

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 April 2017

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

Decision (including any steps ordered)

1. The complainant requested information associated with a specified grant to the Community Service Trust ('CST'). The Home Office applied section 14(2) of FOIA (repeated request).
2. Having considered its handling of the request, the Commissioner's decision is that the Home Office did not apply section 14(2) appropriately to that request for the reasons set out in this notice. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation:
 - issue a fresh response to the request not relying on section 14(2).
3. The Home Office must take these steps 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.

Background

4. The complainant made his request to the Office of Security and Counter Terrorism ('OSCT') which is an integral part of the Home Office.

5. The Home Office told the Commissioner that the complainant has made a number of *"related requests"*, the first of which it received on 15 April 2016 (for information on funding/grants). The Home Office responded and said that no information was held.
6. The second request was received on 19 May 2016 which asked for *"all communications and paperwork in relation to the £13.4m granted to cst_uk"*, which the Home Office refused on cost grounds (section 12 of FOIA).
7. The third request received on 22 June 2016 was as follows:

"Follow-up to 39794 [Home Office reference number for the second request]; Specifically in regard to my request concerning grant of £13.4m to CST (39794), please revise the request as follows:

 - *Minutes of meetings, emails, and letters between CST, the OSCT and the HO in relation to the grant.*
 - *Any research data or evidence on which the HO and/ or OSCT relied, or was presented, in order to appropriately decide the grant.*
 - *A copy of the equality impact assessment.*
 - *Grant forms and agreements signed, including budgets, expenditure, and any deliverables.*
 - *Correspondence from any third parties."*
8. The Home Office refused this request on cost grounds. It suggested the complainant refine his request with a view to bringing it under the cost threshold.

Request and response

9. Having refined his request, the complainant wrote to the Home Office on 21 July 2016 and requested information in the following terms:

"1. emails; minutes; letters; grant forms; budgets; research/ any evidence to support need for amount of grant; and deliverables, between CST, HO, and OSCT, for the specifically purposes of the £13.5 grant award to the former."
10. The Home Office responded on 19 August 2016. It stated that the request was a repeat request (section 14(2) of FOIA).
11. The complainant requested an internal review on 13 September 2016. He argued that his request should be answered because he had

“removed the restriction and limitation of dates”; however, the Home Office has highlighted that there is no reference to dates in either request and that the removal of dates will tend to widen the scope of a request rather than limit it.

12. Following an internal review the Home Office wrote to the complainant on 10 January 2017 and maintained that section 14(2) applies. It also referred to the cost of compliance without specifically citing section 12 of FOIA.

Scope of the case

13. The complainant contacted the Commissioner on 16 January 2017 to complain about the way his request for information had been handled.
14. Following the Commissioner's enquiries, the Home Office confirmed that section 12(1), the cost exclusion, would apply to the current request in the alternative if section 14(2) not applied. Whilst the Home Office provided an extract of a section 12 refusal of this complainant's request of 19 May 2016 (see 'Background' section), it has not specifically cited section 12 for his current request, nor, to the Commissioner's knowledge, has it outlined these reasons to the complainant. The Commissioner has therefore not considered whether section 12(1) can be cited in relation to the request under consideration in this notice.
15. To clarify, the Commissioner has considered only the Home Office's application of section 14(2) of FOIA to the request.

Reasons for decision

Section 14 vexatious or repeated requests

16. Section 14(2) of FOIA states that:

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request”.

17. This means that section 14(2) of FOIA may only be applied when all three of the following criteria have been fulfilled:
 - the request is identical or substantially similar to a previous request from the same requester;

- the authority has previously provided the information to the requester or confirmed that it is not held in response to the earlier FOIA request; and
 - a reasonable interval has not elapsed between the new request and compliance with the previous request.
18. In its submission to the Commissioner, (and as set out in the 'Background' section of this notice) the Home Office said that the complainant had submitted a number of requests relating to grants, in particular the CST grant. It provided her with details of those requests and their outcomes.
19. In refusing to comply with the current request (21 July 2016), the Home Office said it had previously complied with the complainant's request for information dated 22 June 2016. This was refused on cost grounds and the Home Office advised the complainant to refine his request so as to bring it within the cost threshold by, for example, reducing the time period covered or the types of documents requested. The complainant subsequently refined his request on 21 July 2016 as set out in paragraph 8 of this notice.
20. The Commissioner has considered both requests of 22 June 2016 and 21 July 2016 in particular and is satisfied that they were made by the same requester. She is also satisfied that the other requests referenced by the Home Office are from the same requester, ie the complainant in this case.
21. However, in paragraph 19 of her published guidance on repeated requests¹ the Commissioner also states that a public authority can only apply section 14(2) to a request where it has either:
- already provided the information to the same requester in response to a previous FOIA request; **or**
 - previously confirmed that the information is not held in response to an earlier FOIA request from the same requester.

If neither of the above criteria applies, then the request is not repeated and the authority must process it in the usual manner.

¹ <https://ico.org.uk/media/for-organisations/documents/1195/dealing-with-repeat-requests.pdf>

22. The Commissioner is satisfied that the requests of 22 June 2016 and 21 July 2016 were made by the same requester/complainant and they are for similar information. However, the Home Office refused the earlier request on the grounds that to comply with it would exceed the cost limit; it did not actually provide the information requested. As the Home Office has neither provided the information to the complainant, nor confirmed that the requested information is not held, the request of 21 July 2016 is therefore not a repeat of the one dated 22 June 2016.
23. The Commissioner therefore finds that section 14(2) has not been appropriately applied to the request of 21 July 2016.

Other matters

24. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As she has made clear in her *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 88 working days for an internal review to be completed, despite the publication of her guidance on the matter.
25. She notes the Home Office said it had a backlog of internal reviews at that time while it concentrated on initial requests and that it had apologised to the complainant for the delay.

Right of appeal

26. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF