

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2024

Public Authority: Post Office Limited
Address: 100 Wood Street
London
EC2V 7ER

Decision (including any steps ordered)

1. The complainant has requested information relating to a statement made by the Chief Executive Officer of the Post Office to the Commons Business and Trade Select Committee hearing, about being frustrated by the lack of former sub postmasters, prosecuted using Horizon data, that have come forward to have their convictions reviewed for potential appeal.
2. The Post Office Limited ("the Post Office") relied on section 12 of FOIA (cost of compliance) to refuse the request.
3. The Commissioner's decision is that the Post Office was entitled to rely on section 12(1) of FOIA to refuse the request. The Commissioner also finds that the Post Office complied with its obligation under section 16 to offer advice and assistance.
4. The Commissioner does not require the Post Office to take any further steps as a result of this decision notice.

Request and response

5. On 21 June 2023, the complainant submitted the following request for information to the Post Office Ltd:

"I request information including advice in whatever form, including legal advice, relating to Nick Read's statements to the Commons Business and Trade Select Committee hearing, where he said he is frustrated by the lack of former subpostmasters, prosecuted using Horizon data, that have come forward to either the Criminal Cases Review Commission (CCRC) or directly to the

Court of Appeal, to have their convictions reviewed for potential appeal.

This information includes the "specific piece of work" referred to in his evidence to the Select Committee which was:-

"We have been doing a specific piece of work to identify [whether] there are any potential appellants, individuals that have been prosecuted. We say to them, 'Come forward, we will not oppose you'."

I also ask whether that "piece of work" - which will not oppose appeals has been supplied to 1) Sir Wyn's official enquiry, 2) the CCRC and if not why not."

6. On 21 July 2023, the Post Office responded. It relied on section 12 of FOIA to refuse the request – a position it upheld following an internal review.

Reasons for decision

Section 12 – cost of compliance

7. Section 12(1) of the 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" set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations")
8. The appropriate limit is set in the Fees Regulations at £600 for central government bodies, legislative bodies, and the armed forces. It is set at £450 for all other public authorities. The appropriate limit for the Post Office in this case is £450.
9. 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 work for the Post Office before the cost of complying would exceed the appropriate limit.
10. 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 to comply 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.
11. 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 task for the Commissioner in a section 12 matter is therefore to determine whether the public authority made a reasonable estimate of the cost of complying with the request. The Commissioner considers that to be reasonable, the estimate must be sensible, realistic, and supported by cogent evidence.
 12. 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.
 13. 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

14. Based on the estimate provided in the internal review, the Commissioner was satisfied that a decision could be reached without seeking further submissions from the Post Office.
15. The Post Office explained in its internal review that:

“a test search was conducted of one available email account, using appropriate search terms. It yielded 2718 emails for that one individual involved with the task. At the rate of 1 email per minute, it will take more than 45 hours (well above the 18-hour limit prescribed by law) to go through those 2718 emails. That test search did not cover all the individuals involved with the piece of work, or the other locations where relevant records could be held within Post Office systems, nor did it extend to information held by the independent barristers who are conducting the project on our behalf.

In addition, and as explained in [the Post Office's] original response, the project is a review by independent barristers, of all relevant information available to Post Office to identify criminal appeal cases that Post Office could properly concede, based on

the information held and in accordance with the Court of Appeal (Criminal Division)'s judgment in Hamilton & Others. Numerous people who have been written to in connection with their conviction have not responded to multiple communications from Post Office and the Criminal Cases Review Commission ("CCRC"), which is an independent body, and work is ongoing to review several hundred prosecution case files and encourage appropriate applications. Therefore, even if it were possible to identify the full extent of the information responsive to your request, it would likely be covered by the exemptions found at s40 (personal data) and s42 (legal professional privilege) in any event"

The Commissioner's view

16. The Commissioner is satisfied that complying with this request would exceed the appropriate limit.
17. In this case, the Post Office has estimated that it would take over 45 hours to identify, retrieve and collate the information requested. This is clearly over the cost limits prescribed by FOIA of 18 hours. This estimate was made on the basis that each of the emails identified as potentially being within the scope of the request would take one minute to review. The Commissioner does not consider this to be unreasonable – indeed many of the emails may take significantly longer than this to review.
18. The Commissioner also notes that, for the reasons given by the Post Office in its internal review, this estimate is likely to be much lower than the true figure, as the above estimate is only for the email account of one individual involved in the specific piece of work referred to in the request. The complainant has requested all information relating to the specific piece of work.
19. As the Post Office has estimated that the cost limit is exceeded for the email account of one individual, the Commissioner is satisfied that the cost of complying with the request in full would significantly exceed the limit. He is therefore satisfied that the Post Office is entitled to refuse to comply with the complainant's request on the basis of cost.

Procedural matters

Section 16 – advice and assistance

20. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.

21. 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.
22. In this case, the Post Office advised the requester in its initial response to the request:

“If you were to make a new request for a narrower category of information, it may be that we could comply with that request within the appropriate limit, although we cannot guarantee that this will be the case. Unfortunately, given the nature of this work, we are unable to provide ways for you to narrow down your request.”

23. Given the scope of the complainant’s request, the Commissioner is of the view that no further meaningful advice could have been offered as to ways to refine the request in order to bring it within the cost limit. The Commissioner is therefore satisfied that the Post Office did comply with section 16 of FOIA when dealing with this request.

Other matters

Internal review request

24. The Commissioner notes that the time taken for the Post Office to respond to the internal review request exceeded 40 working days.
25. As explained in the ICO’s guidance¹, internal reviews should usually be completed within 20 working days. However, there may be circumstances where public authorities require more time to complete an internal review, for example to address complex issues, consult with third parties or consider substantial amounts of information.
26. In these circumstances, this should be no more than an additional 20 working days, unless there are legitimate reasons why a longer extension is necessary.

¹ [Request handling, Freedom of Information – Frequently Asked Questions | ICO](#)

Right of appeal

27. 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

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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF