

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 May 2025

Public Authority: Ministry of Housing, Communities and Local Government

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant made a multipart request to the Ministry of Housing, Communities and Local Government ("the MHCLG"), of which part 2 sought the date on which its definition of the term 'Windrush Generation' was first announced to the public. During the course of the Commissioner's investigation, the MHCLG informed the Commissioner that identifying the date would engage section 12(1) of FOIA (cost of compliance) and now relied on that provision.
2. The Commissioner's decision is that section 12(1) is not engaged.
3. The Commissioner requires the MHCLG to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to part 2 of the request in which it does not rely on section 12 of FOIA.
4. The MHCLG 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. On 8 July 2024, the complainant wrote to the MHCLG and requested information in the following terms:
 - (1) How does your Government department define the 'Windrush Generation'?
 - (2) When was that definition first announced to the public?
 - (3)
 - a. Why was the definition announced to the public in the view of the fact that there were thousands of West Indians / people born in the Caribbean who remained in Britain after 8 May 1945?
 - b. Why have this number of people been excluded from your definition?
 - (4) Hundreds of West Indian immigrants also arrived on the Jamaica Producer British Steam ship, the Almanzora and Ormonde in 1946 and 1947, why are they not included in the Department's definition of Windrush Generation?
6. The MHCLG responded on 22 July 2024. It provided its definition of the term 'Windrush Generation' (part 1 of the request) but indicated that the remainder of the requested information was not held.
7. On 16 August 2024, the complainant asked the MHCLG to provide an internal review, on the basis that it had not provided the recorded information specified in the request, and that they believed "that the information is found in documents you have published".
8. Following an internal review the MHCLG wrote to the complainant on 26 September 2024. It maintained that it had no further information it could provide, and that in respect of any published documents, these documents were already publicly accessible.

Scope of the case

9. The complainant contacted the Commissioner on 13 October 2024 to complain about the way their request for information had been handled, and specifically that the MHCLG held the information requested by part 2 of the request.
10. During the course of the investigation, the MHCLG informed the Commissioner that it considered compliance with part 2 of the request would exceed the appropriate limit set by section 12(1) of FOIA.

11. The scope of this case and of the following analysis is therefore whether the MHCLG is entitled to refuse part 2 of the request under section 12(1).

Reasons for decision

Section 12 – Cost of compliance

12. The following analysis covers whether MHCLG estimated reasonably that complying with the request would have exceeded the appropriate limit.
13. 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”).
14. 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 public authority in this case is £600.
15. 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 MHCLG.
16. 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.
17. 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.

18. 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.
19. 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

20. The complainant argues that the MHCLG should be able to identify the requested information within its records from April-June 2018 (prior to the first 'Windrush Day' commemoration).

The MHCLG's position

21. The MHCLG has explained that the term 'Windrush Generation' has developed and been used over a long period of time. The MHCLG's present interpretation of the term was provided as part of its initial response to the request. The MHCLG has also explained to the Commissioner that this definition is also provided to the public on [its webpages for the Windrush Day Grant Scheme 2024](#).
22. However, the MHCLG argues that identifying when the term was first used by it would require extensive searches and consultations, and may not even be clearly identifiable. The MHCLG has used the term for several decades, and the Windrush Day Grant Scheme was begun 8-9 years ago. To attempt to identify and track the origin and development of the term would require significant resources.
23. For example, a test search of just one officer's (within the Windrush Team) email inbox using the term "windrush generation" identified 1135 emails between 18 March 2024 and 18 March 2025. This Team, which has existed for 8 years, typically has 3-4 officers, meaning that the number of relevant emails for one year alone is likely to be in excess of 3500. As such, even reviewing one year's worth of emails, and allowing for one minute per email, would require nearly 60 hours of work.
24. The MHCLG has also searched in the Team's shared Windrush folder using the term "windrush generation"; this resulted in thousands of hits across a ten-year period of time.
25. For the above reasons, the MHCLG argues that compliance with the request would grossly exceed the appropriate limit.

The Commissioner's view

26. The Commissioner has considered the MHCLG's position on section 12(1).
27. The MHCLG has provided arguments which appear to focus on searching the entirety of its internal records for the first use of the term. For example, the MHCLG considers that it would be necessary to search each policy officer's inbox, and that a search across the whole Team would involve the review of over 3500 emails for each year.
28. However, it appears to the Commissioner that the MHCLG has interpreted the request in a way that does not reflect what is actually sought.
29. The request seeks the date on which the definition was first announced to the public.
30. The Commissioner is not satisfied that the MHCLG would need to undertake searches it has outlined to identify this information. The Commissioner is not convinced that searches for any 'announcement' to the public would reasonably require the in-depth search of internal records to the extent argued by the MHCLG.
31. The Commissioner is therefore not satisfied that MHCLG has estimated reasonably that compliance with part 2 of the request would exceed the appropriate limit. Therefore, the MHCLG is not entitled to rely on section 12(1) to refuse it.
32. The Commissioner requires the MHCLG to issue a fresh response to part 2 of the request in which it does not rely on section 12 of FOIA.

Right of appeal

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

Website: 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.

Daniel Perry
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