



NCN: [2024] UKFTT 474 (GRC)

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

**Heard on: 17 May 2024
Decision given on: 3 June 2024**

Before

**TRIBUNAL JUDGE HEALD
TRIBUNAL MEMBER MURPHY
TRIBUNAL MEMBER TAYLOR**

Between

GEORGE GREENWOOD

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

The appeal was decided without a hearing as agreed by the parties and allowed by the Tribunal by rule 32(1) of the Tribunal Procedure (First -Tier Tribunal) (General Regulatory Chamber) Rules 2009

Decision:

1. The Appeal is Allowed
2. The Respondent shall provide a copy of this Decision to the Attorney General's Office
3. The information provided to the Tribunal for the Appeal in the closed bundle and made subject to a rule 14 Direction shall be provided to the Appellant by the Attorney General's Office without redaction within 35 days of being sent this Decision.

Substituted Decision Notice: the Attorney General's Office shall within 35 days of being sent this Decision respond to the Appellant's request for information dated 4 November 2022 without reliance upon (any part of) section 12 or section 14 Freedom of Information Act 2000.

REASONS

1. This Decision relates to an Appeal brought by the Appellant, Mr Greenwood, pursuant to section 57 Freedom of Information Act 2000 ("FOIA"). It is in respect of a Decision Notice ("DN") issued by the Information Commissioner ("the IC") on 16 October 2023 and concerns a request for information ("the Request") made to the Attorney General's Office ("the AGO").
2. References to page numbers in this Decision are to an open bundle ("the Bundle") of 90 pages provided for the Appeal. As well as considering the content of the Bundle we also had a closed Bundle of 9 pages provided pursuant to rule 14 2009 Rules.

The AGO

3. The AGO is a ministerial department of the UK Government and describes its role as follows:-

"The Attorney General's Office (AGO) provides legal advice and support to the Attorney General and the Solicitor General (the Law Officers) who give legal advice to government. The AGO helps the Law Officers perform other duties in the public interest, such as looking at sentences which may be too low."

4. His Majesty's Attorney General for England and Wales ("the AG") is the chief law officer to the Crown and legal advisor to the Government. The AG leads the AGO. Between September 2021 and September 2022 the AG was The Right Honourable Suella Braverman KC MP.

Entitlement to Information

5. FOIA provides that any person making a request for information to a public authority is entitled to be informed in writing if that information is held (section 1(1)(a) FOIA) and if that is the case to be provided with that information (section 1(1)(b) FOIA).
6. The FOIA entitlements are subject to exemptions in Part II of FOIA which can be absolute by section 2(2)(a) FOIA or qualified and subject to the public interest balancing test ("PIBT") set out in section 2(2)(b) FOIA.
7. FOIA has other provisions which a public authority may rely upon, if appropriate, to refuse disclosure such as section 14(1) FOIA if the request is considered to be vexatious and section 12(1) FOIA if the cost of disclosure would exceed the "appropriate limit".

Role of the Tribunal

8. The Tribunal's role in an Appeal is as set out in section 58 FOIA. This provides that:-

(1) If on an appeal under section 57 the Tribunal considers –

(a) that the notice against which the appeal is brought is not in accordance with the law, or
(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently, the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based

9. In *IC v Malnick and ACOBA* [2018] UKUT 72 (AAC) (see para 90) the Upper Tribunal said that in dealing with an Appeal the First-tier Tribunal:-

“...exercises a full merits appellate jurisdiction and so stands in the shoes of the IC and decides which (if any) exemptions apply. If it disagrees with the IC’s decision, the IC’s decision was “not in accordance with the law” even though it was not vitiated by public law error.”

The Request (C54)

10. On 4 November 2022 Mr Greenwood wrote to the AGO and asked for information pursuant to FOIA as follows:-

“Please state the number of occasions that Suella Braverman forwarded emails from her ministerial email account to one of her privately held email accounts, over the term of her office as Attorney General between 10 September 2021 and 6 September 2022.”

The Response (C55) on 5 January 2023

11. On 5 January 2023 the AGO responded. It refused to provide the information and said:-

*“The AGO has considered your request and considers it to be vexatious within the meaning of s.14(1) FOIA. Complying with it would require officials to consider a very large number of communications from the periods when Suella Braverman was Attorney General and would, as confirmed by the Information Tribunal in *Independent Police Complaints Commission v Information Commissioner* (EA/20111/0222), “be so grossly oppressive in terms of the resources and time demanded by compliance as to be vexatious”.*

Review

12. Mr Greenwood challenged the Response (C57) on 12 January 2023. The AGO carried out an internal review and wrote on 9 February 2023 (C58) maintaining its position.

