

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 January 2016

Public Authority: Foreign and Commonwealth Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant made 22 related requests to the Foreign and Commonwealth Office ("FCO"). The FCO refused to provide the requested information citing section 12 (cost of compliance) as its basis for doing so.
2. The Commissioner's decision is that the FCO is entitled to rely on section 12 as its basis for refusing to respond to the requests. It has also provided adequate advice and assistance in accordance with section 16 of the FOIA.
3. No steps are required.

Request and response

4. Between 19 February 2015 and 1 March 2015, the complainant made a series of requests which are listed in an Annex to this notice. There are 22 in total including 10 which were submitted on one day. At the time, the FCO was already also dealing with another 11 requests from the complainant. The complainant was conducting detailed research on Guy Burgess for a biography (since published) but argued that not all the requests related to this topic.
5. There was an exchange of correspondence during which time, both parties attempted to come to a resolution of the complainant's information access concerns.

6. The FCO sent the complainant a refusal notice on 30 March 2015. It refused to respond to the listed requests citing section 12 (exceeds cost of compliance) as its basis for doing so.
7. In a letter covering a range of related topics, the complainant requested an internal review on 13 April 2015. In a letter of 29 April 2015 which also covered a range of topics, the FCO sent him the outcome of its internal review and upheld its use of section 12 in respect of these requests.

Scope of the case

8. The complainant contacted the Commissioner on 12 May 2015 to complain about the way his requests for information had been handled. Specifically he disagreed with the FCO's use of section 12. He also argued that the FCO had not provided adequate advice and assistance in accordance with section 16 of the FOIA.
9. The Commissioner has considered whether the FCO is entitled to rely on section 12 as a basis for refusing to respond to the complainant's requests. He has also considered whether the FCO has complied with its obligations under section 16 of the FOIA.

Reasons for decision

Section 12 – compliance exceeds the appropriate limit

10. Section 12(1) 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.
11. The appropriate limit is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. Under regulation 3 the appropriate limit is set at £600 for a public authority such as the FCO. Under regulation 4 the FCO may apply a rate of £25 per hour to determine whether information is held, and then locate, retrieve and extract the information. At this rate, the appropriate limit equates to 24 hours of work.
12. The FCO has sought to aggregate the requests in order to calculate the cost of compliance.

Can the cost of compliance be aggregated?

13. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied. Those conditions require the requests to be:
- made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
 - made for the same or similar information; and
 - received by the public authority within any period of 60 consecutive working days.
14. Regulation 5(2) of the Fees Regulations requires that the requests which are to be aggregated relate *"to any extent"* to the same or similar information. In the Commissioner's view, requests are likely to relate to the same or similar information where, for example, the requester has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested.
15. In this case, the FCO has argued that there is an overarching theme to these 22 requests; they were made by one person; and they were made within 60 consecutive working days.
16. The Commissioner asked the FCO for clarification as regards the overarching theme. The complainant had acknowledged that some of the requests related to Guy Burgess but argued that others were not related and were, in fact, on unrelated subjects about which he was conducting background research. Regrettably, he was not specific about which requests he was referring to.
17. The Commissioner first identified requests 4, 6, 7, 8, 12, 14, 19, 20 and 21 (see Annex) as not obviously being about Guy Burgess or persons involved or allegedly involved with him. He asked the FCO to explain why it believed these, in particular, could be amalgamated.
18. The FCO argued that as regards the individuals named in the requests there was either a suspected personal link to Guy Burgess or to the security and intelligence services. The Commissioner accepts this and notes, for example, Wolfgang zu Putlitz, Eduoard Pfeiffer and EPG Norman are all named in the complainant's own biography of Guy Burgess as having met him and/or had dealings with him. The biography

was published after the requests and after the complainant submitted his complaint.

