

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 18 July 2013

Public Authority: Office of the First Minister and deputy First Minister

Address: Castle Buildings
Stormont
Belfast
BT4 3SR

Decision (including any steps ordered)

1. The complainant made six requests to the Office of the First Minister and deputy First Minister (OFMDFM). OFMDFM refused the requests under section 12(1) of the FOIA on the basis that compliance would exceed the cost limit. The Commissioner's decision is that OFMDFM was entitled to refuse the requests, and does not require any steps to be taken.

Request and response

2. On 23 November 2012, the complainant made six separate requests for information to OFMDFM. The requests were as follows:

"1. An annual breakdown of air travel expenses for department employees in the past two years.

Please include in breakdown flight destinations, the corresponding number of employees flying to said destination, cost of each corresponding flight and what the class of flight was ie business, economy etc, and general purpose of travel.

For clarification please do not include the Minister's or Ministers' air travel in this request.

2. An annual breakdown of air travel expenses for the department's ministers in the past two years, including flight destinations, the corresponding number of employees flying to said destination with the minister, cost of each corresponding flight for each person and what the

class of flight was ie business, economy etc, and general purpose of travel.

3. An annual breakdown of the cost over the past two years of hotel/accommodation expenses in Northern Ireland and the Republic of Ireland for department employees.

Please include in the breakdown the star rating of the accommodation/hotel, corresponding cost and corresponding how many nights the employee/s stayed and the corresponding number of employees that stayed for the duration.

For clarification please do not include the Minister's or Ministers' accommodation in this request.

4. An annual breakdown of the cost over the past two years of hotel/accommodation expenses in Northern Ireland and the Republic of Ireland for the department's minister or ministers.

Please include in the breakdown the corresponding; star rating of the accommodation/hotel, cost and how many nights the minister stayed and the number of employees that stayed for the duration.

5. An annual breakdown of the cost over the past two years of hotel/accommodation expenses abroad for the department's employees.

Please include in the breakdown the corresponding; star rating of the accommodation/hotel, the country of the hotel/accommodation, cost of the stay and how many nights the employee/s stayed and the number of employees which stayed for that duration.

For clarification please do not include the Minister's or Ministers' accommodation in this request.

6. An annual breakdown of the cost over the past two years of hotel/accommodation expenses abroad for the department's ministers.

Please include in the breakdown the corresponding; star rating of the accommodation/hotel, the country of the hotel/accommodation, cost of the stay and how many nights the department minister or ministers stayed and the number of employees which stayed with the minister or ministers for that duration."

3. On 29 November 2012 OFMDFM requested clarification from the complainant in relation to the following points:

"1) What is meant by the last two years? Departmental information is held in financial years.

2) What is meant by employees? Is this all employees, or senior civil service only? If the scope of the request is for all, there is a greater potential for the cost limit to be exceeded.

3) What is meant by 'abroad'? We would take this to mean other than the UK/Ireland.

4) Information relating to accommodation / hotel star rating is not be [sic] held by NI Departments. Are you content that this gets omitted from her request?"

4. The complainant responded to OFMDFM on 30 November 2012. The complainant was of the view that her requests *"can be read objectively and are clear in their meaning"*, but did respond to OFMDFM's queries:

"1) I understand your obligation in dealing with my request is to take in to account all information within the scope of my request at the date of which my requests were received please process them accordingly.

2) I think it is clear in the objective reading of the word 'employee' what is meant by this. I do not consider that an artificial distinction between senior or junior employees should be made in relation to my requests. This is not what I have asked for and I note with concern at this early stage in the process that reference has been made to a possible fees limit being exceeded.

3) Yes - this is the clear and obvious meaning.

4) I do not accept the department does not hold details regarding where its employees or Minister/s stay when on official business as the department pays for the accommodation.

If the star rating is not available please provide me with details including the name and location of the accommodation."

5. OFMDFM issued a refusal notice to the complainant on 21 December 2012. OFMDFM estimated that compliance with the six requests would exceed the cost limit set out at section 12 of the FOIA, and refused the requests on this basis. OFMDFM suggested that the complainant refine her requests in terms of the time period and focusing on trips made by employees based in Northern Ireland.