Complaint and DN ref IC-236075-N3G6

13. Mr Greenwood complained to the IC. On 19 July 2023 the IC issued a DN (IC-236075-N3G6) (C60). In it the IC responded to the position taken by the AGO about the Request being vexatious and the cost of responding as follows:-

3. *The Commissioner's decision is that the AGO has failed to demonstrate that section 14(1) is engaged and is therefore not entitled to rely on this exemption to refuse to comply with the request. Nor has it demonstrated that section 12(2) is engaged and so is not entitled to rely on this exemption to neither confirm nor deny whether it holds the requested information.*

4. *The Commissioner requires the AGO to take the following step to ensure compliance with the legislation:*

- *issue a fresh response to the complainant that does not rely on either section 14(1) or 12(2).*

5. *The AGO must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court."*

The AGO Response of 23 August 2023 (C71)

14. On 23 August 2023 the AGO in summary wrote to Mr Greenwood (C71) with a fresh Response and in it they:-

- confirmed that they did hold some of the information requested
- said that the cost of complying with the Request would exceed the limits set by section 12(1) FOIA and associated Regulations.
- said that the other search methods suggested by Mr Greenwood would not provide *"an adequate alternative to a full manual review of Ms Braverman's ministerial inbox.*

Complaint of 23 August 2023 (D73)

15. On 23 August 2023 Mr Greenwood complained to the IC about the way in which the AGO had Responded following DN IC -236075-N3G6. He said

"The AGO has sent the attached response. The cost estimates cited by the AGO are absurd, and no supporting evidence has been provided for how it has been calculated.

It argues that:

"Locating, retrieving and extracting information relevant to your request would require government officials to undertake a manual review of all material within the "sent items" of Ms Braverman's ministerial email account for a period of 12 months. We estimate that this would take an official (or officials) more than 24 hours to complete.

Furthermore, not all such information would be held by the AGO for the purposes of the Act (for example, personal as opposed to governmental information is not 'held' by the AGO), and assessing whether or not it is held by us would also take additional time. Accordingly, the cost of complying with your request would exceed the limit set out by s12(1) FOIA and associated regulations."

This is in direct contradiction to the ICO's decision notice that:

"Having reviewed the AGO's submissions and estimates, the Commissioner does not consider that all of the activities set out in its estimate are relevant to the consideration of this case. For example, he considers that conducting a full manual review of the content of any emails within the scope of the request is more than is needed to satisfy the request, which is for only the number of emails sent."

The AGO also in effect merely repeats a section 12 refusal, rather than relying on a substantially new exemption as required by the DN. This response is therefore clearly in breach of the ICO's decision notice.

Please therefore take appropriate enforcement action to ensure the AGO complies with FOIA. It is deeply disappointing that a department responsible for upholding the law does not appear to be complying with it."

DN 16 October 2023 (Ref IC-254776-P4F5)(A1)

16. The IC issued the DN referable to this Appeal on 16 October 2023. In summary the outcome was that:-

- the IC was satisfied that the AGO was entitled to rely on section 12(1) FOIA.
- the AGO had failed to provide reasonable advice and assistance as required by section 16 FOIA to aid Mr Greenwood in refining his request.
- the IC required the AGO to take the following step to ensure compliance with the legislation: *"provide advice and assistance to the complainant regarding how they may potentially refine their request within the cost limit."*

Appeal (A14)

17. Mr Greenwood's Notice of Appeal is dated 19 October 2023. In it he said that the outcome sought was *"that the Appeal be allowed and the information in dispute be released"*

18. The Appeal was supported by Grounds of Appeal ("GoA") and a number of supporting documents. His GoA in summary are as follows:-

1) the AGO's method of searching for emails is not reasonable which is required by FOIA and therefore the ICO erred in finding that the costs associated with the search claimed by the AGO were credible (page 11)

2) the 2 DN's are contradictory because in the first the AGO was told to respond again without relying on section 12 FOIA but then the AGO did use section 12 (albeit a different subsection thereof) which the DN supported.

3) the information that has been found (as evidenced by the Response) should be disclosed even if partial unless an exemption is validly asserted.

