

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

### **Decision notice**

**Date:** 11 June 2013

**Public Authority:** Cabinet Office  
**Address:** 70 Whitehall  
London  
SW1A 2ASX

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

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1. The complainant has requested copies of emails relating to the government's education reforms, sent between the Prime Minister and a special adviser, using non-GSI email accounts. The Cabinet Office determined that the request was not a valid request for information under section 8(1)(c) as it did not describe the information being sought. The Information Commissioner's decision is that the request is a valid request under the FOIA and that the Cabinet Office incorrectly applied section 8(1)(c) and is obliged to respond to the request under the FOIA.
2. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation:
  - issue a fresh response under the FOIA, treating the request as a valid request for copies of emails relating to the government's education reforms, sent between the Prime Minister and the special adviser, via any non-GSI email accounts used by the Prime Minister.
3. The public authority 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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4. On 23 September 2012, the complainant wrote to the Cabinet Office and requested information in the following terms:

*"Could I please have emails sent between the Prime Minister and Steve Hilton using an email address other than his official account that related to the government's education reforms. Please confine your search to email accounts other than the Prime Minister's official email account, by which I mean one hosted by the government, with a .GSI email address."*
5. The Cabinet Office responded on 22 October 2012. It refused the request under section 12 of the FOIA, stating that the request was too broad and that compliance would involve a search of all records (manual and electronic) created since the coalition government was formed. It invited the complainant to submit a refined request.
6. The complainant wrote to the Cabinet Office on 23 October 2012, referring it to the specific instruction in his request that the search for relevant information should be confined to any non-GSI email accounts used by the Prime Minister.
7. Following an internal review the Cabinet Office wrote to the complainant on 22 November 2012. It revised its position, withdrawing its reliance on section 12. It stated that it did not consider the request to be a valid request for recorded information under the FOIA. It refused the request under section 8(1)(c).

## Scope of the case

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8. The complainant forwarded the exchange of correspondence to the Commissioner on 22 November 2012, and asked that it be investigated under section 50 of the FOIA. He commented that he was concerned by the suggestion that the FOIA did not permit requesters to describe information by reference to its location.
9. The Cabinet Office had initially refused this FOIA request under section 12, but revised its view in favour of applying section 8(1)(c) instead. The Commissioner has therefore made no determination on the applicability of section 12.

## Reasons for decision

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### Section 1 and section 8 FOIA – valid requests for information

10. Section 1(1) of the FOIA states:

*“Any person making a request for information to a public authority is entitled—*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request....”*

11. Section 8(1) provides that:

*“In this Act any reference to a “request for information” is a reference to such a request which ...*

*(c) describes the information requested.”*

12. Therefore, requests for information under the FOIA have to fulfil the requirements of section 8, which include a description of the information requested.

### The Cabinet Office’s view

13. The Cabinet Office explained that it had initially interpreted the request as asking for all information (constituting official business) relating to education reform, involving the Prime Minister and Steve Hilton.

14. The Cabinet Office’s records management policy requires that all official emails that are to be kept for more than a short period must be placed in its departmental record keeping system, and deleted from outlying inboxes and other storage areas. It was this departmental record keeping system which it referred to when considering the request. Due to the volume of information it contained, the Cabinet Office estimated that compliance with the request would exceed the appropriate costs limit, and refused the request under section 12 of the FOIA.

15. When prompted by the complainant, the Cabinet Office had declined to comply with his instruction to limit the search for relevant information to a specific location. It argued that the instruction showed that the complainant was interested not in information about the government’s education reforms, but in information about those reforms *held in a particular type of email account*. It believed that the request should be viewed not as a request for *information*, but as a request for a particular *medium* which may or may not have been used to record information.

16. Following this line, it argued that the request could not be considered to be a valid request for information under section 8(1)(c) of the FOIA because the complainant had not described the information being sought.
17. The Cabinet Office contended that the FOIA does not allow an applicant to require a public authority to search a particular location, use particular search terms, or specify a particular medium for recording relevant information (for example, "private" and "not official" emails). Such an approach, it argued, amounts to little more than a fishing expedition, which was not the FOIA's intended purpose.
18. It argued:

*"Once a request has properly described the information, such that it is a valid request, it is then for the public authority to consider where the information may be held and to conduct its own reasonable and appropriate search for that information".*
19. The Cabinet Office also asked the Commissioner to consider arguments it had recently submitted to him in respect of a similar scenario. To summarise, these arguments hypothesised that a request to see all the information located in a particular physical location, such as a manual file store or even a particular room, could legitimately be categorised as not a valid request for information. The Cabinet Office had then extended this analogy to a request for all information held on non-recycled rather than recycled paper, which it also suggested would not be a valid request under section 8(1)(c). It had expressed the view that the same principle governs requests for electronic information, in that a request for all the information held on a particular file server would clearly not be a valid request for information.
20. The Cabinet Office also referred to the Commissioner's published guidance on official information held in private email accounts<sup>1</sup>. It drew particular attention to the Commissioner's view that while it might be necessary to request the search of private email accounts relating to

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[http://www.ico.gov.uk/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/official\\_information\\_held\\_in\\_private\\_email\\_accounts.ashx](http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/official_information_held_in_private_email_accounts.ashx)

relevant individuals in specific cases, the occasions when this will be necessary are expected to be rare. It suggested that to search private email accounts on the mere off chance that they might contain official information would appear to be in contradiction of the Commissioner's own guidance on this point.

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

21. The Commissioner considers that requests for information made under section 1 of the FOIA have to fulfil the requirements of section 8, which include a description of the information requested.
22. The Commissioner considers that the purpose of section 8(1)(c) is to enable the public authority to narrow down what information the requester wants. However, the FOIA does not prescribe how the information sought must be described or what constitutes a sufficient description. The description will enable the public authority to apply the provisions of the FOIA to the request. If further clarification is needed to enable the public authority to identify and locate the information requested, then clarification may be sought under section 1(3).
23. On access to documents (the "medium" by which information is held), although it is the case that the FOIA provides a right of access to information rather than to copies of documents, requests may refer to specific documents as a way to describe the information requested. A request for a particular document, such as an email, should generally (unless the context makes clear that this is not the case) be interpreted as a request for all of the information that may be recorded in that document. The Commissioner therefore rejects the Cabinet Office's argument that the request's reference to the location and medium in which the information is held renders it invalid.
24. In this case, the complainant has specified that the emails he requires should relate to the government's education reforms and have been sent between the Prime Minister and Steve Hilton, via any non-GSI accounts used by the Prime Minister.
25. The Commissioner considers that this constitutes a sufficient description of the location, origin and type of the information (if such information were held) to enable the Cabinet Office to understand what the complainant required. The Commissioner accepts that the emails have not been specifically identified by the complainant (for example, by date or by their subject line) and that he may not have any idea of the precise nature of the information they may contain, beyond that they should relate to education reform in some way.

26. However, he has clearly specified in his request a particular sphere of interest (education reform). This indicates that he is interested in specific, identifiable information, albeit he might not know what the content of that information is. Whilst public authorities might find such requests irritating, the FOIA does not legislate against so-called "fishing expeditions" (although the Commissioner accepts such matters may be relevant when considering whether a request is vexatious for the purposes of section 14).
27. It is important to note that there is no requirement in the FOIA that those intending to make requests for information have any prior knowledge of the information they are requesting. Such a position would contradict the purpose of the legislation, which was introduced on the basis that it would provide the public with a "right to know". For instance, the Commissioner would not consider a request for information held under a specified file reference at The National Archives to be invalid simply because the requester did not describe what information the file contained.
28. The Commissioner considers that the wording of section 8(1)(c) is clear and should bear its plain meaning. This provision simply requires the request to "*describe the information requested*". The complainant has specified that the information he requires should comprise emails relating to the government's education reforms and have been sent between the Prime Minister and Steve Hilton, via any non-GSI accounts used by the Prime Minister. The Commissioner considers that the request contains a sufficient description of the information requested for the purposes of section 8.
29. Turning to the Cabinet Office's hypothetical argument, that a request framed only by reference to the contents of a physical location would not be regarded as a legitimate request, the Commissioner considers that this is not a valid analogy, since, in addition to its location, the complainant has clearly specified the general subject area of the information he is interested in. The issue the Cabinet Office has referred to is one of whether the description in a request corresponds in any way to the nature of the recorded information, or merely refers to its physical location at a particular point in time. The Commissioner contends that in this case, the former clearly applies.
30. Turning, finally, to the Cabinet Office's citing of the Commissioner's guidance on access to information in personal email accounts, the Commissioner notes that the extract cited does not address the question of whether a request is valid (which is the Cabinet Office's stated view in this case) but whether a private email account needs to be searched in

certain circumstances. He therefore does not consider that the guidance supports the Cabinet Office's position in this case.

31. For the reasons given above, the Commissioner has concluded that the complainant's request did sufficiently describe the information requested for the purposes of section 8(1)(c). It must therefore be dealt with in accordance with the provision of the FOIA. That does not, of course, mean that the information (if held) necessarily has to be disclosed.

## Right of appeal

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32. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

33. 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.
34. 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 .....**

**Graham Smith  
Deputy Information Commissioner  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**