

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 9 April 2024

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

#### **Decision (including any steps ordered)**

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1. The complainant requested information about a new detention centre in France. The Home Office initially relied on the exemptions in sections 27(1)(a) (international relations) and 40(2) (personal information) of FOIA to refuse the request. During the Commissioner's investigation, the Home Office revised its position and instead cited section 12(1) of FOIA (the cost of compliance exclusion).
2. The Commissioner's decision is that the Home Office has properly relied on section 12(1) of FOIA to refuse the request. The Commissioner also considers that the Home Office has complied with its obligations under section 16(1) of FOIA to provide adequate advice and assistance.
3. The Commissioner does not require any steps to be taken as a result of this notice.

#### **Background**

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4. The Home Office provided the following context to the request under consideration here:

"On 10 March 2023, President Emmanuel Macron hosted the Prime Minister in Paris for a Summit that covered the breadth of the UK-France relationship. At the Summit they announced a range of outcomes furthering UK-France Cooperation, including a new deal on migration that saw the UK agree to fund a range of interventions in France over three years to reduce the number of people crossing the English Channel in "small boats". This new

deal included an agreement for the UK to fund the construction of a new 'detention centre' in northern France.

The proposed centre is a Centre de Rétention Administrative (CRA – the equivalent in the UK system would be Immigration Removal Centres). There are currently 26 such centres already operating in France, each centre holds around 120 people at a time and are designed to house only people who have exhausted all available recourse to claim asylum in France and are subject to removal orders (or the dependents of someone subject to removal orders). It was decided to fund the CRA in northern France as it would increase the ability of French law enforcement to remove people who would otherwise attempt small boat crossings."

## Request and response

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5. On 17 August 2023, the complainant wrote to the Home Office and requested information in the following terms:

"In March 2023, the Prime Minister [sic] announced a £500m payment package to the French government for support with its plans to stop small boat crossings. In this statement the prime minister [sic] announced the financing of a new detention centre close to Dunkirk with £25m over three years.

Under the Freedom of Information Act 2000 I am requesting recorded information held by your department on internal communications which discuss the plans for the new detention centre in France.

The specific internal communications I am interested in include:

- emails
- meeting minutes
- memorandums
- draft reports

I appreciate there may be sensitive personal information included in these internal communications and request that that information be redacted rather than the request refused on these grounds. Note that the time it takes to redact information can not be taken into account contributing towards the overall cost limit of the request.

I am requesting information between the dates of 1 March 2023 and 18 August 2023."

6. The Home Office responded on 30 August 2023. It refused to provide the requested information citing section 27(1)(a) of FOIA (the exemption for international relations).
7. The complainant requested an internal review on 30 August 2023 raising a number of concerns.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 7 November 2023 to complain about the way his request for information had been handled. At that stage, his complaint concerned the then outstanding internal review result.
9. The Home Office provided its internal review result, late, on 29 November 2023. It responded to each of the complainant's concerns and partly revised its position - it maintained that section 27(1)(a) applied but also now cited section 40(2) of FOIA (the exemption for personal information).
10. On 30 November 2023 the complainant told the Commissioner he remained dissatisfied following the outcome of the internal review. He also confirmed he did not require any information withheld under section 40(2).
11. During the course of the Commissioner's investigation, the Home Office revised its position. It wrote to the complainant on 25 March 2024 advising it was now relying on section 12(1) (cost of compliance) of FOIA. Specifically, the Home Office said:

"We have reviewed your case, in particular noting the part of your complaint to the ICO regarding our previous interpretation of the word 'plans' in your request. We were content to accept the wider scope of the word 'plans' as you suggested, 'something to be done, a proposed undertaking, some action or proceeding to be carried out'. However, in doing so, we consider that though the information requested is held by the Home Office, accepting this expanded scope means that the request engages section 12(1) of the Freedom of Information Act 2000 (FOIA).

[...]

