records it held would need to be searched. Instead it limited its search, based on intelligence about the Department's business operation, to relevant individuals and teams. DfT says that, as it had set out in its initial submission to the Commissioner, it undertook an initial search of emails held by the Director of Aviation and the International Travel Programme team in order to estimate the cost of identifying the information requested. Primarily due to the lack of specificity in the request, DfT says, the cost limit would be breached in searching for and identifying the relevant information.
27. DfT has gone on to explain that its approach was then to encourage the complainant to narrow the request so that it could be addressed within the time and cost limit. It had proposed a number of ways the complainant might achieve this including, for example, the time period to be covered. The complainant had not refined their request.
28. The individuals within the Department who were consulted for the initial search did not identify any relevant materials. However in searching emails to identify *if* they contained information relevant to the request and based on the sampling exercise and the time this would take, DfT says it established that the cost limit would clearly be breached. DfT has confirmed that it did not search all records, only the time-period relevant to its interpretation of the request as relating to the pandemic. And DfT's search did not include records after the date the request was submitted.
29. With regard to SAGE meetings, DfT notes that as SAGE is not a committee of the Department for Transport, it does not hold a central record of information in relation to their meetings (and SAGE minutes are already published on gov.uk, albeit in slightly redacted form). Finding such information which would have been relevant to the request would again, DfT says, have breached the cost limit.

## Conclusion

30. DfT considers that the request lacked 'specificity'. The Commissioner does not agree. She considers that a reasonable interpretation of the request is that it is a request for the key guidance and information that the decision makers in DfT drew on to inform their decision to close the UK borders in response to the COVID-19 pandemic. She had imagined that, by the time of the request in November 2020, such information would have been collated and be held centrally. However, DfT's submissions have indicated that that was not the case, and that any relevant information would have been dispersed across the Department, principally in email accounts.
31. However, although DfT has categorised the request as broad, the Commissioner considers that DfT's interpretation of the request was appropriate and, given the circumstances discussed above, she also considers that focussing the sampling exercise on email correspondence and the time parameters of DfT's search were appropriate.
32. The Commissioner is satisfied from DfT's submissions that sufficient thought was given to the request, whether any relevant information would be held and where that information would be held. The Commissioner is also now satisfied that the sampling exercise that was then undertaken, including the search terms used, was appropriate and that the findings of that exercise are credible. She accepts that, given that DfT does not appear to have held any relevant information centrally, and given the volume of correspondence retrieved solely from the sampling exercise (which would need to be reviewed) it would take DfT longer than 24 hours to comply with the request as it had been framed. The Commissioner has therefore decided that DfT was entitled to rely on section 12(1) of the FOIA to refuse to comply with the request.

## **Section 16 – advice and assistance**

33. Section 16(1) of the FOIA places a duty on 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.
34. In its initial response to the complainant, DfT suggested to the complainant that he send it a new, more specific request. It advised him that he could ask for a specific type of information concerning a specific search term, limit the request to a specific time frame, or reduce the request in other ways which met his needs.



35. In its 6 July 2021 correspondence to the Commissioner DfT says that an alternative approach to interpreting the request broadly, as it had done, would have been to encourage the applicant to move towards a narrower or clearer request. This could perhaps have resulted in guiding the applicant to, for example, SAGE minutes. But DfT says it was not clear if this would be perceived as clouding or unduly influencing the applicant's vision of what they wanted to request. DfT says it might have been viewed as steering the applicant, either towards or away from certain pieces of information. This formed the basis of DfT's rationale for suggesting a narrower timeframe, without leading the applicant towards a particularly narrow piece of information.
36. Although the complainant has stressed to the Commissioner how important he considers the matter of the closure of UK borders in response to the COVID-19 pandemic to be, he did not submit a refined request, or further discuss with DfT how he might usefully refine his request.

### Conclusion

37. Paragraph 6.9 of the FOI Code of Practice advises that helping an applicant narrow the scope of their request may include suggesting that the subject or timespan of the request is narrowed. As such, the Commissioner considers that the advice and assistance that DfT offered the complainant was adequate and that there was no breach of section 16(1) of the FOIA.



## Right of appeal

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38. 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](mailto:grc@justice.gov.uk)

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

39. 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.
40. 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

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**