

## **Freedom of Information Act 2000 (FOIA) Decision notice**

**Date:** 6 April 2022

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

### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to drone sorties made by UK Border Force in 2020.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 12(1) FOIA – cost of compliance, in response to the request.
3. The Commissioner does not require the Home Office to take any steps as a result of this decision notice.

### **Request and response**

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4. On 2 February 2021, the complainant wrote to the Home Office and requested information in the following terms:  
  
"a) How many sorties have been flown by the TEKEVER AR5 UAV for the UK border force per month in 2020?  
  
b) How many hours have been flown by the TEKEVER AR5 UAV for the UK border force per month in 2020?"
5. The Home Office responded on 17 May 2021 and refused to provide the requested information citing section 31(1) as its basis for doing so.
6. Following an internal review the Home Office wrote to the complainant on 11 August 2021 and maintained its position.

## Scope of the case

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7. The complainant contacted the Commissioner on 23 August 2021 to complain about the way their request for information had been handled.
8. During the course of the investigation the Home Office amended its position and withdrew reliance on section 31(1). Instead it sought to rely on section 12 FOIA and advised the complainant accordingly on 23.3. The complainant contacted the Commissioner on 28 March 2022 and stated:

"I find it very hard to believe that there is no summary of activity undertaken by the Tekever AR5 for the Home Office except the raw flight reports. However, the reply from the Home Office states that they have identified 260 flight reports for the year 2020. This appears to relate to the number of sorties (i.e. one flight report per sortie) so that just needs to be broken down by month. This would not take the time that is being claimed."

9. The Commissioner considers the scope of this investigation to be to determine if the Home Office has correctly cited section 12 in response to the request.

## Reasons for decision

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### Section 12 – cost of compliance

10. Section 12(1) of 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 cost limit.
11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for central government which applies to the Home Office. .
12. 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 for the public authority.
13. 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 in complying 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.
14. 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. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/00041*, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
15. 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 the FOIA to consider whether there is a public interest in the disclosure of the information.
16. Where a public authority claims that section 12 of the 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 the FOIA.

### **The Home Office’s position**

17. In its revised response to the complainant the Home Office stated it estimated that the cost of locating, extracting, and collating the relevant information to meet the request would exceed the appropriate limit of £600 specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
18. The £600 limit is based on work being carried out at a rate of £25 per hour, which equates to 24 hours of work per request. The cost of locating, retrieving and extracting information can be included in the costs for these purposes.
19. It explained that during the time period requested, it had identified a total of 260 separate flight reports. To respond to the request the Home Office would need to review each of these reports to identify and retrieve the specific information requested, e.g., the number of sorties made. Each report numbers between 7-8 pages in length and it estimated that it would take 5-10 minutes to read each report.

20. Taking the minimum estimate in each case of a 7 page report taking 35 minutes to read, the Home Office calculated the following:

$35\text{minutes} \times 260 \text{ reports} = 9,100 \text{ minutes}$

$9,100/60 \text{ minutes} = 151.7 \text{ hours work in total.}$

This is significantly in excess of 24 hours of work.

21. It further explained that the reports are only held in PDF format and so it would not be able to use its IT technology to highlight and extract the key parts. The quickest method, and the only way, in which it would be able to identify the information requested would be to manually read the reports by eye, and look to identify, and then extract the relevant information.
22. Taking the above into account, the Home Office estimated that the time taken to search for, and then retrieve the information falling within scope of the request, would exceed the appropriate limit, and therefore section 12(1) of the FOIA is engaged.
23. The Commissioner notes the complainant's argument that there is no summary of activity undertaken except the raw flight reports. It is not within the Commissioner's remit to determine what information or how information should be held, but only if a public authority has complied with the legislation.
24. The Commissioner further notes that the complainant disputes the time claimed as it "just needs to be broken down by month".
25. As noted above, a public authority can take into account the time it would take to carry out the four 'tasks' listed in paragraph 13. The main costs associated with this request lie in retrieving the information, or a document containing it and extracting that information.
26. The Home Office explained that the information is held in PDF documents meaning that it would need to manually review each document to identify any information within the scope of the request.
27. The Commissioner is not persuaded that it would take at least 35 minutes to read each report. However, even if the estimate was reduced by 75% it would still equate to 2275 minutes, which is approximately 38 hours and also exceeds the cost limit.
28. Therefore the Commissioner finds that the Home Office is entitled to rely on section 12(1) FOIA to refuse the request.

**Section 16 – the duty to provide advice and assistance**

29. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice<sup>1</sup> in providing advice and assistance, it will have complied with section 16(1).
30. The Home Office advised the complainant:

“If you refine your request, for example, by narrowing the timescales we may be able to comply with a future request within the cost threshold - though I cannot guarantee that this would be the case - however, if you do submit a revised request, it is possible that other exemptions in the FOIA might apply.”
31. The Commissioner considers that this was an appropriate response in the circumstances. He is therefore satisfied that the Home Office met its obligations under section 16(1) 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.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**

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