19. Looking at four points, the Commissioner is satisfied that the 22 requests follow an overarching theme of Guy Burgess and the security and intelligence services during the period that Guy Burgess was connected to them. Those four points are:

- the wording of each request;
- the Commissioner's own online researches into the named individuals;
- aspects of the complainant's published work on Guy Burgess; and
- the explanation provided by the FCO.

Would the cost of compliance exceed the appropriate limit?

20. FCO explained that request 7 was resubmitted as a separate request under the FOIA on June 25 2015. It explained that it took six hours to find information relevant to this request. It acknowledged that it would not need six hours each to find the information described in the 22 requests but that, on average, each request would take two hours. This would add up to an estimate of 44 hours to respond to the 22 requests.

21. The Commissioner considers the FCO's estimation of the time it would take to answer all 22 requests to be reasonable and cogent, particularly given the age and nature of the material requested as well as the scope of the requests. The FCO does not have to provide a precise calculation when asserting how long it would take to answer all the requests, only a reasonable estimation. In this case, the Commissioner is satisfied that the FCO has provided that. The estimation of 44 hours here clearly far exceeds the appropriate limit. The FCO's estimation would need to be wholly unreasonable in order to bring the cost of compliance down to 24 hours. The Commissioner is satisfied that it is not unreasonable. He has concluded that, on the balance of probabilities, the FCO would not be able to respond to the 22 requests within the appropriate limit.

22. Based on this he agrees that the FCO is entitled to rely on section 12 as its basis for refusing to respond to these 22 requests. Section 12 is not subject to a balance of public interest test.

Section 16 – advice and assistance

23. Section 16 of the FOIA states that public authorities have an obligation to provide advice and assistance to requesters where it is reasonable to do so. In relation to section 12 refusals, the Commissioner considers that this obligation means a public authority should provide a requester with recommendations on how to reduce the scope of their request so that some relevant information of interest can be provided.

24. In this case, the FCO suggested to the complainant that he, in effect, limit his requests to one every sixty days so that he would not risk the aggregation of costs as per regulation 5 of the Fees Regulations.
25. The Commissioner thinks that context is key here. The complainant had made in excess of 22 requests to the FCO on the overarching theme (although only 22 are being considered here). As shown elsewhere in this Notice, if the complainant wished to make a number of requests on one overarching theme then the FCO is entitled to aggregate them for the purpose of calculating the cost of compliance with them. While the suggestion that the complainant makes a request every 60 days may seem like a blunt instrument, the Commissioner is satisfied that, in the context of the high volume of the complainant's requests on one theme already submitted in a short period of time, the suggestion is reasonable. If the complainant sought access to all the information described in the 22 requests, he needed to extend the period of time during which those complaints were submitted. Alternatively, the complainant could have refocused his requests to a much smaller amount of information so that the cost of compliance with them would not exceed 24 hours. For example, he could have worked with the FCO to pick out particular requests. He appeared to do so by resubmitting request 7 on 25 June 2015 but objected to the Commissioner about having to do so.
26. In practical terms, once the cost of compliance has been reached in respect of a set of requests that follow an overarching theme, the FCO can rely on section 12 in respect of any other requests on that same theme that are made within 60 consecutive days of the last request made on that theme.
27. That said, the FCO cannot take this position in perpetuity in relation to all the complainant's requests. It is not inevitable that compliance with complainant's requests (even a series of them) will exceed the appropriate limit. The FCO must be clear that it can only aggregate requests for the purpose of calculating the cost of compliance in the circumstances described above. If, for example, the complainant requests information on a different unrelated theme, FCO must ensure it complies with its obligations under the FOIA in respect of those requests. There are no provisions in the FOIA which allow it to make arbitrary decisions as to when it will and will not respond to a request.
28. At the same time, the Commissioner would also draw the complainant's attention to the provisions of section 14 (repeated or vexatious requests). Recent case law has confirmed that public authorities can take into account the burden incurred by answering a large volume of requests from an individual or connected group (even if those requests have a serious purpose). The FOIA can provide a useful tool for

conducting research. However, requesters must ensure they use the FOIA responsibly and are mindful of the burden that high volumes of requests can place upon public authorities.¹

29. The Commissioner has published guidance for requesters about how to make responsible requests. He has called these "Information Request Dos and Don'ts".

