

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

### **Decision notice**

**Date:** 16 May 2024

**Public Authority:** Department for Energy Security and Net Zero  
**Address:** 1 Victoria Street  
London  
SW1H 0ET

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

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1. The complainant requested information regarding profiles of memory usage and battery health across devices used by the Department for Energy Security and Net Zero (DESNZ). DESNZ refused the request citing section 12 (cost of compliance) of FOIA.
2. The Commissioner's decision is that DESNZ was entitled to rely on section 12 in response to the request. It has also complied with its duty to provide advice and assistance in line with the requirements of section 16 of FOIA.
3. The Commissioner does not require any steps as a result of this decision.

## Request and response

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4. On 14 January 2024, the complainant made a request for information in the following terms:

“Under the Freedom of Information Act, I'd like to request the following information:

Information held on (a) profile(s) of computer memory usage (Wikipedia page for reference: [https://en.wikipedia.org/wiki/Computer\\_m](https://en.wikipedia.org/wiki/Computer_m)) and (b) 'battery health' across devices used / operated by your Department (e.g. laptops, phones etc.).

Please do not hesitate to reach out if any aspect of my request requires further clarification.”

5. On 15 January 2024, DESNZ responded citing section 12 to refuse the request and explained the background to the administration process involved. It also provided advice regarding narrowing the scope of the request.
6. The complainant requested an internal review on 15 January 2024, setting out their grounds for dissatisfaction with DESNZ's response.
7. DESNZ provided its internal review response on 23 January 2024, again citing the cost limit exemption under section 12 of FOIA.

## Scope of the case

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8. The complainant contacted the Commissioner on 24 January 2024 to complain about the way their request for information had been handled. They included a link to the What Do They Know (WDTK) website and argued that:

“I find it difficult to believe that it would take so long to retrieve and present the information in a suitable format. I think there may have been an over-estimation of how much time would actually be required.”

9. The Commissioner considers the scope of this case is to determine if the public authority is entitled to rely on section 12(1) of FOIA. He has also considered whether DESNZ complied with its duty to provide advice and assistance under section 16 of FOIA.

## Reasons for decision

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### Section 12 – cost of compliance exceeds the appropriate limit

10. Section 12 of 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 cost limit.
11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for public authorities such as DESNZ.
12. 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 of FOIA effectively imposes a time limit of 24 hours for DESNZ to deal with this request.
13. 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.
14. 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 decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/0004*, 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.
15. Section 12 of FOIA is an absolute exemption and 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.
16. 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.

**Would the cost of compliance exceed the appropriate limit?**

17. When dealing with a complaint to him under FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources or how it chooses to hold its information.
18. Therefore, as set out in the Fees Regulations, the Commissioner has considered whether the estimated cost of responding to the request would exceed the appropriate limit of 24 hours.
19. As is the practice in a case where a public authority has cited the cost limit under section 12, the Commissioner asked DESNZ to provide a more detailed explanation of its cost estimate.
20. DESNZ explained to the Commissioner that transient information on the profile of use of a computer's memory is presented on them through programs such as Task Manager. This information is not captured centrally nor recorded in logs that would provide a summary across the department's circa 4,700 computers. To fulfil the request, it would need to take forward a piece of work to enable its Mobile Device Management (MDM) systems to interrogate all its devices for reporting purposes.
21. As its MDM does not currently have the capability to collect this information, it would require engagement with all its users to ask them to follow a series of technical steps to interrogate Task Manager (and the equivalent on MacBooks) and then manually provide information in a format that can be collated and presented.
22. DESNZ estimated that if each end user were required to take action to provide this information, assuming it would take five minutes to read the instructions and provide the information requested, this would take 392 hours. It estimated that associated staff costs across the department to perform this task (even without the time taken to collate and present the information), at £25 an hour would cost £9,800 and this alone would far exceed the cost limit.
23. DESNZ also stated that in addition to the above, the second aspect of the request about battery health would similarly require a manual process to be adopted. However, this would take longer to perform as it asks for details on "'battery health' across devices used/operated by the Department (e.g. laptops, phones etc.).
24. Again, on the basis that there are circa 4,700 users of devices, DESNZ explained that users would need to follow a series of instructions to ascertain the health of the battery in both their laptop and smartphone.

It estimated this would take a total of 10 minutes per user for two devices. This would take 784 hours at £25 per hour equalling an estimated £19,600.

25. DESNZ based both its estimates on everyone complying with the request to provide the information.
26. It further explained that additional resources would be required to produce instructions for staff to follow, to commission the exercise, track progress, collate results and then present these in a format that would fulfil the request. It estimated that this would cost in excess of £1,000 considering the grade of person fulfilling the task and oversight by a supervisor.
27. It should be noted that the grade and oversight of anyone providing additional resources are not relevant as they are charged at the same rate of £25 per hour. Nevertheless, the Commissioner acknowledges that this would incur an additional cost.
28. Section 1 FOIA provides a general right of access to information requested. However, a public authority has a duty to consider whether any information located and retrieved is relevant to the request. For these reasons it is not a case of merely providing the information without reviewing it to determine if the information held could be in scope.
29. Therefore, to determine if information is held and provide the same, DESNZ has demonstrated this would be well in excess of the 24 hours permitted.
30. Even if it were possible to reduce the amount of time taken (which would seem unreasonable given the above) to check the devices, this would still be over the threshold limit of 24 hours.
31. Having considered the information provided, the Commissioner's overall conclusion is that DESNZ has estimated reasonably and cogently that to comply with the complainant's request would exceed the cost limit of 24 hours. It was therefore entitled to apply section 12. However, even if the advice to refine the request had been followed, given the quantity of devices and work involved, it seems unlikely DESNZ could provide information within the cost limit.
32. The Commissioner considers this was an appropriate response in the circumstances given the nature of the original request. He is therefore satisfied that DESNZ also met its obligation under section 16 of FOIA and does not require it to take any steps.

## **Right of appeal**

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33. 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) <mailto:GRC@hmcts.gsi.gov.uk>

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

34. 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.
35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Susan Duffy**  
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