



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

**Appeal Reference: EA/2021/0094**

**Decided without a hearing on:  
6 and 20 October 2021**

**Before**

**SOPHIE BUCKLEY  
MARION SAUNDERS  
ROSALIND TATAM**

**Between**

**GIAN A AMERI**

**and**

**THE INFORMATION COMMISSIONER**

Appellant

Respondent

**DECISION**  
**CORRECTED UNDER RULE 40**

1. For the reasons set out below the appeal is dismissed.

## REASONS

### **Introduction**

1. This is an appeal against the Commissioner's decision notice IC-39651-Q4S4 of 11 March 2021 which held that the Home Office correctly applied s 12(2) of the Freedom of Information Act 2000 (FOIA) and that the Home Office was not required to confirm or deny whether the requested information was held.
2. The Commissioner required no steps to be taken.

### **Application for extension of time**

3. Shortly before the hearing Mr Ameri made an application for 'all outstanding deadlines' to be extended by one month. For the reasons set out in the order dated 6 October this was refused. The parties were given a short extension of time to submit any final written representations.
4. Mr. Ameri submitted further submissions dated 10 October 2021. He also submitted some further documents: a letter dated 6 October 2021 from the Home Officer responding to request for an internal review in response to a related FOI request made on 28 July 2021, and a firearm certificate valid from 14 June 2018 to 13 June 2023. No further submissions were received from the Commissioner. The panel considered the additional submissions and documents on 20 October 2021 before reaching its decision.

### **Background**

5. The Fifty Calibre Shooters Association (FCSA) are a rifle club approved by the Home Office. Under section 44 of the Firearms (Amendment) Act 1997, a person wishing to possess a rifle for target shooting must be a member of an approved rifle club. Any rifle club can apply to the Home Office for approval. When approval has been granted, members of that club can possess firearms and ammunition without holding a personal firearm certificate when engaged as a member of the club in connection with target shooting.
6. Approval also allows the police to grant a free firearm certificate to a responsible officer of the club to enable him or her to purchase and acquire firearms and ammunition for members to use for target shooting.
7. The process for applying for approval is to send form 124 to the chief officer of police for the area in which the secretary or responsible officer of the club resides, and the police then forward the application to the Home Office.

8. One of the criteria for approval is that the club must be a genuine target shooting club with a written constitution.
9. Mr Ameri has not explained in detail why he requested copies of the constitution of the FCSA, although the tribunal understands that it was for the purposes of a court hearing on 6 March 2020 and an unparticularised risk to the general public.

### **Request and response**

10. On 21 February 2020 Mr. Ameri's solicitors made the following the request on his behalf:

The only document we require is the constitution of the Fifty Calibre Shooting Association (FCSA), specifically copies of any version of the constitution submitted by the club to the Home Office at any time since 2004, which is when the FCSA first became a Home Office approved club.

11. The Home Office replied on 6 March 2020 and relied on s 12(2) FOIA on the basis that the costs of identifying which files might hold the document and then searching each of them to ascertain whether they do or not would exceed the appropriate limit.

12. The Home Office upheld their decision on internal review on 24 April 2020 and provided the following further details of the work involved:

The reason why the cost limit is exceeded in respect of your request is because the department cannot, within the cost limit, determine what information is held since 2004 as it is not held centrally nor is it available in a format that can be reconciled and recalled upon easily. The information you request can only be located within individual paper records; which means that searching for the information is more difficult than if the information was stored electronically. Having spoken to the policy unit I understand that there are approximately 5,000 paper files which relate to the Home Office firearms licensing and policy functions and in order to retrieve the information you request, the files would have to be manually checked in order to search to find any that relate to 'Fifty Caliber Shooting Association'. Once they had been identified, a further search would be necessary in order to identify whether the specific information you requested was held in the file...the recording system was purely a paper based system until June 2018 when the electronic casework recording system was started. If you were to make a new request and narrow your request for records since June 2018, we will then treat it as a new request.

13. Mr. Ameri referred the matter to the Information Commissioner on 4 May 2020.

### **The Decision Notice**

14. The Information Commissioner was satisfied that the Home Office estimated correctly that to determine whether the requested information is held would take over the appropriate limit. She found that the Home Office cited s 12(2) FOIA

correctly and was not obliged to confirm or deny whether it held the requested information. She accepted that the Home Office had complied with s 16 FOIA.