Responding to your request for information would require numerous officials to review a significant number of internal communications to locate and retrieve any information that may relate to the information requested; officials would then need to review the retrieved information to ensure that it is relevant, and

extract the relevant information where it is located within communications that contain other information not relevant to this request. It is estimated that the time taken to search for and collate the relevant information falling within scope of your request would exceed the appropriate limit, therefore section 12 of the Act is engaged”.

12. The Commissioner sought the complainant’s view of the Home Office’s revised position, which was also provided on 25 March 2024. The complainant raised a number of concerns which the Commissioner relayed to the Home Office.
13. On 5 April 2024, the Home Office responded to the Commissioner in relation to the complainant’s concerns (further details are included in the sections 12 and 16 analysis sections below).
14. The Commissioner has taken both the complainant’s and the Home Office’s views into account in reaching his decision in this case.
15. The Commissioner has considered whether the Home Office was entitled to rely on section 12(1) of FOIA to refuse this request. He has also considered whether the Home Office met its section 16 (advice and assistance) obligations.

## **Reasons for decision**

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### **Section 12 – Cost of compliance exceeds appropriate limit**

16. The reasoning below examines whether the Home Office was entitled to rely on section 12(1) of FOIA to refuse to provide the requested information.
17. 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.
18. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (‘the Regulations’). These are:
  - (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.

19. In accordance with the Regulations, the applicable cost limit in this case is £600, which is equivalent to 24 hours' work.
20. Section 12 of FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by the Home Office was reasonable; in other words whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £600, that section 12(1) therefore applied and that it was not obliged to comply with the request.
21. In this case, the Home Office told the Commissioner that:

"The response originally provided to this request took [the complainant's] request to pertain to discussions relating to plans provided by the French government for a new CRA in northern France, for which they were seeking UK funding as part of a package of measures to be agreed at a Summit between UK and French national leaders in March 2023. In his complaint to the ICO, [the complainant] has set out in more detail what he had meant by 'plans' in his original request, namely, 'a much broader sense (i.e. something to be done, a proposed undertaking, some action or proceeding to be carried out)'. The Home Office is content to accept this expanded definition of plans, however we consider that in accepting this definition the scope of the request is such that section 12 is engaged as locating, retrieving, and extracting all the relevant information would engage the cost limit in the Act."

22. The Home Office has explained the following (requesting that some details are not reproduced in the decision notice, which the Commissioner has respected):

"In order to fulfil this request Home Office officials would have to review all internal communications relating to discussions regarding the original French proposal for the UK to fund a CRA, and additionally all internal communications within the specified date range that relate to the subsequent work by the Home Office to implement the funding arrangement for this project, This included a significant amount of discussion between policy leads and respective legal, finance, and commercial advisers on creating a range of documentation to underpin the bilateral agreement ... and also a range of internal documents such as...".

23. The Commissioner asked the Home Office to provide an estimate for the costs of complying with the request. It provided the following summary and accompanying rationale:

<b>Work required</b>	<b>Estimate: hours/minutes</b>
Preliminary searches	1 hour (60 minutes)
Further actions – location & retrieval	19.75 hours (1125 minutes)
Further actions - extracting	22 hours (1140 minutes)
<b>Total:</b>	<b>42.75 hours (2325 minutes)</b>

24. For the preliminary searches aspect, the Home Office explained:

“In order to carry out the specific actions outlined in section 12 for the information that was held in line with the previous, narrower, interpretation of [the complainant’s] request, it took a policy official around 20 minutes of time to retrieve all relevant information, and around 40 minutes to extract the relevant information, as much of the information in scope of the request within email communications was discussed alongside other areas of funding the UK provides to France that are not in scope of this request (not including information that would otherwise be redacted under section 40 of the FOIA).

The preliminary searches relating to this request therefore took **one hour (60 minutes).**”

25. For locating and retrieving the requested information, the Home Office said:

“Accepting the wider definition would most notably bring into scope a further range of emails that would require locating. We estimate that around 15 officials have worked on this issue during the time period in scope, across a range of teams, and would therefore be required to also undertake location, retrieval and extraction of the information in scope from their emails.