4) (A13) *"There is a clear public interest in discovering if the serving Home Secretary has breached the ministerial code through her use of private email by forwarding official correspondence."*

19. The GoA concluded by saying *"I respectfully submit that the Commissioner has wrongly adopted the AGO's cost estimates, and the records should be disclosed"*

20. The AGO did not Appeal the element of the DN which related to section 16 FOIA.

Appeal Procedure

21. Since this Appeal started the IC submitted its Response (A33-A40) and Mr Greenwood Replied (A41-A49). Additionally:-

- on 9 February 2024 Directions were given providing for a closed bundle by rule 14 2009 Rules and inviting the AGO to apply to be made a party to the Appeal.
- on 23 February 2024 the AGO formally declined to become a party and said:-

"Furthermore, the Attorney General's Office confirms that it will not be seeking the opportunity to make written submissions to the Tribunal as a non-party."

Closed Bundle

22. On 9 February 2024 Directions were given pursuant to rule 14 2009 Rules regarding certain closed material to be held by the Tribunal pursuant to rule 14(6). The Closed material is:-

- the complete version of the letter from the AGO to the IC of 21 September 2023 (see D80 in the open bundle)
- the complete correspondence between the IC and AGO from 4 December 2023 – 15 December 2023 consisting of 3 emails (see section E in the open bundle)

23. In reviewing this material we had regard to the Decision in *Browning v Information Commissioner and DBIS [2013] UKUT 236 (AAC) (20 May 2013)*. Our review was in the context of dealing with the Appeal with all the available information. The Practice Note on Closed Material in Information Rights Cases of May 2012 opens with this statement:-

"It is a general principle of tribunal practice that hearings are in public with all parties entitled to be present throughout; and that the documents provided to the tribunal by any party are seen also by all the other parties"

24. However, as a balance to that general statement, Rule 14(6) 2009 Rules provides that:-

"The Tribunal may give a direction that certain documents or information must or may be disclosed to the Tribunal on the basis that the Tribunal will not disclose such documents or information to other persons, or specified other persons."

25. The 2012 Practice Note sets out why this is needed in Information Rights cases.

“In some appeals, the tribunal is able to make its decision without looking at the information whose disclosure is disputed. These can and do proceed normally. Sometimes however, the public authority cannot properly explain its case without showing the disputed information to the tribunal. Put another way, sometimes the tribunal cannot check, on behalf of the citizen, that the public authority is entitled to an exemption under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, without seeing the disputed information for itself. Obviously, though, disclosure of the information to everyone in the proceedings would defeat the object of the exercise. There is no point in deciding whether information should or should not be disclosed, if it already has been. Similar difficulties can occur with supporting evidence and arguments.”

26. In this Appeal and in the context of the issue being that of costs by section 12(1) FOIA we did not consider that the redactions that formed the closed material were of the type or had the content where a rule 14 Direction was appropriate.

Closed Bundle Gist

27. We also considered the Decision of the Upper Tribunal in *Barrett –v- Information Commissioner and Financial Ombudsman Service [2024] UKUT 107 ACC*. As a result of our conclusion relating to the information in the closed bundle set out above we do not consider requiring the IC to provide a gist is necessary.

Relevant Law

28. Section 12 (1) FOIA provides as follows:-

(1)Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

29. The “appropriate limit” is set by The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the 2004 Regs”).

30. Reg 3 2004 Regs states

(1) This regulation has effect to prescribe the appropriate limit referred to in section 9A(3) and (4) of the 1998 Act and the appropriate limit referred to in section 12(1) and (2) of the 2000 Act.

(2) In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is £600.

(3) In the case of any other public authority, the appropriate limit is £450.

31. Part 1 Schedule 1 FOIA is relevant to the AGO.

32. By reg 4 2004 Regs the AGO can take account only of the costs it reasonably expects to incur in relation to the Request in these tasks

(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.

33. By reg 4(4) 2004 Regs the estimated time cost allowable for the tasks in reg 4(3) 2004 Regs is set at £25 per hour per person.

34. In *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004 it was Held that:-

“13 The effect of section 12 is not to impose a limit leaving the authority obliged to carry out work to the limit...it is to remove the information from the section 1 duty to disclose altogether”

35. In *Randall* the Tribunal referred to the basis of the decision relating to the reasonableness of costs should be *“sensible, realistic and based on cogent evidence”*. This formulation is also found in the ICO Guidance where they say:-

“Not only does your estimate have to be sensible and realistic, you need to make sure it is supported by cogent evidence. You should therefore make sure you are in a position to make that evidence available if the Commissioner receives a complaint.”