### **The Appeal to the Tribunal**

15. The grounds of appeal are, in summary, that:
  - 1) The Commissioner should not have accepted the Home Office's assertions of how long it would take without evidence. The assertions cannot be correct because they would mean that the Home Officer was unable to access the information to discharge its duty of care
  - 2) The Home Office knew that two police forces might have had the data and failed to inform Mr. Ameri or the Commissioner of this.

### **The Commissioner's response**

16. The Commissioner put detailed questions to the Home Office as to why it was not possible to confirm what information it held within the appropriate limit. She considered the answers and thorough reasons and found them compelling and persuasive. The Commissioner is entitled to accept the word of the public authority where there is no evidence of an inadequate search, any reluctance to carry out a proper search or a motive to withhold information.
17. The issue under FOIA is not what information should be kept or how it should be kept but, in this case, what steps would be necessary to locate any information that is held.
18. Para 2.12 of the Freedom of Information Code of Practice does not apply because the Home Office has not been able to establish whether or not it holds information within the scope of the request. Further it would have been for Mr. Ameri to approach the other public authority. At most, this would amount to a breach of s 16 FOIA.

### **Mr. Ameri's reply**

19. Mr. Ameri notes that the FOI request had been narrowed down to the single and most recent document held by the Home Office and that the Home Office was aware that the document was needed urgently for court proceedings.
20. The relevant application is submitted first to the Police and then to the Home Office which means that the Home Office would know for certain that at least one Police force would or might hold the relevant data.
21. The above suggests that the Home Office do not want the document to be produced in court for a due diligence challenge.

22. The requested document is available on the FCSA website but the file properties show that the document was created with Word 2016 in 2004.
23. It is impossible to believe the Home Office evidence that it does not hold data in a proper and readily accessible manner when this is essential for it to discharge its duty of care. The Commissioner should therefore have sought to verify the accuracy of the assertions.

### **Evidence and further submissions**

24. We read and took account of an open and a closed bundle and small number of additional documents submitted by Mr. Ameri on 10 October 2021.
25. In his final submissions dated 10 October 2021, Mr. Ameri submits that the documents set out in para 4 above show that he had clearly identified the person or subject of the FOI request and all that the Home Office needed to do was to perform a search of its database to determine what documents it held in respect of the Home Office issued authority. Mr. Ameri highlights the public consultation which had recognised the potential dangers of such weapons if they fall into the wrong hands.
26. Mr Ameri submits that it is not cogent for the Home Office to admit to being unable to retrieve basic information about the entity to which the home office has issued authority to possess 50 Calibre firearms and related ammunition.

### **The relevant law**

27. Under s 12(1) a public authority is not obliged to comply with a request for information where:
  - ..the authority estimates that the costs of complying with the request would exceed the appropriate limit.
28. The relevant appropriate limit, prescribed by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations') is £450.
29. In making its estimate, a public authority may only take account the costs it reasonably expects to incur in relation to the request in-
  - (a) determining whether it holds the information,
  - (b) locating it, or a document which may contain the information,
  - (c) retrieving it, or a document which may contain the information, and
  - (d) extracting it from a document containing it. (See regulation 3).
30. The Regulations specify that where costs are attributable to the time which persons are expected to spend on the above activities the costs are to be estimated at a rate of £25 per person per hour.

31. The estimate must be sensible, realistic and supported by cogent evidence (McInnery v IC and Department for Education [2015] UKUT 0047 (AAT) para 39-41).
32. The test is not a purely objective one of what costs it would be reasonable to incur or reasonable to expect to incur. It is a test that is subjective to the authority but qualified by an objective element. It allows the Commissioner and the tribunal to remove from the estimate any amount that the authority could not reasonably expect to incur either on account of the nature of the activity to which the cost relates or its amount. (see paragraph 20) (**Reuben Kirkham v Information Commissioner** [2018] UKUT 126 (AAC)).

### *The Task of the Tribunal*

33. The tribunal's remit is governed by s.58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether she should have exercised it differently. The tribunal may receive evidence that was not before the Commissioner, and may make different findings of fact from the Commissioner.

## **Discussion and Conclusions**

### *Scope of the request*

34. Mr. Ameri states in his reply that the request was narrowed down to a single document. The tribunal notes that Mr. Ameri, via his solicitors, submitted a revised request dated 21 February 2020 which stated that 'at the very least' could you supply the club constitution submitted by the FCSA in support its last application for renewal of the club licence. Mr. Ameri also indicated during the Commissioner's investigation that he wanted a single document.
35. However, in Mr. Ameri's email to the Commissioner dated 15 December 2020 he confirmed that he was no longer amenable to receipt of one single document and that he required receipt of all documents as originally requested. In the light of this email we consider that the scope of the request in consideration in this appeal is the original request. This finding would not have affected the outcome of the appeal in any event for the reasons set out below.

