

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 February 2012

Public Authority: The Home Office (UKBA)
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps)

1. The complainant has requested information about persons who were granted indefinite leave to remain under the Case Resolution Directorate ("CRD") programme.
2. The public authority advised the complainant that to comply with his request would exceed the appropriate limit. The Information Commissioner's decision is that the public authority applied section 12(1) appropriately.
3. The Information Commissioner further concludes that the public authority did not comply with its duty under section 16 of the Act to provide advice and assistance.
4. The Information Commissioner does not require the public authority to take any steps.

Background

5. The public authority provided the Information Commissioner with the following background information:

"On 25 July 2006 the then Home Secretary announced a new programme of work to clear the backlog of unresolved asylum cases within five years. This programme, known as the "Case Resolution Programme", was handled by the Case Resolution

Directorate (CRD) at the UK Border Agency (UKBA). Cases within the programme are often referred to as "legacy" cases.

The legacy was defined as all asylum cases that were incomplete and not being processed by regional asylum teams at that point in time. Further representations which amount to a fresh claim from an individual, who already has an unresolved asylum claim before March 2007, were also considered by CRD. Each case was considered on its merits and in line with existing policy and law. If the case was unmeritorious the Agency would remove the individual(s) from the United Kingdom."

6. The information request can be found online:
http://www.whatdotheyknow.com/request/minimum_data_set#outgoing-146271.

Request and response

7. On 9 July 2011, the complainant wrote to the public authority and requested information in the following terms:

"I would like to request details of the breakdown of the numbers of persons who were granted indefinite leave to remain under the CRD legacy programme who prior to this grant of leave:

- i) Had not had an initial decision on their unresolved asylum claim prior to the grant of ILR; and*
- ii) Had a negative decision on their initial asylum claim prior to the grant of ILR;*
- iii) had not, to the UKBA's knowledge, ever made an application for asylum prior to the grant of ILR.*

Unfortunately the information in the public domain, including the information provided to the Home Affairs Committee, does not provide this information".

8. The public authority responded on 25 July 2011. It advised that it did hold the requested information but compliance with the request would exceed the appropriate limit.
9. Following an internal review the public authority wrote to the complainant on 18 August 2011. It upheld its initial position.

Scope of the case

10. On 20 August 2011 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He stated:

"I requested information but this was refused. Request for information refused on costs grounds. I do not accept that providing the information I requested would need an officer to manually count approximately 161,000 records. In a separate FOI request the public authority has stated that the CID database bus differentiate and provide a minimum data set on separate applications which suggests the requested information should be able to be provided".

11. The Information Commissioner will therefore consider whether or not the request can be met within the appropriate limit.

Reasons for decision

12. Section 12(1) of FOIA states that:

"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".

13. Section 12(1) of the Act provides that an 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 cost limit (£600 for central government, £450 for all other authorities). Section 12 of the Act should be considered with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken in:

- (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.

14. Regulation 4(4) states that the authority should calculate the cost of complying with a request by multiplying the time estimated by £25 per hour. If the authority considers that complying with the request would therefore cost more than the appropriate limit, it is not obliged to comply with the request. In this case the £600 limit applies, which equates to 24 hours.
15. Section 12(4) of the Act and regulation 5 of the Fees Regulations provide that requests may be aggregated where two or more requests are made within sixty working days, and where they relate *to any extent*, to the same or similar information. This means that in certain circumstances an authority can legitimately refuse multiple requests under the cost limit, even if compliance with one or more of these requests would not themselves exceed the cost limit.
16. Technically, multiple requests within a single item of correspondence are separate requests for the purpose of section 12. If an authority has applied the exclusion under section 12 to multiple requests within a single item of correspondence, the Information Commissioner will need to consider whether each of these requests can be aggregated in accordance with the Fees Regulations. If it is found that one of the multiple requests is not sufficiently similar to the others, the authority will not be entitled to refuse that particular request under section 12 unless complying with the request by itself would exceed the cost limit.
17. In this case, the request comprised three questions. Having considered the wording of these, the Information Commissioner is satisfied that each question relates to the same subject matter. The Information Commissioner is thus satisfied that the requests are for similar information and the public authority was entitled to aggregate them for the purposes of section 12.
18. Having reached this conclusion, the Information Commissioner will next consider the application of section 12(1). This removes the public authority's obligation to provide requested information where the cost of identifying, locating, retrieving and extracting the requested information exceeds the appropriate limit.