36. The ICO Guidance adds a list of the sort of things a public authority should be prepared to explain such as:-

- *your search strategy*
- *whether you have carried out any searches for the requested information;*
- *whether you based the estimate on a random or representative sampling exercise*
- *which departments or members of staff you contacted; and*
- *the search terms used when querying electronic records.*
- *why you need to search for the information in the referenced files or records;*
- *how you store the information, for example whether you hold the information in paper or electronic files;*
- *how many files, boxes, documents, records or emails you would need to review; and*

- *how long it would take to determine whether you hold the requested information or to locate, retrieve and extract it. For example, it is useful to include the size of the relevant files, the average length of time it would take to review each file and the number of staff required.*

37. In *Reuben Kirkham v Information Commissioner (Section 12 of FOIA) [2018] UKUT 126 (AAC)* the Upper Tribunal (at para 34) said in answer to the question at section F “How do we know they’re not just making it up?”

“The answer to Mr Kirkham’s question is this: there is no guarantee of certainty, but the Information Commissioner and the tribunals should take a sceptical approach and require the public authority to provide persuasive evidence of how they undertook the estimate, with follow-up questions if necessary.”

38. In *Roberts-v- the information Commissioner (EA/2008/0050)* para 12:the Tribunal said:-

“Section 12 provides that the public authority may rely on its costs estimate to refuse a request but does not expressly make that reliance conditional on the quality or nature of the estimate. One must look in the Regulations for any guidance as to how the estimate should be made. In that connection Regulation 4(3) provides that the public authority may only take account of the costs it reasonably expects to incur in carrying out certain specific tasks. It says no more about any steps that the public authority should take in evaluating possible methods of extracting data. However, the word “estimate” itself provides some guidance. It points to something more than a guess or an arbitrarily selected figure. It requires a process to be undertaken, which will involve an investigation followed by an exercise of assessment and calculation. The investigation will need to cover matters such as the amount of information covered by the request, its location, and the hourly cost of those who will have the task of extracting it (in this case a rate imposed by the Regulations). The second stage will involve making an informed and intelligent assessment of how many hours the relevant staff members are likely to take to extract the information.

39. In *Roberts* the Tribunal also said that “Clearly the whole exercise must be undertaken in good faith and, as the Regulation provides, involve an element of reasonableness.”

The IC’s Response to the Appeal

Reasonable steps

40. The IC’s conclusion in the DN was that (A5):-

“33 In essence, therefore, this case turns on whether the estimate provided by the AGO was reasonable.

34 The Commissioner recognises that the complainant disputes the cost estimate provided and considers that the AGO failed to provide supporting evidence as to how the estimate was calculated.

35 The Commissioner accepts that it is not a statutory requirement to explain how the estimate has been calculated. However he considers it is beneficial to a public authority to do so to enable the requester to assess the reasonableness of the estimate

37 Having considered the estimate provided, the Commissioner finds that it is realistic and reasonable. He therefore accepts that to provide the requested information would exceed the appropriate limit and that section 12(1) has been correctly applied in this case."

41. In its Response to the Appeal the IC referred to the DN but added (A38):-

"The Commissioner submits that asking relevant AGO staff if they had knowledge of particular private email addresses used by Ms Braverman or conducting searches for common personal domain names would be unlikely to enable the AGO to be satisfied, on the balance of probabilities all potential email addresses had been captured. Any information garnered from such searches or enquiries is likely to be incomplete and would be unlikely to enable the AGO to establish there were no further private email addresses which hadn't been captured. Relevant staff knowledge may be incomplete and email addresses ending with common personal domains may not be readily identifiable as belonging to Ms Braverman."

42. The IC also said (A38)

"However, as the AGO did not consider any of the other search methods suggested by the Appellant would be an adequate alternative (including contacting Ms Braverman's private office to ask for the private email addresses), the Tribunal may be assisted in its decision-making on this point by input from the AGO. The Commissioner would therefore respectfully invite the Tribunal to consider requesting written submissions or requiring the AGO to join proceedings"

Partial Disclosure

43. The IC refers to ICO Guidance which says

"As a matter of good practice, you should avoid providing the information found through any searches already conducted and then claiming section 12 for the remainder of the information. Instead, inform the applicant that section 12 is engaged for all of the request. You can then offer advice and assistance which should enable the applicant to make a fresh request, targeting the information which they are most interested in from that which could be provided within the limit."

44. On this basis the IC says that the AGO was not obliged to provide a partial response with results from a "sampling exercise".