The lead official on the implementation of this policy noted during the compiling of this response that a search for the term “CRA” in the relevant date range brought up 465 emails that would require reviewing, to locate those with pertinent information. This does not include the possibility of further emails with derivative search terms such as ‘detention centre’ or ‘retention centre’, both

of which have commonly been used in internal communications on this subject.

If it is assumed that the time taken to complete the location only of these emails is around the same time taken to undertake the retrieval of email information in the preliminary searches then it would take the lead official **7.75 hours (465 minutes)** to complete this search, not including additional time that would be taken to conduct review and retrieval of information under derivative search terms.

Given the range of officials working on the information in scope will not all have the same number of emails relating to the information in scope it is more difficult to come to an exact figure as to the total time taken, however if it is assumed that the 15 officials have an average of 75 emails to review (this weighting is predicated on the fact that most officials will have fewer than the lead official's 465 to locate) the estimated time for location and retrieval of the information would be **18.75 hours (1,125 minutes).**"

26. The Home Office advised that a further **1 hour (60 minutes)** would need to be added to the **18.75 hours** in order to locate and retrieve the requested meeting minutes and draft reports, all of which are held electronically. As per the above table, this would bring the estimated time to a total of **19.75 hours (1125 minutes)** for locating and retrieving the requested information.
27. In relation to extracting the relevant information, the Home Office told the Commissioner the following:

"As noted in the Preliminary searches, much of the information in scope of the request within internal communications was discussed alongside other areas of funding the UK provides to France that are not in scope of this request (not including information that would otherwise be redacted under section 40 of the FOIA). To extract the relevant information in the scope of this request would therefore add significantly to the already outlined time taken by officials to locate and retrieve information held in emails relating to this subject.

Making an assumption that many of the emails that each official had to review would be duplicative (with multiple officials having copies of the same email) and therefore that the potential number of emails per official that would require information extraction would be half the total that needed locating and retrieving (38 emails for each of the 15 officials) but assuming that the time taken for the extraction of information from these

emails would take the same amount of time as was taken in extracting information in the Preliminary searches it is assumed that a further **19 hours (1,140 minutes)** would be required to extract this information.

Additionally, much of the further documentation outlined above as being in scope also covers information that is not in scope of this request, and therefore would require extraction of the information that is relevant. Given that much of the further documentation is more lengthy and detailed than an email chain, it is assumed that extraction would take more time than the extraction of information from emails, and would be no more than **3 hours (180 minutes)**.

Therefore, the estimated time, for the extraction of all further information in scope of this request is **22 hours (1,320 minutes)**."

28. The Commissioner has no reason to doubt the reasonableness of the Home Office's estimate, particularly given the wider definition of 'plans' put forward by the complainant. The Commissioner notes that, even if some parts may have unintentionally been slightly mis-estimated, that the total time significantly exceeds the cost limit of 24 hours and £600 proscribed by the Act.
29. As set out in the 'Scope' section of this notice, the complainant raised some concerns following the Home Office's revised response to section 12(1) of FOIA. He argued that the Home Office had "attempted to inflate the administrative work involved in fulfilling my request to artificially exceed the cost limit". In reply, the Home Office said:

"The Home Office has not sought to inflate the administrative work involved in fulfilling the request. The full extract that [the complainant] has quoted from is, '[...] officials would then need to review the retrieved information to ensure that it is relevant, and extract the relevant information where it is located within communications that contain other information not relevant to this request.' Extraction of the relevant information is covered in the regulations cited by [the complainant], and reviewing the material to ensure that only information that is compliant with the request is extracted is a part of this process."
30. The complainant expressed concern that the Home Office should have relied on section 12 of FOIA from the outset. He argued that some of the wording included in the original substantive response and internal review outcome did not reflect the narrower interpretation of 'plans' adopted by the Home Office at that time. The Home Office explained that the first quote submitted by the complainant (taken from the public



interest test arguments in favour of disclosure) applies equally to the narrower scope originally interpreted and subsequent wider scope now accepted by both parties.

