

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 March 2020

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

Decision (including any steps ordered)

1. The complainant requested information relating to a named individual. The Home Office confirmed it held information within the scope of the request but refused to provide it, on the basis that to do so would exceed the appropriate limit in costs set by section 12(1) (cost of compliance) of the FOIA.
2. The Commissioner's decision is that the Home Office correctly applied section 12(1) and found that there is no breach of section 16(1) (duty to provide advice and assistance) of the FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Background

4. Regarding the individual named in the request, the BBC reported in 2016:

"Salman Butt, a British Muslim activist, has launched legal action, saying he was named as a "non-violent extremist" by the government. ... Mr Butt was named in a Downing Street press release about an aspect of the strategy, known as the Prevent duty,

being used to stop extremists radicalising students on university campuses.”¹

Request and response

5. On 14 May 2019, the complainant wrote to the Home Office and requested information in the following terms:

"Dr Salman Butt, an academic and Chief Editor of Muslim recently defeated you in the Court of Appeal, Neutral Citation Number: [2019] EWCA Civ 256.

<https://www.bailii.org/ew/cases/EWCA/Civ...>

See para 14,

14. "The announcement on 17 September 2015 of the coming into force of the PDG [Prevent Duty Guidance] on the following day was made in a press release of the Prime Minister's Office and the Home Office jointly ("the press release"), in which Dr Butt was identified as an extremist "hate speaker". The press release stated that he had been identified as an extremist on the basis of research carried out by the EAU."

Request.

All data held which caused you to list Dr Butt as a hate speaker".

6. The request was made via the 'whatdotheyknow' website.
7. The Home Office responded on 13 June 2019. It refused to provide the requested information, citing section 40(2) (personal information) of the FOIA as its basis for doing so.
8. Following an internal review, the Home Office wrote to the complainant on 29 July 2019. It maintained its original position.

¹ <https://www.bbc.co.uk/news/uk-38209567>

Scope of the case

9. The complainant contacted the Commissioner on 12 August 2019 to complain about the way his request for information had been handled. He told the Commissioner:

"There is a legitimate interest in knowing how and why someone is branded a 'hate speaker'".

10. Following the Commissioner's intervention, the Home Office revisited its handling of the request. It provided a revised response to the complainant on 29 November 2019, in which it advised that section 12(1) (cost of compliance) of the FOIA applied.

11. The complainant confirmed that he was dissatisfied with the Home Office's revised response. In support of his complaint, he told the Commissioner:

"I do not accept that the limit would be breached".

12. The analysis below considers the Home Office's application of section 12(1) of the FOIA to the requested information.

Reasons for decision

Section 12 cost of compliance exceeds appropriate limit

13. Section 12(1) of the 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".

14. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. 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 24 hours in this case.

Would complying with the request exceed the appropriate limit?

15. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) of the fees regulations states that an authority can only take into account the costs it reasonably expects to incur in:

- determining whether it holds the information;

- 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.
16. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
17. In correspondence with the complainant, the Home Office told him that it would exceed the cost limit of £600 to identify, locate and extract the requested information. It explained that the requested information is not stored centrally and is stored across more than one archiving system. It also told him:
- "... the legal case regarding the subject of your request – Dr Butt – started in late 2015 (and continues to this day). 3 and a half years have passed since the date of your request [sic], and during this time the Home Office has been in receipt of hundreds of documents which relate to Dr Butt – it is estimated to be between 800-1000.*
- To comply with your request, we would have to scrutinise all these documents to verify that they fall within scope. This can only realistically be achieved by going through each of them in turn and reviewing them by eye. Even though the majority are held in electronic form, and even if we were to use keyword searches, officials would still need to read the documents themselves (which contain the search terms) in order to fully understand their context and check to see if they are relevant to the scope of your request or not.*
- Bearing in mind the sheer volume of material that would need to be reviewed, it is estimated that it would exceed 24hrs, and therefore we are unable to comply with your request as it currently stands".*
18. The Home Office confirmed that, while the estimate covered locating, retrieving and extracting information, it did not include considering whether any of the information was exempt from disclosure.
19. The complainant disputed that it would exceed the time limit to comply with his request.
20. In correspondence with the Commissioner, the Home Office told her that to gather the requested information is a "mammoth task".
21. During the course of the Commissioner's investigation, the Home Office was asked to provide more detail in respect of its application of section 12.