6. On 2 January 2013 the complainant requested an internal review. The complainant challenged OFMDFM's decision to aggregate the requests rather than consider them separately.
7. On 22 January 2013 OFMDFM communicated the outcome of its internal review. OFMDFM upheld its decision to aggregate the requests, and to refuse the requests under section 12 of the FOIA.

Scope of the case

8. On 6 March 2013 the complainant contacted the Commissioner to complain about the way her request for information had been handled. Specifically the complainant wished to challenge OFMDFM's decision to aggregate the six requests, as she considered them to be separate. The complainant also complained that she had made a similar request to other Northern Ireland government departments, yet OFMDFM was the only department to refuse her requests on the basis of section 12.
9. The Commissioner advised the complainant that each Northern Ireland government department is a separate public authority for the purposes of the FOIA. Therefore different departments may choose to respond to similar requests in different ways, according to the circumstances in each case.
10. The Commissioner's investigation in this case focused on whether OFMDFM was entitled to aggregate the requests, and whether OFMDFM was entitled to rely on section 12(1) in order to refuse the requests.

Reasons for decision

11. Section 12(1) of the FOIA provides that an 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, known as the cost limit (£600 for central government, £450 for all other authorities). Section 12 of the FOIA should be considered with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken in:
 - (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it.

12. Regulation 4(4) states that the authority should calculate the cost of complying with a request by multiplying the time estimated by £25 per hour. If the authority considers that complying with the request would therefore cost more than the appropriate limit, it is not obliged to comply with the request. In the case of OFMDFM, the £600 limit applies, which equates to 24 hours.
13. Section 12(4) of the FOIA and regulation 5 of the Fees Regulations provide that requests may be aggregated where two or more requests are made within sixty working days, and where they relate to any extent, to the same or similar information. This means that in certain circumstances an authority can legitimately refuse multiple requests under the cost limit, even if compliance with one or more of these requests would not themselves exceed the cost limit. However, if it is found that one of the requests is not sufficiently similar to the others, the authority will not be entitled to refuse that particular request under section 12 unless complying with the request by itself would exceed the cost limit.
14. The Commissioner notes that the complainant expressed a strong view that each of her requests ought to be treated separately and not aggregated. The complainant also pointed out that she had made similar requests to a number of Northern Ireland government departments, but OFMDFM was the only department which sought to refuse her requests on this basis.
15. However, the Fees Regulations clearly state that a public authority is entitled to aggregate requests that fulfil certain conditions. Having considered the wording of the six requests, the Commissioner is satisfied that each question clearly relates to travel and accommodation costs. The Commissioner therefore finds that the six requests relate to similar information and OFMDFM was entitled to aggregate them for the purposes of section 12.
16. The Commissioner acknowledges the complainant's frustration, but is mindful that each public authority must consider a request on its own merits. Authorities may choose to rely on appropriate provisions of the FOIA to refuse requests, or they may choose to comply with any request if they wish to do so. As indicated above, this decision notice deals only with OFMDFM's response to the complainant's requests.

17. OFMDFM provided the Commissioner with a detailed estimate of the time it would take to complete the activities allowed by the Fees Regulations. OFMDFM estimated that this would take approximately 38 hours, which significantly exceeds the cost limit of 24 hours.
18. The Commissioner has considered whether OFMDFM's estimate of 38 hours is reasonable. In doing so he notes that the six requests are extensive in terms of the information requested. The broad theme of the requests is travel and accommodation, but across the six requests this is broken down by cost, duration and star rating of hotels. Three of the questions relate to ministers, and the other three ask the same questions in relation to officials.
19. OFMDFM confirmed that it had not accounted for time taken to confirm whether the information was held, as it already knew that it was likely to hold relevant information. OFMDFM did claim that it would take two hours for officials to consider which branches of the department it would need to consult with in order to ensure that all relevant information was identified. In addition OFMDFM advised that it does not already hold this information in the breakdowns requested by the complainant, therefore it would need to collate the information from various sources (including diaries and financial accounts) in order to comply with the request.
20. OFMDFM also pointed out that the time period specified by the complainant was ambiguous. OFMDFM advised the complainant that it held information by financial year (ie April-March), but when asked for clarification, the complainant stated that she required "*all the information within the scope of my request at the date of which my requests were received*". OFMDFM considered that this broad interpretation of the request would require collation of information by calendar year (January-December) as well as financial year in order to ensure that all relevant information was identified. This would require more time than the collation of information already held, ie broken down by financial year.
21. The Commissioner also notes that OFMDFM is unique in that it is headed jointly by the First Minister and deputy First Minister. This means that there are in effect two sets of ministerial information to collate, as each Minister has a private office which will hold information relating to travel and accommodation arrangements. Similarly, each junior minister has their own private office, which means that the exercise of searching for relevant information and extracting it from records held would need to be repeated four times. OFMDFM estimated that it would take five hours for each of the First Minister and deputy First Minister's private offices, and three and a half hours for each of the junior ministers' private offices. As OFMDFM is only required to produce an estimate, the

