

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 14 March 2011

Public Authority: Foreign and Commonwealth Office
Address: Old Admiralty Building
London
SW1A 2PA

Summary

The complainant requested information concerning the funding of various overseas non-governmental organisations (NGOs) from the Foreign and Commonwealth Office (FCO). The FCO aggregated the complainant's request along with that of his wife's made on the same day as both requests had previously been part of a request submitted by the complainant earlier in the year. The FCO refused to comply with the requests on grounds of cost. The complainant did not accept the application of section 12(1) or the fact that the requests were aggregated. Owing to the lack of engagement from the FCO with the ICO's investigation, the Commissioner has decided that the FCO has failed to demonstrate that compliance with the request would exceed the appropriate costs limit. The FCO is required to disclose the information to the complainant within 35 calendar days of this Notice.

The Commissioner's Role

The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 1 February 2010 the complainant requested the following information:

"1. The number of Non Governmental Organisations (NGO's) overseas currently funded by HM Government.

2. The proportion of the current budget of the Foreign & Commonwealth Office used for funding or partially funding NGO's.

3. The proportion of the current budget of the Foreign & Commonwealth Office used for aid or partial aid on a country by country basis over and above that provided by the Department of International Development."

3. On the same day the complainant's wife submitted a request which the FCO aggregated in terms of cost along with the complainant's. The complainant's wife requested the following information:

"1. The names of the NGO's in the Middle East funded or partially funded by HM Government.

2. The current annual funding cost on an individual basis of each of the NGO's in the Middle East funded or partially funded to HM Government.

3. The annual funding cost on an individual basis of each of the NGO's in the Middle East funded or partially funded by HM Government for the last five years from 2004."

4. The FCO responded on 24 February 2010 refusing to disclose the information requested on grounds of cost. The FCO stated *"both requests should be aggregated and that when taken together they exceed the appropriate limit under section 12 of the Act."* The FCO provided a brief analysis of the cost estimation and then went on to provide advice and assistance under section 16 of the Act regarding refining requests.
5. The complainant contacted the FCO on 24 February 2010 questioning why the FCO had aggregated the requests for the purposes of the cost estimate.
6. On 1 March 2010 the FCO responded providing further grounds on which the requests could be aggregated and advice on how to refine the requests to attempt to bring them under the appropriate cost limit.
7. The complainant requested an internal review of the FCO's decision on 8 March 2010. On 31 March 2010 the FCO wrote to the complainant with details of the internal review it had carried out. The internal review upheld the FCO's decision to aggregate the cost of the requests

and withhold the information on the grounds that compliance would exceed the appropriate limit.

The Investigation

Scope of the case

8. On 4 May 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the fact that the FCO had aggregated both his and his wife's requests and that the requests had been refused under section 12(1) of the Act.

Chronology

9. On 1 September 2010 the Commissioner wrote to the FCO seeking further evidence about the FCO's costs estimate and refusal under section 12(1) of the Act.
10. On 5 October 2010 the FCO responded to the Commissioner and provided brief details of the possible number of departments where the information may be held and the length of time it would take to contact each department and obtain the information. The FCO concluded that the costs limit would be exceeded based on this estimate.
11. On 8 October 2010 the Commissioner wrote to the FCO asking for clarification on a number of matters regarding the costs estimate provided.
12. On 15 November 2010 the FCO contacted the Commissioner asking for an extension to the date its response was due. As the revised date had already passed the Commissioner asked for a response as soon as possible.
13. On 6 December 2010 the Commissioner chased a response from the FCO.
14. On 20 December 2010 the Commissioner again chased a response from the FCO.
15. On 17 January 2011 the Commissioner served an Information Notice on the FCO in order to obtain the information necessary to progress his investigation.
16. On 22 February 2011 the Commissioner, having received no response to his Information Notice, contacted the FCO. He asked for a response within seven working days and explained that continued non-

compliance with his Information Notice and the investigation as a whole would be referred to his enforcement solicitors with a view to commencing proceedings for contempt of court.

17. On 24 February 2011 the FCO contacted the Commissioner asking for an extension of 20 working days in which to reply to the Information Notice. The Commissioner refused to grant this extension and asked for the FCO's response to be provided as soon as possible.

Analysis

Substantive Procedural Matters

Aggregation of requests

18. Regulation 5(1) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations) states the following:

"In circumstances in which this regulation applies, where two or more requests for information...are made to a public authority –

- (a) by one person, or*
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,*

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority...of complying with all of them."

