

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 July 2023

Public Authority: House of Commons
Address: London
SW1A 0AA

Decision (including any steps ordered)

1. The complainant has requested information regarding the Parliamentary art collection from the House of Commons ("the HoC"). The HoC initially said that it did not hold the information for the purposes of FOIA. During the Commissioner's investigation it also argued that compliance with the request would exceed section 12 (Cost of compliance exceeds appropriate limit) of FOIA.
2. The Commissioner's decision is that:
 - On the balance of probabilities, the HoC does hold information falling within the scope of the request.
 - However, the HoC was entitled to rely on section 12 when refusing to comply with this request.
 - As the HoC did not provide advice and assistance on how the request might be refined so as to bring it within the cost limit, it has not complied with the duty under section 16 of FOIA.
3. The Commissioner requires the HoC to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance as regards how the request might be refined so as to bring it within the cost limit.
4. The HoC 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.

Request and response

5. On 11 February 2023, the complainant wrote to the HoC and requested information in the following terms:

“Can you please give me a list of all artwork from the Parliamentary art collection which currently hangs in the office of MPs? Can you give me the name of each artwork and the MPs office in which it hangs?”

6. The HoC responded on 6 March 2023. It stated that it did not hold the requested information.
7. Following an internal review, the HoC wrote to the complainant on 5 April 2023. It stated that some information was not held for the purposes of FOIA, but that if it did hold some information, it would likely be unable to disclose this information due to security reasons or due to breaching personal data rights.

Scope of the case

8. The complainant contacted the Commissioner on 19 April 2023 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to consider whether the HoC holds any information within the scope of the request, and if it does, whether it could be provided within the appropriate cost limit.

Reasons for decision

Section 1 – general right of access

10. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
11. The HoC explained to the Commissioner that it does not hold a list as described in the request. It explained that there is no business need for such a document and the cost of creating it would exceed the cost limit. However, it also described to the Commissioner the various sources from which some information falling within scope of the request could be extracted and compiled.

12. The Commissioner's guidance on determining whether information is held¹ states that there are some circumstances where a public authority may still "hold" information, even though it does not have it immediately to hand when a request is made. If a public authority has the "building blocks" necessary to produce a particular type of information, it is likely that it would hold the information unless it requires particular skills or expertise to put the building blocks together.

The Commissioner's decision

13. In the circumstances of this case, the Commissioner is satisfied that compiling the requested information would simply comprise the "re-representation" of existing information, and that therefore, on the balance of probabilities, the HoC does hold information falling within the scope of the request. It was therefore not entitled to rely on section 1 to refuse this request.

Section 12 - Cost of compliance exceeds appropriate limit

14. During the Commissioner's investigation, the HoC said that in the event section 1 did not apply, it believed it was not required to comply with the request by virtue of section 12. This late revision has not been put to the complainant, to forego any further delay in the investigation.
15. Section 12(1) of FOIA states that a public authority is not required to comply with a request for information if it estimates that the cost of doing so would exceed the appropriate cost limit. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations').
16. The "appropriate limit" is set in the Fees Regulations at £600 for central government, legislative bodies, and the armed forces and at £450 for all other public authorities. Therefore, the "appropriate limit" for the HoC is £600. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, effectively imposing a time limit of 24 hours for the HoC.
17. The Fees Regulations state that a public authority can only take into account the costs it reasonably expects to incur in carrying out the following activities:

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/#create>

- 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.
18. The HoC provided the Commissioner with a detailed description of the various indoor and outdoor spaces, which make up the parliamentary estate. All locations have a space ID which are stored in the In-House Services and Estates ('IHSE') database. This database can produce a list of space IDs that have been allocated to members of parliament, however there are around 650 members of parliament and allocations change frequently. The HoC confirmed that there were currently 950 space IDs allocated to members of parliament.
 19. The Parliamentary Art Collection is made up of over 10,000 objects. The collection is managed by the Heritage collection team who use a separate database to the IHSE database. This database is used to support the management of the collection, for example, it holds core data on artworks and information on any specialised cleaning work or the removal of the artwork from a location. The HoC also advised that the full inventory of all the collection is not known at this time and work is ongoing to produce a fully audited inventory.
 20. The HoC said that whilst the collections database holds space IDs of where each piece of art is located, these are not linked to members of parliament.
 21. The HoC advised that in order for it to identify which piece of art are in which members of parliament's office/spaces, it would need to compare and cross reference each space ID allocated to a piece of artwork, against the space ID allocated to the member of parliament.
 22. The HoC said that the creation of such a list with each member of parliament's office space would not be a time-consuming task, as the IHSE database allows the production of this information quite easily. However, the creation of a list of the entire art collection and which office art is located in would take a significant amount of time.
 23. The HoC heritage collection team would have to manually search their own database against the 950 space IDs allocated to the members of parliament and then transfer this information into a new document. The HoC advised that it estimated it would take approximately 2 minutes to conduct each individual search. It advised that it would take 1,900 minutes/31.66 hours to search each of the 950 space IDs against the art collections database.

24. The HoC advised it would take a further 30 seconds for each result to be compiled into a new document for the complainant. For the 950 space IDs this would take a total of 475 minutes/7.9 hours. The HoC concluded that to produce the requested information, it would take an estimated total of 39.56 hours of staff time or a cost of £989.
25. In addition, it said further work would likely be required to verify that the information it held amounted to the name of an artwork, and in some cases a visual check might be required. It said it had not estimated the time required for these actions, as its estimate already exceeded the appropriate limit.

The Commissioner's decision

26. When dealing with a complaint to him under FOIA, it is not the Commissioner's role to make a ruling on what information a public authority should hold, or how it should hold it. He is not concerned with 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, in a case such as this, the Commissioner's role is simply to decide whether or not the requested information can, or cannot, be provided to a requestor within the appropriate cost limit.
27. The Commissioner's job here is to determine whether the HoC has demonstrated that the work involved in providing the information specified in the request would be likely to exceed 24 hours, and thus the £600 cost limit established under the Fees Regulations.
28. The HoC has provided an estimate that compliance with the request would require at least 39 hours work. The Commissioner considers this estimate to be credible and he recognises that further work might be necessary which would incur additional costs.
29. Having considered the information provided by the HoC about how the information is held, the Commissioner is satisfied that it has estimated reasonably that the costs involved in complying with the request would exceed the £600 limit established by the Fees Regulations. As such, the HoC was entitled to rely on section 12(1) of FOIA to refuse to comply with the request.

Section 16(1) – The duty to provide advice and assistance

30. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request where it would be reasonable to do so.
31. This means that, in general, where section 12(1) of FOIA has been cited, a public authority should advise the requester as to how their request

could be refined to bring it within the cost limit (albeit that the Commissioner recognises that where a request is far in excess of the limit, it may not be practical to provide any useful advice).

32. In this case, although the HoC did not apply section 12(1) until the Commissioner's investigation, in its responses to the complainant it did set out, in broad terms, why the request would be time consuming to respond to. However, the Commissioner considers that it should be possible to refine the request so that it captures at least some information which may be of interest to the complainant (eg by revising its scope to information on artworks that could be extracted from the Heritage collection team database alone).
33. Therefore, in order to fully comply with section 16(1) of FOIA, the HoC should take the action in paragraph 3, above.

Right of appeal

34. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.

36. 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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