Commissioner cannot state with certainty that OFMDFM's calculations are accurate. However, the Commissioner understands that ministerial private offices will hold a large amount of information, and the Commissioner considers the estimates reasonable in that context. The Commissioner therefore accepts that dealing with the request would be likely to incur more time and resource than a department with one Minister. The Commissioner has borne this in mind when considering the complainant's argument that other departments were able to provide the requested information without exceeding the cost limit.

22. In relation to officials, OFMDFM explained that information would be held by its finance division. OFMDFM pointed out that it would need to collate information from a number of sources, including officials' work diaries and personal records, as well as information held by the finance division, in order to comply with the request. OFMDFM estimated that this would take two working days, equivalent to 16 hours, as officials across the department had travelled extensively over the relevant time period. The Commissioner considers that this estimate may be slightly generous as officials can be expected to understand the value of good records management. However the Commissioner does accept that it would be likely to take more than one working day to identify and extract all the relevant information.
23. The Commissioner notes OFMDFM's claim that relevant information would also need to be collated by OFMDFM's Brussels office, which again would not be the case for every government department. OFMDFM estimated that it would take three hours for relevant information to be identified and extracted, which the Commissioner considers reasonable.
24. Given the extent of the information requested, the Commissioner considers OFMDFM's overall estimate of 38 hours to be broadly acceptable. Whilst the Commissioner is of the view that good records management could reduce the time required to locate and identify relevant, he accepts that the process of retrieving documents and extracting relevant information is likely to be time-consuming. Therefore the Commissioner accepts OFMDFM's argument that compliance with the six requests would exceed the cost limit set out at section 12(1) of the FOIA.

Section 16 – advice and assistance

25. Where section 12(1) is applied by a public authority, section 16 imposes a duty to provide advice and assistance to an applicant in order to help them access at least some of the information they seek. In these circumstances the Commissioner would expect a public authority to

consider ways in which an applicant could refine their request to enable it to be brought under the costs threshold.

26. OFMDFM originally drew the complainant's attention to section 12 in its email of 29 November 2012. In this email OFMDFM suggested that the complainant consider the cost limit when clarifying her request.

27. Further, in its refusal notice of 21 December 2012 OFMDFM suggested that the complainant refine her request as follows:

"...I would suggest that you re-submit your request, limiting the time period to the last financial year (to 31 March 2012) and focusing on trips made by employees based in Northern Ireland."

28. The Commissioner is of the view that it is often helpful for public authorities to suggest what information could be provided without exceeding the cost limit. Authorities must nevertheless be careful not to make assumptions as to what information is most important to the applicant. In addition the Commissioner is of the view that public authorities should only request clarification where it is actually necessary.

29. In this case the Commissioner accepts that OFMDFM was entitled to request clarification about the time period, as different interpretations such as calendar years and financial years were possible and the complainant had not specified which interpretation she had intended. However the Commissioner considers that phrases such as "employees" and "abroad" were sufficiently clear and did not require further information from the complainant.

30. The Commissioner also considers it important that applicants be prepared to engage meaningfully with public authorities, particularly where a request is refused under section 12. Had the complainant in this case been willing to consider refining her request, she may have been able to obtain some of the information she required.

31. The Commissioner finds that in this case OFMDFM did provide sufficient advice and assistance to comply with its duty under section 16 of the FOIA, and requires no further action to be taken.

Right of appeal

32. 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: 0300 1234504
Fax: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

33. 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.
34. 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

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