Would compliance exceed the appropriate limit?

19. The public authority provided the complainant with the following explanation in its first response letter of 25 July 2011:

"I can confirm that we hold the information which you have requested but we have estimated that the cost of meeting your request would exceed the cost limit of £600 specified in the

Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. We are therefore unable to comply with your request.

The £600 limit is based on work being carried out at a rate of £25 per hour, which equates to 24 hours of work per request. The cost of locating, retrieving and extracting information and preparing the response can be included in the costs for these purposes. The costs do not include considering whether any information is exempt from disclosure, overheads such as heating or lighting, or items such as photocopying or postage.

To provide a full explanation ... would mean that 161,000 individual case files for those granted ILR would need to be examined in detail to provide the answers to your questions.

On 2 March 2011 the acting Chief Executive of the UK Border Agency, Jonathan Sedgwick, wrote to the Home Affairs Select Committee, updating them on the progress made to clear the backlog of older asylum cases. Up to the end of January 2011 the UK Border Agency had granted 161,000 applicants some form of leave to remain in the United Kingdom”.

20. The complainant did not accept this estimate. His representations can be seen via his case on the “*What Do They Know*” website (see link in “*Background*” above).
21. At internal review the public authority upheld its previous position. It also provided the following explanations to queries raised by the complainant:

“[The complainant] referred to data provided to the Home Affairs Committee on 02 March 2011 which highlighted the outcomes of 403,500 cases dealt with by CRD.

This information was taken from CID which is able to extract data on the latest outcomes of a selection of cases.

[The complainant] goes on to suggest that CID should be able to extract the data he requested, which refers to the outcomes of any previous cases the applicants in question had submitted. UKBA has confirmed that the information requested is held in CID.

UKBA has also confirmed that CID is unable to extract data based on the previous case history of those granted indefinite leave to remain under the CRD legacy scheme.

While CID is able to produce data on the latest case outcome of a group of applicants, refining that search to the level of data below (i.e. the previous case outcome) is not possible with the current database.

In order to retrieve this information, UKBA would need to manually search the case records of the 161,000 cases granted indefinite leave to remain under the legacy scheme or produce a more sophisticated piece of software to search the database."

22. In response to queries raised by the Information Commissioner, the public authority also provided the following explanations:

"I can confirm that the information requested by [the complainant] is only recorded within the CID system and relevant manual case files. However, it is not the case that all of the data contained in manual files will be liable to be recorded on the CID system. This is because a proportion of the cases in question, to which ILR was ultimately granted, predate the implementation of the CID system and as such certain data pertaining to them, such as application type of these earlier cases, is not liable to be captured within the CID system."

"[The complainant] is requesting that he be provided with three separate figures, each of which pertains to the different demographics he has specified in his request. We do not hold this information in this format. Although it should in theory be possible to derive this information from data which we do hold, the cost exemption is engaged as a result of the activity that would entail in order to identify and retrieve this data.

The CID system records data on all aspects of individual leave applications. Some of this data is recorded in explicit fields whilst other data is recorded as part of electronic case notes. In tandem with this manual case files also hold data relating to asylum applications. To supply the information sought by [the complainant] would entail in many instances cross referencing what data is held on the CID system with that data held in corresponding manual files. This would be necessary in order to guarantee that information on case outcomes, such as the award of ILR, is properly aligned with all information held on initial application type or status of an asylum claim and not simply

what, potentially incomplete, data may be recorded for a case on the CID system alone."

"UKBA have not carried out a sampling exercise in response to [the complainant]'s request, specifically because the data sought by [the complainant] cannot be searched for other than on a record by record basis. As the number of records within scope of [the complainant]'s request totals 161,000 – it may be reasonably concluded that even were it to take a minimum of 10 minutes to review each record such would take over 1115 days to conclude. With respect to the provisions of section 14(1) (sic) of the Act this figure is far in excess of the designated cost limit. I can confirm that the estimated time it would take to retrieve the information sought by [the complainant] has been based on the quickest possible method of identifying and retrieving the information sought."