<https://ico.org.uk/for-the-public/official-information/>

30. The Commissioner has therefore concluded that the FCO has complied with its obligations under section 16 with respect to the 22 requests under consideration in this case. It cannot limit the complainant in perpetuity to one request every 60 days but he accepts that the FCO made reasonable attempts to offer advice and assistance to the complainant. The complainant should be mindful of the burden his numerous information access requests make upon the FCO regardless of the seriousness of their purpose.

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

Right of appeal

31. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. 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.
33. 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

Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Appendix – Full list of information that the complainant requested between 19 February 2015 and 1 March 2015

1. The formation by Herbert Morrison, the then Foreign Secretary, of a small secret committee to look into the disappearance of Foreign Office diplomats Guy Burgess and Donald Maclean in the spring of 1951.
2. (a) file XP/1629/901 (b) Any other files or parts of files that relate to correspondence of 27 March 1944 between the Permanent Under-Secretary of the Foreign Office, Sir Alexander Cadogan and the Director General of the BBC, RW Foot requesting that Burgess be released for service in the Foreign Office News department and the employment of Burgess.
3. All material held on Sir Frederick Warner (1918-1995) and, in particular, full disclosure of his activities between 1951 and 1956 and the investigations into his associations with Guy Burgess.
4. All material held on Kenneth Hugh de Courcy (born 1909).
5. The exact date of Burgess's secondment to the Information Research Department and the dates of his department posting between December 1946 and August 1950.
6. All files kept on the French politician Edouard Pfeiffer (1890-1964).
7. All files on Joseph Ball and especially (a) his dealings with Horace Wilson, Robert Vansittart and Neville Chamberlain; (b) his role in the Home Defence Security Executive; (c) his dealings with Adrian Dingli and Count Grandi of the Italian Embassy; (d) his links to Edouard Pfeiffer; (e) his links to Truth and Collin Brooks.
8. All papers on Wolfgang zu Putlitz (1899-1975) and in particular his activities as an informant and visits to Moscow 1930-1963.
9. All Foreign Office records on William Edward David Allen (1901-1973) and in particular his relationship with Kim Philby and Guy Burgess and his posting to the British Embassy at Ankara.
10. All material held on Alan Maclean (1924 – 2006) and in particular his debriefing in 1951.

11. All material on David Footman (1895 – 1983), in particular the files connected with his friendship with Guy Burgess and his government service from 1953 – 1982.
12. The papers relating to the investigations into Geoffrey Jackson (1915-1987) for espionage.
13. All materials you hold on Sir Robert Mackenzie Bt (1906 – 1990).
14. All material on EPG Norman and in particular his activities 1935 – 1945.
15. Denis Proctor (1905 – 1983) and, in particular, his relationship with Guy Burgess and the investigations into that relationship.
16. All material on Robert Zaehner and in particular the investigations into his espionage activities and friendship with Guy Burgess.
17. All material pertaining to Goronwy Rees (29 Nov 1909 – 12 Dec 1979) and in particular the investigations into his espionage activities and his revelations about Guy Burgess and other spies.
18. All records on Milo Talbot (1912 – 1973), Baron Malahide and especially on his time in Section D, in Ankara, in the Security Department and IRD.
19. All material on the Swedish journalist Bertil von Wachenfeldt.
20. All further files on the journalist and communist sympathiser Paul Willert (1909 – 1998).
21. Further papers of Sir Horace John Wilson (1882 – 1972) relating to his negotiations on behalf of Neville Chamberlain, 1937 – 1940 and in particular his dealings with the French.
22. All material on the associations of Kenneth Gilmour Younger (1908 – 1976) with Guy Burgess.