

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

### **Decision notice**

**Date:** 4 January 2023

**Public Authority:** The Department for Levelling Up, Housing and Communities

**Address:** 2 Marsham Street  
London  
SW1P 4DF

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

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1. The complainant requested information from the Department for Levelling Up, Housing and Communities (DLUHC) relating to a statement made by Michael Gove concerning short term lets.
2. The Commissioner's decision is that the DLUHC is entitled to rely on section 14(1) (vexatious request) to refuse to comply with the request. However, the Commissioner finds that the DLUHC failed to provide reasonable advice and assistance and therefore failed to meet its obligations under section 16(1) of the FOIA.
3. The Commissioner requires the DLUHC to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with advice and assistance to help them submit a less burdensome request.
4. The DLUHC 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

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5. On 14 April 2023, the complainant wrote to the DLUHC and requested information in the following terms:

“I would be grateful if you could provide any information, data or documents underlying the statement made by the Housing Secretary claiming new policies in relation to short term lets would stop local people being “pushed out of cherished towns, cities and villages by huge numbers of short-term lets.

Basically the data you hold which suggests the above is actually occurring.”

6. The DLUHC refused to provide the requested information citing section 14(1) (vexatious request) as its basis for doing so.

## Reasons for decision

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7. This reasoning covers whether the DLUHC is entitled to rely on section 14(1) to refuse to comply with the request.

## The complainant's position

8. The complainant does not consider their request to be vexatious. In their complaint to the Commissioner the complainant stated that they have not requested all information held by DLUHC relating to local people being pushed out of towns, cities and villages due to short term lets. They have only requested the information relied on by Michael Gove when making his statement on short term lets.
9. The complainant considers that when making his statement, Michael Gove would not have relied on all the information held by the DLUHC which relates to local people being pushed out of towns, cities and villages due to short term lets. The complainant therefore considers that their request would not place a burden on the DLUHC and its resources.
10. The complainant also stated that they believe the DLUHC did not hold any information to support Michael Gove's statement at the time the statement was made.

## The DLUHC's position

11. The DLUHC considers the request to be vexatious. In their submissions to the Commissioner the DLUHC explained that Michael Gove's statement on short term lets was based on several years of joint work

between the DLUHC and the Department for Culture, Media and Sport (DCMS). It stated that in order to provide the requested information it would need to review all relevant correspondence, stakeholder engagement readouts, parliamentary debates and external research held. This would include DCMS' call for evidence on a tourist registration scheme which the DLUHC has access to.

12. The DLUHC explained that in the last year it has received 123 pieces of correspondence with the term 'short term let' in the title. It estimates that it would take approximately four hours to review the correspondence to determine whether it fell within the scope of the request (123 pieces of correspondence x 2 minutes = 4.1 hours). The DLUHC explained that once it had identified the correspondence it holds which falls within the scope of the request, it would then need to consider whether an exemption would need to be applied to each piece of correspondence. It estimates that this would take around six hours (123 pieces of correspondence x 3 minutes = 6.15 hours).
13. The DLUHC considers that it is likely to hold further correspondence relating to short term lets that may fall within the scope of the request which do not have the term 'short term let' in the title and so would not have been located by the above search. Furthermore, the DLUHC stated that as the request is not limited to a particular time period, it may need to search for correspondence from multiple years rather than just the last year.
14. The DLUHC explained that it has also conducted a search of Hansard for information dating from the last five years which falls within the scope of the request using the keywords 'short term let', 'holiday let' and 'AirBnB' as search terms. This search returned 1506 results which may fall within the scope of the request. The DLUHC estimates that it would take approximately two minutes to review each result and so it calculated that it would take 78 hours to review all 1506 results. It stated that no exemptions would apply to the information held on Hansard as the information is already publicly available.
15. The DLUHC also explained that it would need to search the outlook inboxes of the four individuals from the relevant team for emails which fall within the scope of the request. It has conducted a search of one of the individual's inboxes using the search terms 'short term let', 'STL', 'holiday let' and 'AirBnB'. This search returned 325 results. The DLUHC estimates that it would take approximately five minutes to review each result and determine whether it falls within the scope of the request. It calculated that in total it would take around 27 hours to review all 325 results (325 results x 5 minutes = 27 hours). The DLUHC therefore estimates that it would take 108 hours to search the outlook inboxes of all four individuals and determine whether any information located falls

within the scope of the request. The DLUHC estimates that it would take a further 108 hours to consider whether it needed to apply exemptions to any information located that falls within the scope of the request. It considers this estimate to be conservative.

16. The DLUHC explained that it would also need to search its short term lets and second homes SharePoint folder for information which falls within the scope of the request. It estimates that it would take approximately 35 hours to review the 210 documents held in the folder and determine whether those documents fall within the scope of the request (210 documents x 10 minutes = 35 hours). It estimates that it would take a further 35 hours to consider whether any exemptions apply to the information.
17. The DLUHC estimates that in total, it would take approximately 374 hours to comply with the request. It considers that a number of exemptions are likely to apply to information falling within the scope of the request such as section 40 (personal information), section 35 (government policy), section 41 (information provided in confidence) and section 42 (legal professional privilege).
18. The DLUHC stated that it is likely that it would need to undertake a significant liaison with third parties such as other government departments and stakeholders when determining whether the information it holds within the scope of the request can be disclosed. It considers that the request would place a burden on the DLUHC as in order to comply with the request, it would need to divert resources away from core duties including work relating to the Levelling Up Bill and ongoing consultations.