19. Regulation 5(2) goes on to state:

"This regulation applies in circumstances in which –

- (a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and*
- (b) those requests are received by the public authority within any period of sixty consecutive working days."*

20. The Commissioner considers that it can be argued that the FCO was correct to aggregate the requests received from the complainant and his wife on 1 February 2010. From the information provided to the ICO the Commissioner understands that there is a background to the February requests dating from 4 January 2010 which shows that the requests are linked and share a common purpose seeking similar information.

21. The complainant originally wrote to the FCO on 4 January 2010 and made nine requests for information. It appears that six of the nine requests that were initially refused on grounds of cost in that

correspondence of 4 January 2010 were then resubmitted as separate requests, namely those received by the FCO from the complainant and his wife in February.

22. It is evident that the provisions laid out in regulations 5(1)(b), 5(2)(a) and 5(2)(b) are satisfied and therefore the Commissioner finds that the FCO aggregated the requests in accordance with the Regulations correctly. The Commissioner then went on to investigate the section 12 refusal.

Section 12 – the cost of compliance exceeds the appropriate limit

23. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Regulations. The appropriate limit for central government departments is £600 and £450 for all other public authorities.
24. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
- determining whether the information is held;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
25. The Commissioner asked the FCO, with reference to the four activities described above, to provide a detailed reasonable estimate of the time taken and cost that would be incurred by providing the information falling within the scope of the request. The Commissioner asked that, when the FCO provided these calculations, a description of the nature of the type of work involved was also included.
26. The FCO provided brief details to the Commissioner as to why it considered that section 12(1) applied to the request. With regard to the Middle East request, the FCO estimated the areas in which it was likely to fund NGOs and explained that this covered a total of over 24 departments. The FCO then estimated that it would take approximately 10 minutes to find the information relating to the first two questions and 50 minutes for the third question as it covered the last five years.
27. The FCO went on to factor in compliance with the first three parts of the requests, those not concerning NGOs in the Middle East. It stated that it would have to *"contact each and every geographical department in the FCO and each of the 268 posts"* in order to obtain the requested information. The FCO estimated an hour per department again and

therefore concluded that locating, retrieving and extracting the relevant information would exceed the appropriate costs limit.

28. The Commissioner sought a more detailed breakdown of the physical work involved from the FCO in order to determine whether the estimate concerning the cost of compliance with the request previously supplied was a reasonable one. The Commissioner would expect a public authority, when supporting its position that section 12(1) applied to a request, to describe how the information was recorded and what type of work was needed to locate, retrieve and extract the information.
29. He sought these details from the FCO along with any additional information regarding whether the information would be held manually or electronically and the size of any files that would need to be searched. The Commissioner also asked whether there was a way to access the information centrally and whether a sampling exercise had been undertaken in order to come to the costs estimate.
30. The clarification sought by the Commissioner regarding the initial response from the FCO detailed above became the content of the Information Notice served on the FCO on 17 January 2011.
31. As the Commissioner has received no substantive response from the FCO to date, he has not been able to continue with his enquiries. Although he recognises that the request could potentially span a significant amount of information which the FCO would need to search through in order to locate, retrieve and extract the requested information, the Commissioner has not been provided with enough evidence in support of the section 12(1) application to draw that conclusion with any certainty. In this regard, the Commissioner notes the remarks of the First-tier Tribunal (Information Rights) (formerly the Information Tribunal) in the case of *Alasdair Roberts & The Information Commissioner* (EA/2008/0050), that any estimate should be "*sensible, realistic and supported by cogent evidence*".
32. The FCO failed to provide the Commissioner with an adequate description of the tasks involved in complying with the request. He has therefore been unable to form an adequate understanding of the costs which would be incurred by the FCO.

The Decision

33. The FCO failed to provide the Commissioner with sufficient evidence to support its application of section 12(1) on which he could base a decision to uphold the public authority's refusal on grounds of cost.

Steps Required

34. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- disclose the requested information to the complainant.

The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

35. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

36. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. During the course of his investigation, the Commissioner has encountered considerable delay on account of the FCO's reluctance to meet the timescales for response set out in his letters. Furthermore, the Commissioner has met with resistance in his attempts to understand the FCO's reasons for handling the request as it did. The delays and resistance were such that the Commissioner was obliged to issue an Information Notice in order to obtain details relevant to his investigation.
37. Accordingly, the Commissioner does not consider the FCO's approach in this case to be particularly co-operative, or within the spirit of the Act. For this reason, he will be monitoring the FCO's future engagement with the ICO and would expect to see improvements in this regard.

Right of Appeal

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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 14th day of March 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

"Section 1(1) 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."