IC-476273-R4Q4

FOI Disclosure

Appropriate limit

Term (Read only) *

Appropriate limit

Definition (Read only)

Under s12 of the FOIA the Secretary of State for Constitutional Affairs has set an 'appropriate limit' to the costs which a public authority is obliged to incur in complying with an information request – currently £600 for central government and £450 for all other PAs.

FOI and cost limits

When can a request be refused based on cost?

The cost limit for complying with a request or a linked series of requests made for the same or similar information is £600 for central government, Parliament and the Armed Forces, and £450 for all other public authorities.

A public authority can refuse a request if they estimate the cost of compliance would exceed these limits.

When calculating the costs of complying, a public authority can aggregate the costs of all related requests they received within 60 working days from the same person or from people that appear to be working together.

When estimating the cost of compliance, the public authority can only consider the cost of the following activities:

- determining whether they hold the information.
- finding the requested information, or records containing information.
- retrieving the information or record; and
- extracting the requested information from records.

Public authorities should rate staff time at £25 per person per hour, regardless of who does the work. (This includes contractors or external staff). This means a limit of 18 or 24 hours, depending on whether the £450 or £600 limit applies.

If the cost limit is exceeded, the public authority can refuse the request and must provide advice and assistance on how to make a request within the cost limit. Or they can charge a fee for the cost of the whole request including the £450 or £600 whichever is the appropriate fee.

If the requester believes the cost limit has been wrongly estimated, they must ask for an internal review before bringing a complaint to us.

S12 and the cost of third-party staff time

Published 08/07/2025

Where a third party carries out the tasks of locating the requested information, the cost of that time should still be estimated at £25 per hour.

In Stephen Campbell v IC EA/2022/0358 the FtT found that HM Treasury (HMT) was not entitled to refuse the request under s12 – the appropriate limit.

It confirms our long established position that when estimating the cost of complying with a request a PA can only cost the relevant activities at a rate of £25 per hour, even if those activities are to be carried by contractors who may actually charge substantially more.

The FtT was also critical of HMT for failing to consider more cost effective ways of conducting those searches, or alternative places where the information may be held.

The request and the decision

On 6 December 2020, the appellant requested from HMT the electronic draft of a review into Loan Charge schemes, prior to manual review and factual corrections. HMT initially claimed it did not hold the information, stating the Review team was independent and evidence had been destroyed post-review. During the Commissioner's investigation, the appellant noted an automated reply from a Review-related inbox, suggesting archived emails might exist. HMT's IT services were provided, by a private contractor which confirmed archived mailbox searches were possible, but costly. HMT then refused the request under FOIA section 12, citing costs exceeding £600. The Commissioner upheld this refusal and the focus of the appeal was on the application of s12

After the appeal was filed, HMT discovered a hidden repository following a change in IT provider. It contained two identical draft documents likely matching the requested report. These were disclosed in PDF format, though HMT maintained disclosure wasn't required under FOIA.

What approach did the Tribunal take to the application of section 12(1) to refuse the request?

The Tribunal disagreed with HMT and ruled that section 12(1) was not engaged for the following reasons:

1. FOIA Cost Limits Apply Regardless of Outsourcing

   The Tribunal emphasized that under FOIA regulations, public authorities can only charge £25 per hour for staff time spent on certain activities—regardless of whether the work is done by internal staff or external contractors. HMT had

outsourced its IT functions and was relying on its contractor's higher rates to justify the refusal. The Tribunal found this approach invalid. The law is clear: the cost cap is based on time charged at a cost of £25 per hour, not the actual charges.

2. Mailbox Access Costs Were Poorly Justified

   The Tribunal criticized HMT for not considering more cost-effective ways to retrieve the information. For example, it could have asked its IT provider to grant internal staff access to the mailboxes or export the data for internal review. Instead, HMT assumed only the contractor could do the work and that it would be expensive. The Tribunal found this assumption lacked evidence and showed poor planning.

3. Document Library Should Have Been Searched

   After the appeal was filed HMT discovered a hidden SharePoint repository containing two draft versions of the requested report. The Tribunal found that this repository should have been identified and searched much earlier. It criticized HMT for failing to take reasonable steps to locate the information, especially since such document libraries are standard in modern digital workplaces.

Is the approach taken by the Tribunal consistent with our guidance?

The approach taken by the Tribunal is consistent with our existing guidance on section 12(1) in that it endorses our position that a public authority can only include external or contracted staff time at a rate of £25 per hour, regardless of charges imposed by the external provider to carry out the work. Our guidance states:

"Even if you use contract or external staff to carry out some or all of the permitted activities, you can only include their time at the rate of £25 per hour. This is irrespective of the actual cost charged or incurred."

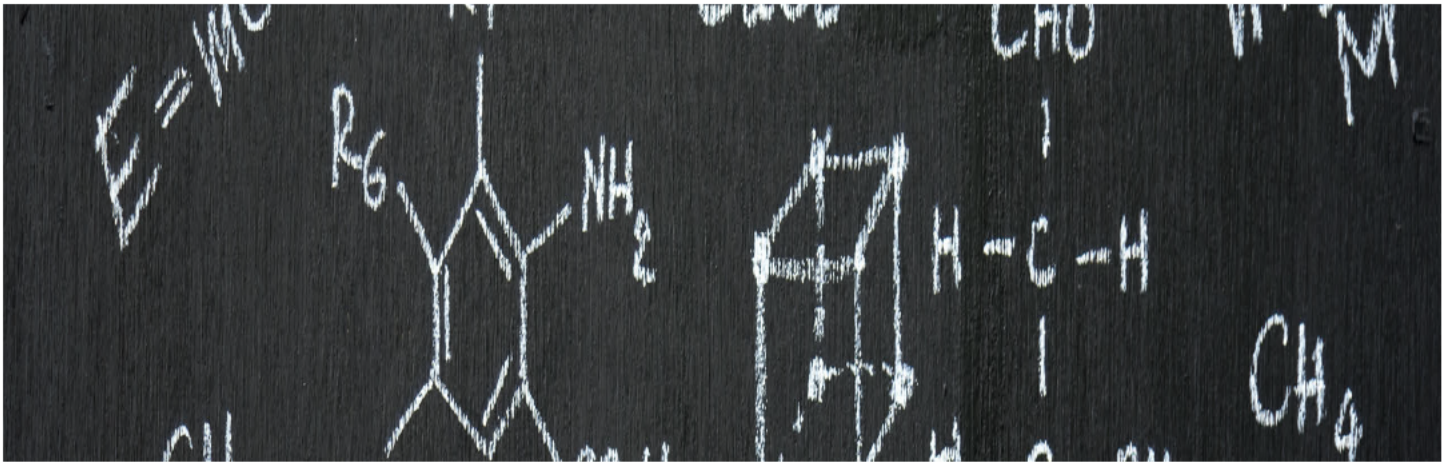
In this specific case, the work described at section 4(3) of the FOI & DP (Appropriate Limit & Fees) Regulations 2004 was being undertaken on behalf of HMT by an IT provider, and is therefore chargeable at the prescribed rate at section 4(4).

Learning points

The Tribunal observed that HM Treasury had entered into an outsourcing contract that failed to include provisions for services reasonably necessary to meet its statutory obligations under the Freedom of Information Act (FOIA).

Given that the right to request information under FOIA and the associated Fees Regulations have been in place for over 20 years, public authorities— particularly large ones like HM Treasury — are expected to anticipate and plan for the operational requirements of FOIA compliance when negotiating IT contracts. This includes ensuring that essential tasks, such as retrieving and searching for information, can be carried out without undue cost or delay. Where a public authority becomes entirely dependent on an external provider for these functions, as was the case here, it risks undermining its ability to meet its legal obligations.

The decision highlights the Tribunal's expectations regarding the thoroughness and scope of searches conducted by public authorities, particularly when they claim that information is not held or that responding to a request would exceed the cost limit. The decision serves as a valuable reference for case officers seeking to challenge a public authority's use of section 12 to refuse a request, particularly where the adequacy of its search or cost estimation is in question.



Maya Esslemont v Information Commissioner & the Home Office

[redacted]
Senior Policy Officer

Tribunal/Court: First tier tribunal

Section/Regulation: Section 12

Date of decision: 20 January 2021

Reference: EA/2020/0008

ICO decision: FS50860105

Significance of decision: Of significance

Status of decision: Green

Scope of the request

Statistics on outcomes of immigration applications

Summary of decision

The information in issue in this case was statistical data relating to immigration outcomes; the public authority was the Home Office. The information requested was not readily accessible although the component parts were held in various databases. The Home Office therefore needed to extract and collate the information from various databases into a bespoke database, which led to the application of s.12 FOIA (a typical scenario).

What is of interest in this appeal is that the FTT needed to consider the interpretation of "extraction" as a permitted activity under the Fees Regulations in the context of the Home Office's estimate. The difficulty was that the estimate was only over the threshold by a few hours, and the Home Office had incorporated various checking / quality assurance, and presentation aspects into the time estimate. The key points to note are that the Tribunal concluded that:

- The initial thinking with regards to determining and designing the methodology to extract the data, and checks to confirm the records were extracted correctly, could be included under "extraction", together with a degree of assurance and verification of outputs at the various stages of the process until all the information had been extracted (subject to being a reasonable estimate).
- The time in which it takes for a computer to run a search of a database, without direct staff involvement, could not be claimed (although to the time taken to set up the search by a member of staff, and the extent that the member of staff would need to occasionally check the status and functioning of the search could be)
- The presentation and assurance of the data in final output form, excel, and the preparation of explanatory notes, for presentation purposes, could not be claimed as by that point the information had already been extracted.

Following an oral hearing, the appeal was allowed on 20 January 2021 (though this accords with our amended position on appeal) and a substituted decision notice issued.

Key Policy Considerations

This case proved a very useful test case to work through what can and can't be included in these circumstances. It confirms our 'case-by-case' approach.

The requested information was not routinely available in a pre-defined dataset, it would therefore need to be extracted and assembled from a number of different data sets.

As part of the 'extraction' process the Home Office (HO) included the time taken for a computer to run a search of a database and extract information and subsequent quality assurance testing of that extracted information. This included the need for bespoke systems with code written to extract and process the requested information.

Designing and writing the computer query and checking if it worked

Ultimately the FTT accepted that the time taken to design and write the computer query required to extract the information could be included in the estimate as could the cost of trialling whether the query was actually retrieving the information it was designed to collect (see paragraphs 34 35)

Running the query

Having designed the computer query, the HO argued that it would have to run it four times due to the volume of information involved. This would involve 15 minutes to set the query up each time and then a further 45 minutes for the query to run, i.e 1 hour per run, giving a total of 4 hours in this case. The 45 minutes during which each query was running was included even though staff had little involvement in the process, apart from the occasional check on its progress, because it would not be practical for them to undertake any other tasks during that period.

The FTT accepted that it was reasonable to conclude that staff time would be required to support the running of the computer process, but considered the estimated time was excessive (para 35). It allowed the 15 minutes to set up each query, but only an additional 15 minutes per run to monitor the progress.

Presenting the extracted information

The FTT rejected the Home Office's arguments that the estimate could include time for presenting the results in a specific format (paras 40 - 41).

Overall

The decision does not deviate from our policy position. The FTT upholds our approach to the application of section 12, recognising in principle, that various activities eg quality assurance, running queries etc, can contribute to the cost of complying with the request. But public authorities should provide evidenced reasons in support of their estimate.

The full summary can be found at: Esslemont v Information Commissioner

FOI POLICY REVIEW – FTT/UT/CA decision

Tribunal / Court: First Tier Tribunal

FOI or EIR :	Section / Regulation:	Date of decision:	Reference:
FOI	S12	20 January 2021	EA/2020/0008

Parties :

Maya Esslemont v The Information Commissioner (and the Home Office)

Earlier judgement/decision summaries:

ICO decision –

- Date 5 December 2019
- Reference FS50860105
- FS50860105

Summary of ICO Decision

The complainant requested information relating to immigration outcomes. The Home Office refused to comply with the request 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. 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.

Summary of FTT Decision :
(Can be a copy of the text from lawyers summary email.)
The information in issue in this case was statistical data relating to immigration outcomes; the public authority was the Home Office. The information requested was not readily accessible although the component parts were held in various databases. The Home Office therefore needed to extract and collate the information from various databases into a bespoke database, which led to the application of s.12 FOIA (a typical scenario).

What is of interest in this appeal is that the FTT needed to consider the interpretation of "extraction" as a permitted activity under the Fees Regulations in the context of the Home Office's estimate. The difficulty was that the estimate was only over the threshold by a few hours, and the Home Office had incorporated various checking / quality assurance, and presentation aspects into the time estimate. The key points to note are that the Tribunal concluded that:

- The initial thinking with regards to determining and designing the methodology to extract the data, and checks to confirm the records were extracted correctly, could be included under "extraction", together with a degree of assurance and verification of outputs at the various stages of the process until all the information had been extracted (subject to being a reasonable estimate).
- The time in which it takes for a computer to run a search of a database, without direct staff involvement, could not be claimed (although to the time taken to set up the search by a member of staff, and the extent that the member of staff would need to occasionally check the status and functioning of the search could be)
- The presentation and assurance of the data in final output form, excel, and the preparation of explanatory notes, for presentation purposes, could not be claimed as by that point the information had already been extracted.

