

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 March 2024

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

Decision (including any steps ordered)

1. The complainant has requested information regarding the UK Youth Mobility Scheme under Immigration Rules.
2. The Home Office relied on section 12 (cost limit) of FOIA to refuse the request.
3. The Commissioner's decision is that the Home Office was entitled to refuse to comply with the request in accordance with section 12(1).
4. The Commissioner finds that the Home Office has complied with its obligations under section 16 of FOIA to offer advice and assistance.
5. The Commissioner does not require further steps.

Request and response

6. On 5 October 2023, the complainant submitted the following request to the Home Office:

"The number of "expressions of interest" received under paragraph 2 and 3 of the "Immigration Rules Appendix Youth Mobility Scheme: eligible nationals" in each of the years 2022, 2021, and 2020 broken down by country as per paragraph 2 of that appendix.

The number of “invitations to apply” issued under paragraph 3 of the of the “Immigration Rules Appendix Youth Mobility Scheme: eligible nationals” in each of the years 2022, 2021, and 2020 broken down by country as per paragraph 2 of that appendix.”

7. The Home Office responded on 1 November 2023, issuing a section 12 refusal notice in reply to the complainant’s request for information.
8. The complainant made a request for an internal review on 1 November 2023.
9. The Home Office provided an internal review response on 31 January 2024 upholding its original position.

Scope of the case

10. The complainant contacted the Commissioner on 31 January 2024 to complain about the way their request for information had been handled.
11. The Commissioner considers the scope of this case to be to determine if the Home Office has correctly cited section 12(1) of FOIA. The Commissioner has also considered whether the Home Office met its obligations to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

12. Section 12 of FOIA states that 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”).
13. Section 12(2) of 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. The Home Office relied on section 12(1) in this case.
14. The appropriate limit is set in the Fees Regulations at £600 for central government, legislative bodies, and the armed forces and at £450 for all other public authorities. The appropriate limit for the Home Office is £600.

15. 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 24 hours for the Home Office.
16. 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.
17. 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.
18. It is worth noting that if one part of a request triggers the section 12 exemption, then that will apply to the entirety of the request and there is no requirement for the Commissioner to consider any other exemptions cited by the public authority.
19. 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?

20. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner expects the public authority to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.

21. The Home Office initially explained that;

"To locate the information, you have requested would involve a manual trawl through every individual case record to identify the relevant cases."

22. The complainant was not satisfied, and requested an internal review, stating:

"The information on gov.uk (<https://www.gov.uk/guidance/youth-mobility-scheme-visa-ballot-system>) makes clear the ballot application process which is to send an email with a subject line in a specific format within a 48 hour period. The information requested is therefore held electronically, assuming that it has not been deleted. (I note that the response does not confirm whether you have the information requested.) It should be a question of using search filters within an email client to retrieve the information I have requested, not a manual trawl.

If, despite this, it is the case that providing the information broken down BY COUNTRY would bring the request above the cost limit I would be prepared to accept the same information in aggregate broken down only by years."

23. On internal review, further explanation was given as to why locating the information would exceed the time/cost limit in section 12:

"This is because although the requested information is held, it is not stored centrally. In order to respond to your request for information, officials would need to conduct detailed searches across each individual mailbox that was live during the ballot period. It is estimated that this task would significantly exceed 24 hours due to the time spent by officials needing to search through the mailboxes in order to locate, identify and retrieve any information that relates to the UK Youth Mobility Scheme under Immigration rules in each of the years 2020, 2021 and 2022. Further work would then be required to isolate the material in scope as each record would need to be manually investigated and recorded offline as an eligible ballot entry for each of the countries listed. The business area that responded to your request has confirmed to me that there would be an increase per number of ballot entries year on year. It is estimated that the task would take in excess of 50 hours and would therefore exceed the appropriate limit.

You have also asked whether it is possible to receive aggregate information, broken down by years only, to bring it within the cost limit. The business area has confirmed to me that due to the format in

which the information is held, it is not possible to provide aggregate information for each year within the cost limit, for the reasons already provided.”

24. The Commissioner considers that, even if the estimate provided by the Home Office were cut by half, the work involved in identifying the information in scope of the request would still exceed the 24-hour limit.
25. On the basis that the request covers a broad time period and would involve lengthy manual searches of multiple inboxes, it is the Commissioner’s view that the Home Office estimated reasonably that it would take more than the 24 hours / £600 limit to provide the information requested. The Home Office 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 its initial response and internal review response, the Home Office advised the complainant to refine their request:

“you may wish to refine your original request by reducing the amount of information you ask for which may allow for a more targeted search.

If you decide to submit a revised request, we may be able to comply with it. However, until searches begin, based on the terms of any new request you may make, it is impossible to say for certain. It is also possible that even if a revised request was to fall within the appropriate limit, other exemptions in the FOIA might apply.”

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

28. The Commissioner is satisfied that the Home Office has met its obligations under section 16 of FOIA as regards the request.

Other matters

29. The Commissioner notes that it took the Home Office three months to complete an internal review. The FOIA Code of Practice states that internal reviews should normally be completed within a maximum of 40 working days.

Right of appeal

30. 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

31. 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.
32. 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

Michael Lea
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