

Office of the Information Commissioner

Guidance Note

Freedom of Information Act
2014 Section 15(1)(c) -
Voluminous Request

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Introduction

The Information Commissioner has prepared this Guidance Note in relation to section 15(1)(c) of the Freedom of Information (FOI) Act 2014.

The Note is a short commentary on the interpretation and application of section 15(1)(c) of the Act by the Commissioner. It provides a brief summary of relevant issues relating to this provision.

This Note is intended to provide general guidance only and is not legally binding. The application of the provision in any particular case will always depend on the particular record(s) and the relevant facts and circumstances.

1.0 Overview - Section 15(1)(c):

1.0.1 This Note briefly explains how section 15(1)(c) provides for the refusal on administrative grounds of a request for records where granting the request would cause a substantial and unreasonable interference with or disruption of work of the FOI body.

Administrative Provision

1.1.1 This is a discretionary administrative provision which allows for the refusal to grant a request on administrative grounds, as opposed to a provision providing for the refusal of a request on the grounds that the record(s) is / are exempt.

Offer of Assistance

1.2.1 Section 15(1)(c) must be read in conjunction with section 15(4) which provides that an FOI body cannot refuse a request pursuant to section 15(1)(c) unless it has assisted, or offered to assist, the requester in an effort to amend the request so that it no longer falls within section 15(1)(c).

1.2.2 Thus, an FOI body cannot rely on section 15(1)(c) unless it has complied with section 15(4).

Right of Access to Records that Exist

1.3.1 The FOI Act provides for a right of access only to records which already exist. Also, the Act does not provide for a right of access to a record which ought to exist. With the exception of certain electronic records, the Act does not require the creation of records in order to grant a request. (See paragraph below on electronic records.)

1.3.2 The Commissioner takes the view that a request for information is only a valid request under the FOI Act in so far as it may be construed as a request for access to an existing record that contains the requested information. Thus, if an FOI body holds records containing the information sought in the request, such records should be considered and a decision made regarding whether or not they are appropriate for release. However, if no record exists which contains the information sought, section 15(1)(a) would generally be relevant.

Other Provisions of the FOI Act which may be Relevant

1.4.1 In addition to section 15(1)(a) referred to above, other provisions of the FOI Act may be relevant in a case where the application of section 15(1)(c) is being considered.

1.4.2 Where an FOI body considers that the time spent on searching for and retrieval of the records would cause the interference with or disruption of its work, a charge for search and retrieval fees may be relevant (section 27(1) and (2) refers).

Where the amount of search and retrieval charges exceeds, or is likely to exceed, the ceiling limit prescribed, section 27(12) may be relevant – provided that all the

requirements of that provision have been met (including assisting the requester), a request may in certain circumstances be refused pursuant to section 27(12).

FOI History and Warning regarding Commissioner's Decisions

1.5.1 It should be noted that a reference to the Commissioner in the context of the decisions referred to in this Guidance Note may include an officer to whom the function of making the decision had been delegated by the Commissioner.

1.5.2 Section 15(1)(c) is similar to, although not the same as, section 10(1)(c) of the FOI Act 1997. This Guidance Note makes reference to previous decisions of the Commissioner where the applicability of section 10(1)(c) was considered under the FOI Act 1997 (or under the FOI Act 1997 as amended) in so far as they remain relevant. To simplify matters for the reader, all references to section 10(1)(c) in those decisions have been replaced by section 15(1)(c) of the FOI Act 2014 in this Guidance Note. Where this occurs, such references are denoted by an asterisk (*).

1.5.3 While references in this Note are made to previous decisions of the Commissioner in so far as they remain relevant, it is possible that other parts of these decisions no longer represent the current position – this could be due to factors such as a change in the legislation or decisions of the Courts. Caution should be exercised in referring to any decision of the Commissioner relating to this provision that was made under the FOI Act 1997, or under the FOI Acts 1997 & 2003, to ensure that all parts of the decision being referred to remain relevant (including such decisions as are published on the OIC website).

2.0 Section 15(1)(c)

15. (1) A head to whom an FOI request is made may refuse to grant the request where—

...

(c) in the opinion of the head, granting the request would, by reason of the number or nature of the records concerned or the nature of the information concerned, require the retrieval and examination of such number of records or an examination of such kind of the records concerned as to cause a substantial and unreasonable interference with or disruption of work (including disruption of work in a particular functional area) of the FOI body concerned,

...

(4) A head shall not refuse, pursuant to *paragraph ... (c) of subsection (1)*, to grant an FOI request unless he or she has assisted, or offered to assist, the requester concerned in an endeavour so as to amend the request for re-submission such that it no longer falls within those paragraphs.

Requirement on an FOI Body to Offer Assistance

2.1.1 Section 15(4) provides that an FOI body shall not refuse a request pursuant to paragraph (c) unless it has assisted, or offered to assist, the requester in an effort to amend the request for re-submission so that it no longer falls within paragraph (c). As an FOI body cannot rely on section 15(1)(c) unless it has assisted, or offered to assist, the requester as required by section 15(4), this is the first issue which should be considered in any case in which an FOI body is relying on section 15(1)(c).

2.1.2 An FOI body relying on section 15(1)(c) should show to the Commissioner that it has complied with the requirements of section 15(4) by having assisted or offered to assist the requester to amend his / her request. (This may sometimes be referred to as assisting the requester to 'narrow' the scope of the request.)

2.1.3 Where an FOI body has failed to comply with this requirement, the Commissioner will generally annul the decision of the FOI body. The FOI body will then be expected to make a new, first-instance decision on the applicant's original request. This is so that the applicant may avail of the usual rights of internal review as well as external review by the Information Commissioner in respect of the FOI body's new decision. If, in making that new decision, the body intends to rely on section 15(1)(c) it would be required to offer assistance to the requester in accordance with the provisions of section 15(4).

Example # 1: In Case 140156 the Commissioner found that, as both the applicant and the Department had confirmed that section 15(4)* had not been complied with, it was his view that the decision of the Department should be annulled. The Department of Justice and Equality had relied on section 15(1)(c)* to refuse access to the requested records. However, there was no reference, either in correspondence with the applicant or with the Commissioner's Office, of any attempt made by the Department to assist the applicant to amend the

request so that it would no longer fall to be refused under paragraph (c). The effect of the Commissioner's decision was that the Department was required to make a new, first instance decision in respect of the applicant's original request.

Example # 2: In Case 060260 the Commissioner was satisfied that the Health Insurance Authority had offered assistance to the requester as envisaged by section 15(4)*. The Authority had asked the requester in writing to amend her request. It had set out in detail the difficulties presented by the broadly-worded nature of her request as originally formulated and asked the requester to be more specific.

Substantial and Unreasonable Interference with, or Disruption of, Work

2.2.1 In establishing whether a request would cause a substantial and unreasonable interference with or disruption of work, the number of records which need to be retrieved and examined and /or the kind of examination which is required are relevant. A number of factors may have a bearing on this issue, such as:

- the nature and number of the records covered by the request;
- the location(s) in which they are held or stored and whether these are readily identifiable;
- how the records are stored or filed and the relevant filing system;
- the tasks or steps necessary to search for, identify, locate, retrieve and examine the records;
- the nature and number of the relevant records to be examined;
- the length of time and the personnel required to do so;
- the length of time required to consider the records in order to determine their relevance to the request and whether they are appropriate for release; and
- the size, staffing levels and work of the FOI body (including the relevant functional area) concerned.

2.2.2 It should be noted that a refusal may be made on the basis of a disruption of the work of a particular functional area, and not necessarily on the basis of disruption of work of the body as a whole.

2.2.3 The Decision Maker's Manual of the Central Policy Unit (CPU) states that an FOI body will not be able to include additional time or work needed because its filing system or index searching is cumbersome or inefficient.