Following an oral hearing, the appeal was allowed on 20 January 2021 (though this accords with our amended position on appeal) and a substituted decision notice issued.

Analysis:

(An analysis of the decision, highlighting any differences or similarities in approach, whether or not it aligns with our published guidance)

Our position on the application of s12 has been clear and consistent for some years. Our guidance states clearly that, in accordance with Regulation 4(3) of the Fees Regulations, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in–

(a) determining whether it holds the information,
(b) locating the information, or a document which may contain the information,
(c) retrieving the information, or a document which may contain the information, and
(d) extracting the information from a document containing it.

This case proved a very useful test case scenario to work through what can and can't be included in these circumstances. It confirms our 'case-by-case' approach, highlighting that when considering the application of section 12 it is essential to consider the particular facts of each case.

This case involved a request for data from the Home Office which required extraction from various databases, followed by compilation into a format that can present the information requested. The Home Office estimated that the cost of complying with the request would exceed the appropriate limit.

The Home Office argued that, as none of the requested information was routinely available in a pre-defined dataset, quality assurance and confirmation of validity would be required in addition to the activities involved in determining whether the requested information was held. It provided details of its estimate, broken down by the various activities undertaken.

It included in its estimate, within the 'extraction' activity, the time taken for a computer to run a search of a database and extract information and subsequent quality assurance testing of that extracted information.

The issue the FTT considered was what activities are accepted as being an inherent part of 'extraction' for the purposes of the Fees Regulations.

The Tribunal advised how to approach the issues – namely whether the estimate included any costs that were either not reasonable or not related to the matters that may be taken into account.

It was acknowledged that this was an unusual situation, needing bespoke systems, with code written to extract and process the requested information.

Designing and writing the computer query and checking if it worked

In considering the Home Office's estimated cost of complying with the request, the FTT looked at whether the Home Office could incorporate time to agree a framed question for extraction – and, if so, whether the time allowed to conduct the extraction was reasonable or excessive.

The FTT had the opportunity to ask questions of two data analyst witnesses in order to assist its understanding of this area of work. Ultimately it accepted that the time taken to design and write the computer query required to extract the information could be included in the estimate as could the cost of trialling whether the query was actually retrieving the information it was designed to collect (see paragraphs 34 - 35)

Running the query

Having designed the computer query, the HO argued that it would have to run it four times due to the volume of information involved. This would involve 15 minutes to set the query up each time and then a further 45 minutes for the query to run, i.e 1 hour per run, giving a total of 4 hours in this case. The HO argued that it was appropriate to include the 45 minutes during which the query was running, but during which staff may have little involvement in the process, apart from the occasional check on its progress, because it would not be practical for them to undertake any other tasks during that period.

The FTT accepted that it was reasonable to conclude that staff time would be required to support the running of the computer process, but considered the estimated time was excessive (para 35). It allowed the 15 minutes to set up each query, but only an additional 15 minutes per run to monitor the progress.

Presenting the extracted information

The FTT rejected the Home Office's arguments that the estimate could include time for presenting the results in a specific format (paras 40 - 41).

Overall

The decision in this case does not deviate from our policy position. The FTT upholds our approach to the application of section 12, recognising in principle, that various activities eg quality assurance, running queries etc, can contribute to the cost of complying with the request, while also accepting that whether the estimated time is reasonable or excessive is a judgment call dependant on the nature of the information and how it is held.

The FTT approach and conclusion confirms our 'case-by-case' approach, highlighting that when considering the application of section 12 it is essential to consider the particular facts of each case.

Should a similar case arise in the future, case officers are advised to be alert to resisting a blanket claim that section 12 applies and seek evidenced reasons in support of the estimate in the context of the circumstances of the case.

Significance of Decision :	**Status of Decision :**
• **Of significance**	• **Green** (follow freely)

External guidance:

(An indication as to whether the decision will feed into, reinforce or result in changes to any existing or new guidance. Following any changes to guidance, or identification that a decision could reinforce guidance, this section will be updated to provide links to any relevant guidance.)

This could be a useful/interesting example to include in s12 guidance next time it is reviewed.

Date:	**Appeal status:**	**Author:**
19 May 2021	Not Appealed	[redacted]