### **The Commissioner's position**

19. In general, where responding to a request would exceed the appropriate limit, the Commissioner would expect a public authority to apply section 12 to refuse the request. However, section 14 of FOIA may also be applicable in cases where complying with the request would place a grossly oppressive burden on a public authority's resources which would outweigh any value or serious purpose the request may have.<sup>1</sup>

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/how-do-we-deal-with-a-single-burdensome-request/>

20. The Upper tribunal, in the case of *Cabinet Office vs Information Commissioner and Ashton* [2018] UKUT 208 (AAC)<sup>2</sup>, said that in such cases, “the public interest in the subject matter of a request is a consideration that itself needs to be balanced against the resource implications of the request, and any other relevant factors, in a holistic determination of whether a request is vexatious”.
21. The Commissioner notes that the complainant has stated in their complaint that they only require the information that Michael Gove relied on when making the statement quoted in the request. However, the request asks for data which suggests that local people are being pushed out of cherished towns, cities and villages by huge numbers of short-term lets. The Commissioner therefore considers that the DLUHC was correct to interpret the request as being for any information which supports Michael Gove’s statement rather than being for just the information that Michael Gove specifically relied on when making his statement.
22. The Commissioner considers the DLUHC estimate of four hours to review all 123 pieces of correspondence with the term ‘short term lets’ in the title and received by DLUHC in the last year to be reasonable. He also accepts that it would be necessary for the DLUHC to consider whether any exemptions apply to that correspondence which would take additional time.
23. However, the Commissioner considers that it would not be necessary for the DLUHC to search Hansard for information falling within the scope of the request. Hansard is the record of UK Parliament. As the Commissioner understands it, information held on Hansard is held by UK Parliament rather than by the DLUHC. Therefore, as the information on Hansard is not held by the DLUHC, the DLUHC would not be required to conduct a search of Hansard in order to comply with the request.
24. The Commissioner considers the DLUHC estimate of 27 hours to review all 325 emails located in the outlook inbox of one staff member to be excessive. However, he recognises that the DLUHC would need to search the outlook inboxes of four staff members and so he considers that even if the DLUHC was to take only two minutes to review each email held in the inboxes’ of the four staff members, rather than the five minutes estimated by the DLUHC, it would still take the DLUHC a significant amount of time to review the emails and determine whether they fall

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[https://assets.publishing.service.gov.uk/media/5b57139a40f0b6339963e8cf/GIA\\_2782\\_2017-00.pdf](https://assets.publishing.service.gov.uk/media/5b57139a40f0b6339963e8cf/GIA_2782_2017-00.pdf)

within the scope of the request (325 emails x 4 staff members x 2 minutes = 43 hours). Furthermore, the Commissioner recognises that the DLUHC would need to consider whether exemptions apply to any emails held that fall within the scope of the request. Whilst he does not consider that this would take 108 hours as estimated by the DLUHC, he accepts that it would take a significant amount of additional time.

25. The Commissioner does not accept that it would take the DLUHC ten minutes to review each of the 210 documents held within the DLUHC's short term lets and second homes SharePoint folder to determine whether they fall within the scope of the request. However, due to the number of documents that would need to be reviewed, the Commissioner is satisfied that even if the DLUHC was to take five minutes to determine whether each document falls within the scope of the request, it would still take the DLUHC approximately 17.5 hours to review all 210 documents. The DLUHC would also have to spend further time considering whether exemptions apply to any documents which fall within the scope of the request.
26. As detailed above, the Commissioner considers that it would take the DLUHC a considerable amount of time to search for correspondence, emails and documents which fall within the scope of the request. Additionally, due to the nature of the information that has been requested, he considers that exemptions would be likely to apply to sections of the requested information. Therefore, responding to the request would need a significant amount of further time.
27. The Commissioner recognises that there is a serious value and purpose to the request, and that there is a public interest in the requested information being disclosed. However, due to the estimated time it would take to review the information it has identified, together with the fact that the DLUHC would then need to spend a significant degree of additional time to assess whether any exemptions are applicable, the Commissioner is satisfied that complying with the request would place a grossly oppressive burden on the DLUHC and its resources.
28. On balance, therefore, the Commissioner's decision is that the DLUHC was entitled to rely on section 14(1) to refuse to comply with the request.

## **Section 16 – advice and assistance**

29. In this case, the DLUHC has applied section 14 on the basis that responding to the request would create a grossly oppressive burden upon it.

30. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. In effect, an authority must give the requester reasonable advice and assistance to refine (change or narrow) their request. This will generally involve explaining why the limit in section 12 of FOIA would be exceeded, and what information, if any, may be available within that limit.
31. Whilst the DLUHC advised the complainant that they could resubmit a reframed question, the DLUHC did not clearly advise the complainant on how they might refine their request so that it could be responded to within the appropriate limit. It did not explain what information would be available within that limit.
32. Therefore, the Commissioner's decision is that the DLUHC did not provide the complainant with adequate advice and assistance and so breached section 16(1) of the FOIA.

## Right of appeal

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33. 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)

34. 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.

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 .....**

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