45. However the IC does refer to the fact it did go on to require the AGO to provide assistance to Mr Greenwood.

Contradictory DN

46. The IC says (A38) the two DN are not contradictory

Public Interest

47. The IC (A39) says that section 12(1) FOIA is not subject to the Public Interest Test

Mr Greenwood's Reply (A41)

48. We noted in particular these additional matters set out by Mr Greenwood in this Reply. He says:-

- the Cabinet Office code provides that in dealing with FOIA requests public bodies should search for records in *“a reasonable and intelligent way based on an understanding of how the public authority manages its records”*
- *The ICO appears to have been convinced by the AGO that only a manual search of all the former Attorney General’s emails is sufficient to establish on the balance of probability how many emails were sent. The point of a balance of probability test, as set out in EA/2006/0072, is whether after a substantive search, a public body has taken reasonable steps it could be expected to take to locate relevant information to a request.*
- *“It is not a “beyond reasonable doubt” test, which might require such an exhaustive manual review. There are always more searches that can be done for relevant information in scope of a request, even if framed as specifically as possible, but just because more searches can be done, a public body is not required to do them, especially where this would mean a request hits the cost limit*
- *“..refusing the request as a whole based on this fairly remote outcome would not seem to meet the reasonable and intelligence test set out in the Cabinet Office guidelines. My suggested method would likely identify any private inboxes routinely used by Braverman”*

49. Mr Greenwood drew a distinction between the Decision in EA/2006/0072 and this Appeal. He said (A43) that in that case, the Tribunal found that:

“We were particularly impressed by the care with which many elements of the original search were revisited in the course of preparing for the hearing of this Appeal in order to double check that nothing had been missed. We have no difficulty in concluding, on the basis of both these general factors and the specific points made in relation to each category mentioned in paragraphs 15 to 30 above that on the balance of probabilities no further relevant information is held by the Environment Agency.”

50. He made reference (A44) to a public authority being “actively obstructive” resulting in a requester having some suspicion about how carefully checks have been made.

51. Mr Greenwood concluded by saying:-

“While a limited sampling exercise have been conducted, I am not asking for the result of that sampling, but for searches in line with my suggestions to be conducted. For the reasons set out above, I believe adopting the search patterns I suggested would constitute a reasonable search to allow a substantive response.”

The Tribunal’s conclusions on section 12(1)

52. Mr Greenwood considers the AGO’s position on costs, which takes it over the limit set by the 2004 Regs, to be unreasonable. The IC recognised in the DN (A5) that in effect the issue is whether the estimate provided by the AGO was reasonable.

53. The Appeal was on the papers. The AGO did not become a party or file a Response or a statement despite:-

(a) the IC saying on 20 December 2023 (A38):-

"...the Tribunal may be assisted in its decision-making on this point by input from the AGO. The Commissioner would therefore respectfully invite the Tribunal to consider requesting written submissions or requiring the AGO to join proceedings"

(b) the AGO being invited on 9 February 2024 by the Tribunal to become a party

54. It was in that context that we therefore reviewed the Bundle for "cogent evidence" of a "sensible and realistic" position.

55. We noted that in the AGO's Response of the 23 August 2023 (C71) it was confirmed that some relevant information was held. It was our conclusion from this therefore that:-

(a) the AGO had found some examples of where the AG had between 10 September 2021 and 6 September 2022:-

"...forwarded emails from her ministerial email account to one of her privately held email accounts..."

(b) and to have been able to do this the AGO must have known the identity of at least one private email account belong to the then AG in the relevant period.

56. The AGO said on 23 August 2023 (C71) since the DN of the 19 July 2023:-

"As a result, the AGO has undertaken an estimate of the costs of complying with your request. Locating, retrieving and extracting information relevant to your request would require government officials to undertake a manual review of all material within the "sent items" of Ms Braverman's ministerial email account for a period of 12 months. We estimate that this would take an official (or officials) more than 24 hours to complete. Furthermore, not all such information would be held by the AGO for the purposes of the Act (for example, personal as opposed to governmental information is not 'held' by the AGO), and assessing whether or not it is held by us would also take additional time. Accordingly, the cost of complying with your request would exceed the limit set out by s12(1) FOIA and associated regulations.

Furthermore, in seeking to assist you further, the AGO has additionally considered the search methods you suggested in your email to the AGO of 12 January 2023. The AGO concludes that none of those search methods provides an adequate alternative to a full manual review of Ms Braverman's ministerial inbox"

57. From the AGO's letter of the 21 September 2023 (D80) to the ICO we noted that the AGO had located and identified the "outlook" email account used by the then AG in her ministerial capacity. We also noted that they had (in our view unremarkably) concluded that to find forwarded items the best method would, be to search in "sent items". The letter says that there is a significant amount of material in her sent items folder.

58. The AGO say in this letter that they concluded that the only way to then establish relevant material was to carry out a manual search. The time cost of this would they say exceed the limit set in the 2004 Regs.
59. We do not consider the information from the AGO to be “cogent evidence”. The information we would have expected from the AGO and which we consider to have been easily obtained would have included an answer to these questions-
- a) does the AGO have an Information Technology team and were they asked to help and what did they say?
 - b)- if not who thought about the Request and what were their relevant IT skills?
 - c) does the AGO’s IT system have a searchable backup and if so was it searched?
 - d) how many emails were in the sent items folder referred to?
 - e) do forwarded items have the tag “forward” or a shorter form to identify them in outlook in the AGO’s email system and if so can such items be listed separately?
 - f) did anyone ask the former AG or someone from her private office for her private email account(s) before searching for it/them manually. While she might or might not have been required to answer she might have replied and/or asked someone to reply on her behalf. We found it surprising that there was no evidence in the open bundle on this point.
60. It appears to us that the AGO initially went about finding private email account details in a convoluted way which might ultimately have been necessary but was not a sensible way to start. However having now found an account they could in our view (and based on the available evidence) relatively quickly, using the tools available in Outlook, answer the Request with relative ease.
61. The AGO may be concerned that they could never be sure they had found all private accounts or located all forwarded emails to such account(s). This in our view does not preclude the AGO from providing the best information they have once the search is completed.
62. Additionally if the AGO finds answering the Request problematic then it is open to them to assist Mr Greenwood by section 16 FOIA and in response to the decision of the IC in the DN of the 16 October 2023 to “*provide advice and assistance to the complainant regarding how they may potentially refine their request within the cost limit.*”
63. Having reviewed the evidence (including the content of the Closed Bundle) it follows that we are not satisfied that the AGO has provided the necessary evidence that the cost of responding to the Request would exceed the financial limits as provided for in FOIA.
64. Accordingly the Appeal is allowed.

Other Ground of Appeal

65. While it is not therefore necessary to consider the other grounds of Appeal we set out our Decision on each below.

Public interest

66. The PIBT does not apply to Section 12(1) FOIA.

Contradictory DN

67. We accept that the two DN might appear to be contradictory. However:-

- the first dated 19 July 2023 dealt with the AGO's Response which relied on section **12(2)** FOIA
- and the second dealt with a Response which relied on section **12(1)** FOIA.

Partial disclosure

68. In its Response following the first DN the AGO said on 23 August 2023(C71)

"In accordance with section 1(1)(a) of the FOIA, the AGO holds some information that is relevant to your request"

69. Mr Greenwood in the GoA (A11) refers to this answer and says

"As set out in its response of 23rd August, the department has identified that it holds some information in the scope of my request. This suggests they have identified at least one occasion in which an email had been forwarded from Braverman from her AGO account to a private account she utilises."

70. The IC (relying on the ICO Guidance) says (A39)

".. the AGO was not obliged to provide the Appellant with a partial response using the information gleaned from the sampling exercise it conducted. The Commissioner did however order steps that the AGO provide the Appellant with advice and assistance to facilitate him making a refined request".

71. The Guidance referred to says (A39)

"As a matter of good practice, you should avoid providing the information found through any searches already conducted and then claiming section 12 for the remainder of the information. Instead, inform the applicant that section 12 is engaged for all of the request. You can then offer advice and assistance which should enable the applicant to make a fresh request, targeting the information which they are most interested in from that which could be provided within the limit."

72. The ICO's (non binding but useful) Guidance goes on to add:-

“Therefore in practice, as soon as you recognise that you are going to exceed the appropriate limit, it makes sense to stop searching and inform the applicant. This avoids the risk of unnecessary work.”

73. We agree with the IC but also agree that it was appropriate for the IC to have required the AGO to provide Mr Greenwood with advice and assistance to *“facilitate him making a refined request”*.

Decision

74. As regards the reliance on section 12 FOIA the DN was not in accordance with the law and the Appeal is allowed.

Signed Tribunal Judge Heald

Date: 3 June 2024

Promulgated

Date: 06 June 2024