

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 July 2017

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

### Decision (including any steps ordered)

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1. The complainant has requested information about the Independent Anti-Slavery Commissioner, his staff and their interaction with the Home Office.
2. The Home Office refused to comply with the request citing section 12 (Cost of compliance) of the FOIA.
3. The Commissioner's decision is that the Home Office was entitled to apply section 12(1) to refuse to comply with the request. However, in failing to respond to the request within the statutory timescale, the Commissioner finds that the Home Office breached section 10 (Time for compliance) of the FOIA.
4. The Commissioner requires no steps to be taken.

### Request and response

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5. On 30 August 2016, the complainant wrote to the Home Office and requested information in the following terms:

*"... it is with deep regret and reluctance that we are having to write to you with an official complaint and formal request for an investigation into the actions of [name redacted], the Independent Anti-Slavery Commissioner and also members of his office and board as well as the actions of the Home Office.*

*We also are making alongside this complaint letter a Freedom of Information Request for all correspondence relating to these matters including communications between [name redacted], Home Office staff, the Home Secretary's office including Special Advisors, [name redacted] and all other IASC board members relating to discussions surrounding the selection of the provider of the Helpline, and regarding [name redacted]'s appointment to Unseen and engagement with Unseen."*

6. Having received no response, the complainant sent a chaser letter on 5 October 2016. On 6 October 2016, the Home Office apologised for the delay in responding to the request, which it said was under "*active consideration*". The complainant was dissatisfied with this response and requested an internal review of the Home Office's handling of his request.
7. The Home Office responded on 26 October 2016. It refused to comply with the request, on the grounds that to do so would exceed the appropriate costs limit, citing section 12 of the FOIA.

## **Scope of the case**

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8. The complainant, considering that he had already exhausted the Home Office's internal review process, contacted the Commissioner on 6 February 2017 to complain about the way his request for information had been handled.
9. In the circumstances of this case, the Commissioner has exercised her discretion to accept the complaint without the Home Office having conducted an internal review of its decision to apply section 12.

## **Reasons for decision**

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### **Section 10 - time for compliance**

10. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
11. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "*no later than the twentieth working day following the date of receipt*".

12. In this case, the Home Office breached sections 1(1) and 10(1) by failing to respond to the request within 20 working days.

### **Section 12 – cost of compliance exceeds appropriate limit**

13. 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.
14. The appropriate limit in this case is £600, as laid out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”). This is calculated at the rate of £25 per hour, providing an effective time limit of 24 hours work.
15. When estimating whether complying with a request for information would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in complying with the request. The estimate must be reasonable in the circumstances of the case. It is not necessary to provide a precise calculation.
16. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
- determining whether the information is held;
  - locating the information, or a document which may contain the information;
  - retrieving the information, or a document which may contain the information; and
  - extracting the information from a document containing it.
17. The Home Office confirmed that it was relying on section 12(1) to refuse to comply with the request. It said that it had interpreted the phrase “*these matters*”, in the second paragraph of the request, to be the matters referred to in the first paragraph. It therefore considered the request to be for all correspondence held by the Home Office relating to:
- the actions of the Independent Anti-Slavery Commissioner;
  - the actions of members of the Commissioner’s board;
  - discussions surrounding the selection of the provider of the Modern Slavery Helpline;
  - a named person’s appoint to, and their engagement with, Unseen (an anti-slavery charity chosen to run the Modern Slavery Helpline); and
  - the actions of the Home Office in relation to all the above.

18. The Commissioner agrees with the Home Office's interpretation of the scope of the request.
19. The Home Office explained that the request relates to matters on which there has been a great deal of correspondence, both internally within the Home Office and externally, with stakeholders. The helpline referred to in the request is the Modern Slavery Helpline<sup>1</sup>. Background information may be found on GOV.UK<sup>2</sup> and on Unseen's website<sup>3</sup>. Background information on the Independent Anti-Slavery Commissioner is available on GOV.UK<sup>4</sup> and the Anti-Slavery Commissioner's own website<sup>5</sup>.
20. The Home Office considered it was clear from this that modern slavery generally and the establishment of the Helpline in particular were and are major policy areas for the Home Office, on which there was, by the very nature of the subject, a lot of correspondence held by the department. There was also a lot of correspondence between the Home Office and the Independent Anti-Slavery Commissioner and with Unseen. Some of this correspondence would fall within the scope of the request, although not all of it.
21. It went on to explain that electronic searches based on key words would locate a lot of information potentially within scope, but such searches were too wide in themselves to differentiate the information within scope of the request from that which was in the broad area but not within the exact terms of the request (for example, because it was about wider or unrelated issues or because it post-dated the request).
22. The Home Office's estimate of the costs that would be incurred in locating, retrieving and extracting information within scope of the request was based on the results of initial electronic searches provided by the Modern Slavery Unit, the Office of the Director General of the

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<sup>1</sup> <https://www.modernslaveryhelpline.org>

<sup>2</sup> <https://www.gov.uk/government/collections/modern-slavery>

<sup>3</sup> <http://www.unseenuk.org/about/projects/uk-modern-slavery-helpline-and-resource-centre>

<sup>4</sup> <https://www.gov.uk/government/organisations/independent-anti-slavery-commissioner>

<sup>5</sup> <http://www.antislaverycommissioner.co.uk/>

Crime, Policing and Fire Group, the Permanent Secretary's Office and the Home Secretary's Office.

23. The various parts of the department provided the following figures for emails located by initial key word searches which would need to be examined individually:
- Modern Slavery Unit: over 100
  - Office of the Director General of the Crime, Policing and Fire Group: 264
  - Permanent Secretary's Office: 245
  - Home Secretary's Office: 5,982
24. This gave a total of at least 6,591 emails (the estimate referred to in the refusal notice).
25. The Home Office said that this total did not include emails which may be held by Special Advisers, some of which (possibly a large number) would fall within the scope of the request. Since it seemed clear from the above results that the costs limit would be exceeded, it had not proceeded with any further searches in that regard.
26. The Home Office estimated that on average, it would take around one minute to examine each email to identify whether it fell within scope of the request. Based on 6,591 emails (and thus not including any additional emails held by Special Advisers), that gives an estimate of just under 110 hours' work which was well in excess of the 24 hours permitted by the Fees Regulations.

### *Conclusion*

27. The Commissioner has considered the arguments submitted by the Home Office and is satisfied that an estimate of one minute to examine each email is reasonable. The estimate allows for the fact that some emails may be examined in a much shorter time, while it may take considerably longer to establish whether others fall within the scope of the request. It should be noted that even if the estimate was reduced to an average of 30 seconds, the overall work involved would still exceed the appropriate limit by some margin.
28. From the information provided, the Commissioner has concluded that the Home Office was entitled to rely on section 12(1) to refuse to comply with this request.

*Section 16- advice and assistance*

29. If a public authority estimates that the cost of complying with a request for information would be above the appropriate limit, under section 16 of the FOIA it should consider providing advice and assistance with a view to helping the requester bring his/her request under the cost limit.
30. The Commissioner notes that in its refusal notice the Home Office invited the complainant to refine his request, *"...so that it is more likely to fall under the cost limit, [and] we will consider it again. For example, you could refine your question by limiting the time period; narrow the subject you wish to cover, or the persons you require this information from"*.
31. The Commissioner is therefore satisfied that the Home Office has fulfilled its obligations under section 16 of the FOIA.

## Right of appeal

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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: 0870 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

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** .....

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**