

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

### **Decision notice**

**Date:** 14 June 2023

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

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

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1. The complainant requested information about deaths en route to the United Kingdom during migration journeys.
2. The Home Office refused to confirm or deny whether it held information within the scope of the request, citing section 12(2) (cost of compliance exceeds appropriate limit) of FOIA.
3. The Commissioner's decision is that the Home Office was entitled to apply section 12(2) of FOIA and is satisfied that the Home Office met its obligation under section 16 of FOIA to offer advice and assistance.
4. The Commissioner requires no steps to be taken as a result of this decision.

#### **Request and response**

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5. On 15 June 2022, the complainant wrote to the Home Office and requested information, about deaths en route to the United Kingdom during migration journeys, in the following terms:
  - "1. How are the deaths of migrants seeking to enter (whether lawfully or unlawfully) the UK, having been identified as being within the UK's jurisdiction, officially recorded and by which government department?
  2. Are statistics and/or reports produced annually relating to these deaths, either for internal purposes or for publication?

- 2.i. In particular please provide details (such as they have been documented) distinguishing the location, means of attempted entry and manner of death.
3. Please will you disclose to us such statistics and reports since they have been kept.
4. In relation to the management of the bodies of deceased migrants, please will you provide details of the responsible lead government department and other authorities involved in the chain of responsibility for the deceased, and their roles. Please include any internal guidance, memoranda, policy documents involving the Home Office and which may also engage with other government departments and bodies, setting out the policy instructions/process maps and any other guidance issued for the management of the body and engagement with bereaved families.
5. Where international liaison is required, for example in relation to the determination of the identity of a body, the place of death, the tracing of relatives, body repatriation, or other reasons for such communications, please can you provide details of the responsible government department and any policy instructions/process maps and other guidance to officials in the conduct of such business.
6. Please provide details of any information leaflets/online resources that you or other government departments provide to bereaved families or families of missing migrants to assist them in navigating the administrative and legal systems in place in relation to the recording of the official reasons for death of the deceased, funerary arrangements, visas for entry to participate in proceedings etc.”.
6. The Home Office responded on 26 September 2022. While it denied that it holds the requested information, the Home Office did, however, provide contact details for another public authority which it considered appropriate.
7. Following an internal review, the Home Office revised its position. It told the complainant that it is unable to confirm whether the Home Office holds information within the scope of the request, citing section 12(2) (cost of compliance) of FOIA. It provided advice about other public authorities it considered may be able to assist.
8. The complainant remains dissatisfied: he considers that the reasons provided for non-disclosure are unjustified and that the Home Office’s response fails to satisfactorily address any of the questions raised in the original request.

9. The following analysis explains why the Commissioner is satisfied that the Home Office is entitled to rely on section 12(2) of FOIA to neither confirm nor deny (NCND) whether it holds the requested information.

## **Reasons for decision**

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### **Section 12 cost of compliance**

10. Section 12(2) of FOIA provides that a public authority is not obliged to confirm or deny whether requested information is held if it estimates that to do so would incur costs in excess of the "appropriate limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
11. In other words, if the cost of establishing whether information of the description specified in the request is held would be excessive, the public authority is not required to do so.
12. 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 Home Office is £600.
13. 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 Home Office.
14. Where section 12(2) is relied upon, 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 activity:
  - determining whether the information is held.
15. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of "Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004", the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence".
16. A realistic estimate is one based on the time it would take to obtain the requested information, if held, from the relevant records or files as they existed at the time of the request, or up to the date for statutory compliance with the request. For example, if the requested information, if held, is only contained within paper files at the time of the request,

then it is realistic to accept that it would take longer to search paper files than to search the same information if it were stored electronically.

### **The Home Office's position**

17. In this case, the Home Office told the complainant that it would exceed the £600 limit to identify whether information that falls within the scope of the request is held.
18. In support of that view, it explained to the complainant that there is no requirement for the Home Office to officially record and maintain data of the kind requested:

“... because the Home Office does not have the operational lead (primacy) for deaths at the UK border (at sea or at airports)”.
19. However, it acknowledged that it is possible that Border Force, part of the Home Office:

“... will have had knowledge on the day of any incidents that have occurred where the UK authorities have played a part in search, rescue and recovery and officer's notebooks may contain notes of the incident. Border Force may also have knowledge of passengers who have died airside or in the secure zone at airports, and officer's notebooks may contain notes of the incident”.
20. It explained, therefore, that in order to respond to the request for information, it would need to obtain the notebooks for all Border Force staff and manually review them to determine whether any information recorded in the notebooks fell in scope of the request.
21. In correspondence with the Commissioner, the Home Office confirmed that police have primacy over all deaths at the border. It told him that while Border Force may support on an incident, there is no official requirement for Border Force to make any official record of a death at the border.
22. In response to questions asked by the Commissioner, the Home Office confirmed that there are more than 10,000 Border Force Staff. It told the Commissioner that the notebooks for all frontline Border Force Staff would be needed “which would include all officers who work at all Airports and Seaports across the UK, including any mobile teams”.
23. It explained that a Border Force frontline officer may go through 10-15 notebooks a year, depending on the port they work at.
24. It also confirmed that all notebooks are paper and that there are no electronic notebooks.

25. With regard to the steps that would be required to ascertain whether or not the notebooks hold relevant information, the Home Office explained that it would be necessary to manually check each individual notebook, page by page, to see if there are "notes or anything on migrant deaths".
26. It described this as taking "a significant amount of time", estimating that it could take up to 15-20 minutes to check each notebook.
27. It confirmed that, in addition to checking officers' current notebooks, it would also be necessary to check all notebooks that have been sent for secure storage across the UK.

### **The Commissioner's view**

28. The Commissioner recognises that the subject matter of the request is of interest to the complainant. He also acknowledges that the complainant considers that the responses he received from the Home Office do not address the questions he would like answered.
29. The Commissioner recognises that the complainant considers that, as both border and police functions are within the purview of the Home Office, the Home Office should hold the requested information.
30. However, the issue under FOIA, in a case such as this, is not what information should be kept or how it should be kept, but what steps would be necessary to locate any information that is held.
31. The Commissioner has considered the explanations put forward by the Home Office and the factors it has taken into account when estimating that it would exceed the cost limit to determine whether or not it holds the requested information.
32. Based on the information available to him, the Commissioner accepts that it is not a requirement for Border Force staff to make a record of a death at the border. He also accepts that in order to confirm whether or not the Home Office does, nevertheless, hold relevant information, it would need to conduct a manual review of all Border Force staff notebooks.
33. Even if the Home Office's estimate of the time taken to check each notebook for any relevant information was excessive, from the evidence he has seen during the course of his investigation, the Commissioner is satisfied that the Home Office has demonstrated that it would exceed the appropriate limit of 24 hours to confirm or deny whether it holds information within the scope of the request.
34. Section 12(2) does therefore apply and the Home Office is entitled to refuse the request.

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

35. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section, it will be taken to have complied with its obligations.
36. The Commissioner is satisfied that the Home Office has provided the complainant with advice and assistance with regard to contacting other public authorities who may be able to assist him.

## Right of appeal

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37. 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)

38. 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.
39. 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 .....**

**Laura Tomkinson  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
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SK9 5AF**