### *Is the estimate sensible, realistic and supported by cogent evidence?*

36. In its letter dated 26 November 2020 the Home Office states that the information can only be located within individual paper records. The shooting club has not applied for a licence since the introduction of the electronic system in June 2018, so their initial application and any since would have been submitted on paper. The paper documents are stored in files that can contain 250 documents. Multiple

club/museums etc. are grouped together in one file with no labelling of what is contained on the front. Each individual file would therefore have to be examined to locate the requested information.

37. Examining each individual file and recording the data requested would take 5 minutes per file. There are an estimated 5000 files so it would take nearly 418 hours to search and retrieve any information in scope. The shooting club has not applied for a licence since the introduction of the electronic system in June 2018. Even if the request is narrowed to the most recent application from the club, every file would need to be searched.
38. The files are held in two locations, one of which is third party secure file store. The Home Office would have to pay the third party an amount set out in the closed annex per file to retrieve the files.
39. It is not for the tribunal to determine whether or not the record keeping system adopted by the Home Office is adequate or best practice. Although Mr. Ameri asserts that the Home Office is not discharging its duties by adopting such a practice, that is not a matter for us to decide whether it should have adopted such a system.
40. There is no reason for us to doubt that this is, in fact, the system adopted by the Home Office. There is no evidence before to us to show that the Home Office regularly needs to access the pre-2018 paper records in order to discharge its functions. Although Mr. Ameri asserts that the system means that they cannot properly discharge their duties, he has not explained why ongoing and regular access to the paper files and documents is necessary. If, on occasion, the Home Office wish to view the club's constitution when a renewal application is made, their position, as set out in the letter of 26 November, is that they request it from the club. They do not routinely ask for sight of the constitution in relation to applications for renewal.
41. We accept that it is likely that the Home Office will, on occasion, need to access the paper records and that this would take time and cost money. This does not lead us to suspect that the Home Office have, in fact, adopted a different system which provides easier access to the documents.
42. The Home Office has explained their storage system in detail and has given what we find to be a sensible and realistic estimate of how long it would take to search for the requested information. This amount of time significantly exceeds the appropriate limit. In addition to this we accept the Home Office's evidence on the costs of retrieving the files. Both these amounts, taken separately or together, exceed the appropriate limits.
43. On this basis we find that the Home Office was not required to confirm or deny whether the requested information was held under s 12.

44. The Home Office did attempt to provide advice and assistance by suggesting that Mr. Ameri provide another request which was narrowed to records since June 2018, although ultimately it emerged that (at the time of the internal review) the latest application by the club predated the introduction of the electronic system.
45. Mr. Ameri asserts that the Home Office should have stated that the documents could be obtained by making a FOI request to the Cumbria Police or Staffordshire Police, because those police forces might also have had available the requested data.
46. It is clear from letter to the Home Office dated 20 January 2020 that Mr. Ameri was already aware that it was the police that forwarded licence applications to the Home Office. Further, correspondence predating that letter in the bundle shows that the Home Office had already provided him with a link information about licence applications which stated that the police will forward the application to the Home Office. Mr. Ameri therefore already knew at the date of the request that the local police might hold a copy of the requested information, and the Home Office knew that he was aware of that fact.
47. We do not accept that it was 'misleading' of the Home Office not to state that the police might hold a copy. Further, although it might, with hindsight, have been helpful to mention that the police might hold the data, we do not accept that a failure to do so is a breach of s 16.
48. The question for us to answer is what it would be reasonable for a public authority to do. Section 16 does not require a public authority to 'exercise its imagination to proffer other possible solutions to the problem' (**Commissioner of Police for the Metropolis v Information Commissioner and Mackenzie** [2014] UKUT 369, para 17). The police forces mentioned by Mr. Ameri *might* have held the information, they might not. Making an FOI request to the police forces was not, in our view, an obvious alternative solution to the extent that a failure to suggest is a breach of s 16.
49. On this basis we find that the Home Office was not in breach of the duty to provide advice and assistance in s 16 FOIA.
50. On the above grounds the appeal is dismissed.

Signed Sophie Buckley



Judge of the First-tier Tribunal

Date: 21 October 2021

Corrected: 25 October 2021

Promulgation Date: 25 October 2021