

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 January 2024

Public Authority: Office of Communications (Ofcom)
Address: Riverside House
2a Southwark Bridge Road
London
SE1 9HA

Decision (including any steps ordered)

1. The complainant requested information from Ofcom relating to any datasets it holds containing dates of birth, ages, postcodes and or dates of incorporation. Ofcom refused to comply with the request citing section 12 of FOIA (cost limit).
2. The Commissioner's decision is that Ofcom was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. The Commissioner also finds that Ofcom complied with its obligations under section 16 to offer advice and assistance.
3. The Commissioner does not require Ofcom to take any steps.

Request and response

4. On 4 August 2023, the complainant made the following request for information to Ofcom:

"Please can you share redacted versions of all datasets held by Ofcom that contain (a) dates of birth, (b) age, (c) postcode, and/or (d) date of incorporation"

5. Ofcom responded on 24 August 2023 and stated that it could not provide the requested information with the cost limit.
6. On 28 August 2023 the complainant submitted a refined request:

“Please can I make a new request for you to simply identify and locate (as opposed to extract info from those datasets) datasets that contain date of birth, age, postcode, date of incorporation (excluding HR / employee records) and provide me with: (A) the number of datasets you have that contain that data; (B) 'Titles' of those datasets and a description of what they are used for.

If the work required for this is still estimated to be exceed 18 hours, please can you consider omitting 'date of incorporation' and instead simply identify and locate datasets (excluding HR / employee records) that contain date of birth, age, postcode as well as provide info according to the aforementioned (A) and (B).”
7. Ofcom responded on 12 September 2023 and stated that it could still not provide the requested information within the cost limit.
8. Following an internal review, Ofcom wrote to the complainant on 28 September 2023 and stated that it was upholding its original position.

Scope of the case

9. The complainant contacted the Commissioner on 1 October 2023 to complain about the way their request for information had been handled.
10. The Commissioner considers the scope of this case to be to determine if the Ofcom has correctly cited section 12(1) of FOIA in response to the request. The Commissioner has also considered whether Ofcom met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

11. 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”).

12. Section 12(2) of the FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. Ofcom relied on section 12(1) in this case.
13. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for Ofcom is £450.
14. 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 18 hours for Ofcom.
15. 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.
16. 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 in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, 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.
17. 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.
18. 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?

19. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked Ofcom to provide a detailed estimate of the time or cost taken to provide the information falling within the scope of this request.
20. In its submission to the Commissioner, Ofcom explained that datasets, which can be held in many formats, are held by a number of Ofcom departments, in a variety of systems and for various time periods and across Ofcom's remit. It stated that providing an accurate number would entail separate searches as the information is not held centrally and would involve many teams conducting searches across Ofcom's work.
21. Ofcom explained that it maintains a central information registry, recording information type, which is supplemented with a local information asset register to identify where personal data is collected. Data sets are located across Ofcom's secure network in email, document, and spreadsheet formats, and within tenanted software such as service applications, in their proprietary format. Whilst Ofcom could be satisfied that it did hold information relevant to the request, providing an accurate number would entail separate searches and would involve many teams conducting searches across Ofcom's work.
22. From the available local assets registers, Ofcom estimated that there would be at least 200 datasets that contained postcode information. This estimate was based on the analysis of the local information asset register for a selection of business functions in Ofcom, comprising 145 assets in Spectrum Policy Group, 15 assets in Economics and Analytics, 10 assets in Networks and Communications, 32 assets in Content Standards, Licencing and Enforcement and four assets in Research and Intelligence. Ofcom explained that the datasets would also vary significantly in size from kilobytes (which could consist of around 20 records) to gigabytes (which could consist of millions of records).
23. In calculating the estimated time required to fulfil the request Ofcom considered the following conditions:
 - All local information asset registers are comprehensive and contain assets that include personally identifiable information, such as a name, date of birth or address.

- A data set includes any digital file that includes information in a related manner, which can include a list or table found in a document, spreadsheet, or application format.
 - The data must contain date of birth, age (noting this can be derived from the date of birth) and postcode to be considered in scope of the request.
 - Identification of assets on the local information asset register requires follow on activity to identify the specific data sets represented by that single asset. Ofcom's local information asset register records that personal data is included in an asset, but it does not specify the exact fields of data which necessitates further searches of other systems to identify whether the data fields requested appear in that data set. Ofcom estimated that this would take an average of 10 minutes for an asset.
 - Access to the data may be restricted and a permission request to the project owner may be required. This process would take two minutes for a data set.
 - Observation of the data would take on average two minutes.
 - An individual asset may contain an average of five source files to be reviewed which would necessitate further permission requests and observation.
24. Ofcom estimated that reviewing the data tables associated with over 200 assets for the purposes of providing the number of data sets which contained the requested information, as well as supplying a description would total at least 33 hours, significantly exceeding the appropriate limit.
25. The Commissioner considers that Ofcom's estimate that it would take more than the 18-hour limit to respond to the request is reasonable. Ofcom was therefore correct to apply section 12(1) of FOIA to the complainant's request.

Section 16(1) – The duty to provide advice and assistance

26. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45

code of practice¹ in providing advice and assistance, it will have complied with section 16(1).

27. The Commissioner notes that, in both its responses and internal review response, Ofcom suggested that it may be able to provide a response to a request with a narrower scope but advised that exemptions may still apply. Ofcom invited the complainant to specify if there was a particular area of work they would like information on, and it also signposted the complainant to its website. The Commissioner is therefore satisfied that Ofcom met its obligations under section 16 of FOIA.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

28. 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

29. 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.
30. 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

Pamela Clements
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