

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 March 2024

Public Authority: Homes England
Address: 6th Floor
Windsor House
42-50 Victoria Street
Westminster
London
SW1H 0TL

Decision (including any steps ordered)

1. The complainant has requested from Homes England information relating to redemption (settlement) of Help to Buy loans . The public authority ("Homes England") relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that the public authority was entitled to rely on section 12(1) of FOIA to refuse the request. The Commissioner also finds that the public authority complied with its section 16 obligation to offer advice and assistance.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 1 September 2023 the complainant wrote to Homes England and requested information in the following terms:

"I would like to receive additional information in connection with information you have already made available in response to previous FOI requests.

RFI4175- Annex A table

- 1) Can you please advise if these are full redemptions? If not, can you please add a column to show which ones are full/partial redemptions? And a column for the percentage share for partial redemptions
 - 2) Can you please add; a column for EWS1 rating for redemptions since December 2019? a column for the postcode? If it is not possible to provide the full postcode, then first part of the postcode would be helpful. a column for whether the transaction involves the sale of the property (Y/N)
5. Homes England responded to the complainant's request on 29 September 2023. It provided the complainant with some information in relation to part 1 of their request and stated that it did not hold the remaining requested information in an easily accessible format. It would need to collate that information by examining each Help to Buy loan file. It also stated that, in relation to part 2) of the request, adding a column for postcodes could enable identification of individual customer addresses and that therefore it was applying section 40(2) of FOIA to that part of the request.
6. The complainant requested an internal review on 29 September 2023.
7. Homes England responded to this on 25 October 2023 and changed its position, stating that it was applying section 12(1) of FOIA to the remaining requested information as the collation of this would require examination of individual files, which would exceed the time and cost limit as set out in section 12(1) of FOIA. It also reiterated that postcodes could lead to identification as stated above.

Scope of the case

8. On 25 October 2023, the complainant contacted the Commissioner to complain about the way their request was handled by Homes England.
9. The Commissioner has considered whether Homes England was entitled to rely on section 12 of FOIA to refuse the requested information.

Reasons for decision

Section 12 – cost of compliance

10. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
11. Section 12(1) of 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. 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 the public authority is £450.
13. 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 the public authority.
14. 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.
15. 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.

16. 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.
17. 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 public authority's position

18. The public authority explained to the complainant that gathering the requested information would necessitate an examination of each individual Help to Buy loan file, which would exceed the appropriate limit as set out in section 12(1) of FOIA. In a previous decision notice (IC-266513-L1D8) the Commissioner set out Homes England's explanation regarding the four activities under section 12(1) as the information requested in that decision notice would also have required a search through each individual file. The public authority's position is as stated below:-

19. The four activities:

- **Determining whether the information is held**

Homes England clearly states that information within the scope of the request prior to 2021 is not held by it in an easily accessible format e.g. a tracker spreadsheet. In order to collate this information, Homes England would be required to examine each individual Help to Buy case file to determine whether the property had a B2 rating. It further stated that in information held from 2021 to present, there is a record of 42 cases marked as "settled" but this does not mean redemption actually took place. Homes England has therefore concluded that it does not hold in an accessible format the EWS1 ratings for redemptions which have taken place. The information held by it in a tracker spreadsheet only states that 42 cases with a B2 rating were "settled," but this does not mean that redemption actually took place. To collate the information into a spreadsheet, for example, would require Homes England to examine each individual Help to Buy loan file in order to determine whether the property had a B2 rating at the time of redemption. The amount of time that this would take would exceed the appropriate limit as defined in section 12(1) of FOIA.

- **Locating the information, or a document which may contain the information;**

Homes England has previously explained that it does not maintain a central record of the requested information. The requested information is held in each Help to Buy case file. It further explained that, at the time of the request, there were 383,903 Help to Buy: Equity Loan customer accounts. It estimated that it would take an average of 31,992 hours to locate the requested information within the customer records, based on a calculation of five minutes to review the notes and correspondence on each account.

Further, to add a column for the valuation firms and another column with partial postcodes would also require the creation of information as it would require the correct valuation firm and postcode to be stated against each redemption, which would also have to be retrieved from the case files.

- **Retrieving the information, or a document which may contain the information and extracting the information from a document containing it;**

Further, to add a column for the valuation firms and another column with partial postcodes would also require the creation of information as it would require the correct valuation firm and postcode to be stated against each redemption, which would also have to be retrieved from the case files.

20. Homes England had explained in relation to the previous request that, once the requested information had been located within each customer file, retrieving and extracting the information would be a short but numerous exercise, i.e. a quick examination of each file, but as the files are numerous it would take a long time. Its final calculation is that this would take one minute per account, totalling 6,398 hours.
21. When considering the cost of determining whether or not the information is held, locating, retrieving and extracting the information, the total time estimated to comply with the request is 38,390 hours. At £25 per hour, it estimated that compliance with the request would cost £959,750.
22. Homes England confirmed that it did not undertake a sampling exercise to determine the above time calculations. The estimates were provided by members of staff who regularly interact with customer accounts and are reasonably qualified to provide an accurate estimate. It also confirmed that the estimate was based upon the quickest method of gathering the requested information.

23. The Commissioner accepts that, although looking for different information from that in the previous request, it would be likely that searching each file for the information sought in this request would take a similar amount of time, as it has been determined that a manual search of the records is the only way that Homes England could locate, retrieve and extract the requested information.

The Commissioner's view

24. The Commissioner has considered the explanation above and accepts the reason why a manual search would be needed in order to ensure that Homes England located all of the relevant information it holds.
25. The Commissioner has therefore decided that Homes England was correct to apply section 12 of FOIA to refuse the request in this case.
26. The Commissioner has not gone on to consider Homes England's application of section 40(2) in relation to postcodes as he considers that all of the remaining requested information (Homes England having provided information in response to part 1 of the request) falls under section 12(1) of FOIA.

Procedural matters

Section 16 – advice and assistance

27. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
28. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain to the requester how they could refine their request such that it would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.

29. In this case, the public authority informed the complainant that it would have to look through all relevant records to ascertain whether it held the requested information. It also confirmed that creating a column with even a partial postcode could lead to the identification of customer addresses. As the public authority would have to create information in response to the complainant's request by searching through each file and adding columns to its tracker spreadsheet, the Commissioner accepts that there is no easy way for the complainant's request to be refined or narrowed and therefore Homes England did not advise them to do this.
30. The Commissioner is therefore satisfied that the public authority confirmed that there was no easy advice or assistance it could offer the complainant under section 16 of FOIA when dealing with this request.

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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF