

**FOIA s12**  
**Meaning of Information "held"**

***Home Office -v- Information Commissioner***  
***EA/2008/0027***  
***15 August 2008***

**Facts**

On 19 March 2007, Ben Leapman of the Sunday Telegraph made a FOIA request to the Home Office to inform him how many work permits were obtained in 2005 and 2006 respectively by nine named employers in the IT sector. On the 18 April 2007 the Home Office refused the request on grounds that the information requested was "not held in the required format" and would have to be "created". Mr Leapman appealed to the IC who issued a decision notice against the Home Office on 19 February 2008.

The Home Office had a computer database (known as Globe) on which details of all applications for work permits were recorded. Various reports were created using specialist software to obtain particular information from the database. There was however no report in existence which would produce the information requested by Mr Leapman (although it was conceded by the Home Office that it would have been relatively straight forward to write a report which could have produced the requested information).

A concern was also raised by the Home Office about the accuracy of the information which might have been produced from the database, since the details of employers were not always entered consistently by caseworkers.

The Home Office's position was that the requested information could have been produced by creating a new report. However, this would have taken about 3½ hours. Although this did not exceed the limit provided for under s12 FOIA, their position was that they did not "hold" the requested information and would have had to "create" this information.

The issue for the Tribunal to consider was whether in light of the facts and legal framework, the IC made an error of law when concluding that the Home Office held the information requested by Mr Leapman.

**Findings**

The Home Office argued that the IC had failed to distinguish properly between information held by a public authority at the time of the request on the one hand, and "raw data" within the control of the public authority from which requested information could be "created" by manipulation or investigation of that data, on the other. The Home Office submitted that the latter did not fall within the scope of s1 FOIA because it required the public authority to "create" the requested information. They further argued that neither the database itself, nor the running of any existing report would have expressly identified the figures which Mr Leapman wanted, and so they were neither "recorded" or "held". They could only have been

obtained by the use of considerable skill and judgment in writing a computer programme to generate the information. They argued that it could not have been intended that the FOIA should require public authorities to undertake such an exercise in order to comply with a request for information.

The Tribunal considered that there was not distinction in reality between "information" held by a public authority and "raw data" held on a database which is itself held by the public authority. The Tribunal did not accept the Home Office's suggestion that running a new report would involve "research" or the "creation" of new information. The Tribunal stated that information comes from the existing database and that no new information would need to have been collected to obtain information by running a new report.

The Tribunal stated that since the Home Office's database contained a record of each of the work permits granted to the named employers in the years in question, it followed that the Home Office held information as to how many such work permits were granted. The Tribunal considered that the whole scheme of FOIA and section 11 in particular was concerned with information as an abstract phenomenon (i.e. facts which are recorded) and not document or records as such. Thus the fact that the total number of permits was not recorded anywhere as a *number* was irrelevant; the number was implicit in the records of the relevant permits when put together, and whether it came in the form of a list of individual work permits or a total figure was simply a matter of form.

The Tribunal accepted that obtaining the requested information would have involved skill and judgment, and was not information which the Home Office normally required for its own business purposes. The Tribunal did not however consider either of these issues to be relevant. The Tribunal commented that from s12 FOIA and the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the 2004 Regulations"), the legislation envisaged that a public authority may be put to considerable work when complying with s1 FOIA and that there was no reason to suppose that it was not envisaged that such work may involve skill and judgment. The Tribunal considered that the exercise to have been carried out by the Home Office when complying with the request was covered by the wording of Regulation 4(3) of the 2004 Regulations.

As to the Home Office's concern relating to the accuracy of the information, the Tribunal was satisfied that there would not be a problem to produce substantially reliable information. This was in any event irrelevant because the right under FOIA is to information held, not information which is accurate.

## **Conclusion**

The Tribunal upheld the IC's earlier decision and dismissed the appeal.