"In the majority of cases the outcome (such as the award of ILR) should be recorded against the details of an outstanding case. The issue here is that [the complainant] specifically asked for outcomes to be matched to application types. In many instances the age of CRD cases often precede the introduction of CID system and as such not all the legacy details of all claims would be listed on CID. As such to accurately provide the information sought by [the complainant] would require a manual cross check to be undertaken for each grant of leave awarded against the corresponding manual file in order to establish that all the associated application claims relevant to such were accounted for."

"I have established in my investigation that the Home Office was incorrect to suggest in paragraph 18 of its internal review that a piece of software might be developed in order to supply the data being sought by [the complainant]. As set out in the above paragraphs no such undertaking could successfully deliver the data sought by [the complainant] as not all of the requested information is contained within the electronic CID database. The Home Office apologises for any confusion that this assertion may have entailed."

"The information compiled for use in Home Affairs Select Committee (HASC) updates is a general figure that encompasses all cases in which leave to remain was either granted, refused or removed. The information provided to the HASC contained an overall figure of cases granted some form of leave, be it limited or indefinite; this figure did not contain any breakdown of specific

data or case type. This is information that can be electronically retrieved from the CID system.

The information being sought by [the complainant] is of a markedly different character than that which UKBA was able to provide to the HASC and as detailed in the above paragraphs would require examining of individual case records. This is not the case for the information that was provided to the HASC".

23. The issue of what constitutes a reasonable estimate was considered in the Tribunal case *Alasdair Roberts v the Information Commissioner* [EA/2008/0050] and the Commissioner endorses the following points made by the Tribunal at paragraphs 9 -13 of the decision.:
- *"Only an estimate is required"* (ie not a precise calculation);
 - the costs estimate must be reasonable and only based on those activities described in Regulation 4(3);
 - time spent considering exemptions or redactions cannot be taken into account;
 - estimates cannot take into account the costs relating to data validation or communication;
 - the determination of a reasonable estimate can only be considered on a case-by-case basis; and
 - any estimate should be *"sensible, realistic and supported by cogent evidence."*
24. Following those points, the Information Commissioner is satisfied that the public authority has only included the activities that are specified in Regulation 4(3) in its estimate. He does note that a sampling exercise was not undertaken, which is something which he would generally recommend. However, he understands that the sheer volume of records concerned is sufficient evidence to demonstrate that undertaking such a task is not necessary; the estimate was based on a figure of ten minutes check per file, but even were such a check achievable in one minute, this would still readily exceed the appropriate limit.
25. Having considered all the relevant evidence above, the Information Commissioner is satisfied that the public authority's estimate is based on a reasonable assessment of only those activities that are allowed by Regulation 4(3) of the Fees Regulations. He is satisfied that this estimate is *'sensible, realistic and supported by cogent evidence.'* He accepts the estimate in this case and determines that section 12(1) was applied correctly.

Procedural Requirements

Section 16(1)

26. Section 16(1) imposes an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance.
27. Whenever the cost limit has been applied correctly, the Information Commissioner will consider whether it would be possible for a public authority to provide advice and assistance to enable the complainant to obtain information without attracting the costs limit in accordance with paragraph 14 of the Code of Practice. In this case the Information Commissioner has considered whether it would have been reasonable for the public authority to have advised the complainant further about reducing the scope of his request.
28. The public authority explained to the complainant the difficulties of extracting what was requested and also advised at internal review:

"[The complainant] requested, in line with the Information Commissioner's published guidance, advice and assistance on how he could further refine his request for information to bring within the statutory cost limit.

In this specific case, it would not be possible to retrieve more detailed data than has already been released in the Home Affairs Committee report to which [the complainant] refers...".
29. It is therefore apparent that the public authority did consider its position in respect of providing advice and assistance but found it was not possible to suggest a way of keeping the request within the appropriate limit.
30. The Information Commissioner has been provided with more information than the complainant and he has accepted that compliance would exceed the appropriate limit. However, he does not believe that the public authority provided the complainant with a similarly clear explanation. As such he believes that it did not comply with its duty under section 16 of the Act as it could have provided a more detailed breakdown which could have informed the complainant sufficiently to allow him to make a refined request, or even to accept the public authority's position.

31. He therefore considers that the public authority did not comply with its obligations under section 16(1). However, as there is now a more detailed explanation within this decision notice the Information Commissioner does not require any further steps to be taken.

Right of appeal

32. 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: 0300 1234504
Fax: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

33. 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.
34. 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

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