22. In its submission, the Home Office told the Commissioner:

"We estimate that we hold thousands of documents and pieces of correspondence related to Dr Butt's listing as a 'hate speaker'. These documents and correspondence date from mid-2016, when the Butt case started. In order to verify the relevance of these documents to [the complainant]'s information request, we estimate that it would take in excess of 34 working days (7 hours 24 minutes in a standard Home Office working day), and that we could review on average, approximately, 40 documents/emails per hour"

23. The Home Office confirmed that "a sampling exercise, supported by the Government Legal Department", was used to support this estimate. It also told the Commissioner:

"This estimate is based upon the quickest possible method of gathering the requested information, with databases used where possible rather than manually searching files"

24. With regard to the nature of the information within the scope of the request and included in the estimate, the Home Office explained:

"This estimate does not consider the time it would take to identify relevant materials stored on archive systems where it is unclear where the relevant documents would likely be stored. Taking all the above into account, locating and collecting all information and then identifying relevant parts would take more than 24 hours to complete"

25. Having considered its response, the Commissioner asked the Home Office to provide further information with regard to the volume of information it would need to consider in order to comply with the request. In particular she was mindful of the specific wording of the request in relation to the amount of information which the Home Office was claiming to be in scope of the request.

26. In particular, she was concerned that the figures cited by the Home Office appeared to relate to documents received after the legal case commenced, while the wording of the request specified "All data held which caused you to list Dr Butt as a hate speaker".

27. The Home Office confirmed what it had previously told her:

"... the Home Office does hold thousands of documents which relate to information (generally) about Dr Butt"

28. In support of its estimate of the time required to consider those documents, the Home Office confirmed:

"... we are unable to disaggregate the information that we hold pre-17 September 2015 which caused the Home Office to list Dr Butt as a hate speaker, from the totality of information that we hold about Dr Butt more generally... The reason for this, as explained previously, is because of the volume of information – thousands of documents – which would have to be assessed to see if they related to information pre-17 September 2015 or not. The documents have not been stored by date. The way in which the information has been recorded and stored by the Home Office does not allow for identification and retrieval within the cost/time limit of section 12(1) of the Freedom of Information Act 2000 (FOIA)."

29. It also explained:

*"Some of the information contained within these documents will explain the reasons as to why the Home Office had cause to list Dr Butt as a hate speaker. The difficulty that we have, is that the way the information is recorded and stored in the department, means that it is not possible to identify and locate that information, i.e. that **which specifically caused the Home Office to list Dr Butt as a hate speaker**, within the cost/time limit, hence why we are relying on section 12(1) of the FOIA".*

The Commissioner's view

30. When dealing with a complaint to her under the FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, the Commissioner's role is simply to decide whether the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.
31. In essence, therefore, this case turns on whether the estimate provided by the Home Office was reasonable. The Commissioner considers that a reasonable estimate is one that is *"...sensible, realistic and supported by cogent evidence"*.
32. The Commissioner accepts that, on the face of it, the complainant's request appears to be a relatively straightforward one. However, from the evidence she has seen during the course of her investigation, the Commissioner is satisfied that the Home Office has demonstrated that it would exceed the appropriate limit to locate, retrieve and extract the requested information.
33. Section 12(1) does therefore apply and the Home Office is not required to comply with the request.

Section 16 advice and assistance

34. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request *"so far as it would be reasonable to expect the authority to do so"*.

35. In her guidance *'Requests where the cost of compliance exceeds the appropriate limit'*, the Commissioner considers the provision of advice and assistance. She states:

"In cases where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:

- either indicate if it is not able to provide any information at all within the appropriate limit; or

- provide an indication of what information could be provided within the appropriate limit; and

- provide advice and assistance to enable the requestor to make a refined request".

36. In general, where section 12(1) is cited, in order to comply with this duty, a public authority should advise the requester as to how their request could be refined to bring it within the cost limit.

37. In that respect, the Commissioner recognises that the Home Office advised:

"It is difficult to see how the request for information could be refined to reduce the cost of locating the relevant information, but it is possible that this is achievable if information is requested from a specific time period. I note that this same section 16 advice and assistance was provided to [the complainant] in our supplementary response".

38. The Commissioner is also satisfied that, by way of advice and assistance, the Home Office told the complainant:

"Furthermore, even if a revised request were to fall within the cost limit, because of the very nature of the information you seek – information which relates directly to Dr Butt - it is extremely likely that section 40(2) of the FOIA would apply (for the reasons provided in our earlier correspondences), and/or possibly, the exemption at section 32 (Court records)".

Reference: FS50865656



39. She is therefore satisfied that the Home Office fulfilled its duty at section 16(1) of the FOIA to provide advice and assistance as far as is reasonable.

Right of appeal

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

41. 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.
42. 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
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