2.2.4 The FOI body should be in a position to provide all relevant details to support its position to the Commissioner's office. The CPU Decision Maker's Manual states that, if section 15(1)(c) is used, it should only be on the basis of a documented and defensible estimate of how work of the body would be interfered with or disrupted to a substantial and unreasonable extent.

Example # 1: In Case 060260 the Health Insurance Authority provided details to the Commissioner of its size and staffing level, the extent of the records covered by the request, the nature and number of the files to be examined, the estimated time it would take to check each file and the staff required to do so. It also provided details of the tasks, staff and length of time that would be involved in the decision making. The Commissioner agreed that the request was of an excessively broad and voluminous nature. She stated that while the FOI Act

imposes statutory obligations on public bodies, compliance with these obligations is not intended to be unreasonably burdensome.

Example # 2: In Case 98017 the Commissioner found that the argument for refusal of a request for access to records on the grounds of the voluminous or disruptive nature of the request, could not be sustained in the case of a request for access to personnel records which, in the case of the FOI body concerned, were held in readily identifiable locations. He did not accept that the administrative burden would necessarily be as great as the FOI body feared.

2.2.5 The Commissioner does not accept that it is correct to refuse the request of one individual on the grounds that acceding to a particular request in one case will create a potential for requests in other cases.

2.2.6 If the relevant records are held electronically, see also Electronic Records below.

Electronic Records

2.3.1 The definition of “record” in section 2 of the Act includes -

- “(c) a disc, tape or other mechanical or electronic device in which data other than visual images are embodied so as to be capable, with or without the aid of some other mechanical or electronic equipment, of being reproduced from the disc, tape or other device,
- (d) a film, disc, tape or other mechanical or electronic device in which visual images are embodied so as to be capable, with or without the aid of some other mechanical or electronic equipment, of being reproduced from the film, disc, tape or other device,”

Thus, the definition of a record includes electronic records as described above.

2.3.2 Section 17(1) provides that access to a record may be given by providing the requester with a searchable electronic version of the record where available in such form.

Creation of New Electronic Records

2.3.3 Records which are stored electronically may be relatively easily retrieved in a way that does not cause a substantial or unreasonable interference with the work of the FOI body.

2.3.4 Section 17(4) provides that where an FOI request relates to data contained in more than one record held on an electronic device, the FOI body shall take reasonable steps to search for and extract the records, using any facility for electronic search or extraction that existed on the date of the request and was used by the FOI body in the ordinary course. Thus, in these circumstances the FOI body would be expected to extract and create a ‘new’ record.

2.3.5 Section 17(4) also provides that, if these reasonable steps result in the creation of a new record, that record shall be deemed to have been created on the date of receipt of the FOI request. Thus, where the new record is created, it will be regarded as an existing record at the time of receipt of the FOI request and therefore covered by the scope of the request.

Amendments of this Provision and References to Earlier Decisions

2.4.1. As stated above, section 15(1)(c) is similar to (although not the same as) section 10(1)(c) of the 1997 Act. Section 10(1)(c) of the 1997 Act was amended slightly by the FOI (Amendment) Act 2003 and amended slightly again in section 15(1)(c) of the 2014 Act.

2.4.2 Originally, section 10(1)(c) of the 1997 Act referred to interference with or disruption of “the other” work of the public body. The words “the other” were deleted in 2003. (The deletion was intended to clarify that a substantial and unreasonable interference with work could constitute grounds for refusal, whether that was the work of a particular unit or section or the work of an FOI body generally.)

The wording of this provision changed again in section 15(1)(c) of the 2014 Act by the addition of the words “(including disruption of work in a particular functional area)” of the FOI body concerned. The purpose of this amendment was to provide specifically that a refusal can be made on the basis of a disruption to the work of a particular functional area, rather than to the body as a whole.

2.4.3 Section 15(4) of the 2014 Act replaced section 10(2) of the 1997 Act and included the words “for re-submission” after “amend the request”.