31. In addition the Home Office advised:

"The final full quote is, 'Any information that is held by the Home Office in relation to this project is only held because it has been provided by the French government in confidence to support UK decision making [...]', the elision of the middle part of the sentence removes the reference to the information held 'in relation to this project', which was originally determined to mean the plans for the project that have been provided by the French government and any associated internal communications referencing the information which was supplied in confidence, and which, if released, would be likely to prejudice the UK's international relations with France. As set out above, this would be subject to section 27 of the FOIA.

The original request was considered on the narrower basis of the word 'plans' as referring to those specific plans provided by France for the UK to support, not a broader definition of 'plans' that included internal decision-making procedures. The Home Office position is that the latter information would still be likely to engage the exemption at section 27 of the FOIA given that Home Office internal decision making was undertaken based on information provided in confidence by the French government and disclosure of how that information would be used would be likely to prejudice international relations between the UK and France."

32. The complainant raised two further points linked to narrowing his request which are covered in the Section 16 – advice and assistance part of this notice.

33. Having taken both parties' arguments into account, the Commissioner has reached his conclusion set out below.

### **Conclusion**

34. In determining whether the Home Office has correctly applied section 12 of FOIA in this case, the Commissioner has considered the Home Office's rationale provided to him during the investigation.

35. The Commissioner accepts that the Home Office has reasonably estimated that the cost of complying with the request would exceed the appropriate limit.

36. Therefore, even if the Commissioner were to consider that the Home Office's estimate may not be completely accurate, he does not consider that the estimate could be reduced to the point at which it would fall within the cost limit.
37. It is further noted that a public authority is not obliged to search for, compile or disclose some of the requested information before refusing a request that it estimates will exceed the appropriate limit. Therefore, the Home Office was also not obliged to conduct searches up to the cost limit.
38. The Commissioner is therefore satisfied that the Home Office was entitled to rely on section 12(1) of FOIA to refuse the request.

### **Section 16 – advice and assistance**

39. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making or wishing to make requests for information.
40. The Section 45 FOIA Code of Practice (the 'Code')<sup>1</sup> states that, where a public authority is relying on section 12 to refuse a request, it should help the requester to refine their request within the cost limit.
41. The complainant argued that he had not been given the opportunity to narrow his request given the Home Office's later reliance on section 12(1) of FOIA. The Home Office told the Commissioner that as section 27 (and subsequently section 40(2)) of FOIA had been applied originally, it was not required to offer the complainant the opportunity to refine his request. The Home Office pointed out that it had given the complainant that opportunity in its revised response. It also stated that it considers section 27(1)(a) of FOIA would apply to all material requested as being likely to prejudice international relations.
42. In its revised response, the Home Office advised the following:

“Refining your request, for example by narrowing the timescales and being more specific about the type of information you are specifically interested in, may mean that section 12 of the FOIA is no longer engaged. However, I should also point out that if you submit a revised request section 27(1) (a) and section 40(2) of the Act would likely still apply, as was set out in our original

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

response. It is possible that further exemptions in the Act might also apply.”

43. Having considered the available evidence, the Commissioner is satisfied that the Home Office offered reasonable advice and assistance, and at the appropriate time given the history of the responses in this case. He therefore finds that it complied with its section 16 of FOIA obligations.

### **Other matters**

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44. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA.
45. Part 5 of the section 45 Code of Practice (the Code) states that it is best practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Code states that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.
46. The Commissioner is concerned that it took almost three months for an internal review to be completed.
47. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance function. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our FOI and Transparency Regulatory Manual<sup>2</sup>.

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<sup>2</sup> [https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1\\_0.pdf](https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1_0.pdf)

## **Right of appeal**

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48. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

49. 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.
50. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**