

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

### **Decision notice**

**Date:** 01 May 2013

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall  
London  
SW1A 2AS

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

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1. The complainant requested a copy of the Cabinet Office precedent book and expressed a preference for this to be communicated in electronic form. The Cabinet Office responded that it did not hold this information in electronic form, but failed to clearly confirm or deny whether it held this information in any other form.
2. The Commissioner's decision is that the Cabinet Office did not deal with the request in accordance with the FOIA.
3. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation.
  - Provide a fresh response to the request that is compliant with the requirements of sections 1, 11 and 17 of the FOIA. Any information that is disclosed should be supplied in the form preferred by the complainant if it is reasonably practicable to do so.
4. 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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5. On 4 November 2012, the complainant wrote to the Cabinet Office and requested information in the following terms:

*"Please provide me with an electronic copy of the most recent version of the Precedent Book.*

*Note that I am not asking for the Cabinet Manual, and I am not asking for the pre-1950s Precedent Book currently available from the National Archives. I would like the current version or if there is no current version the most recent version."*

6. The Cabinet Office responded on 22 November 2012. It stated that it did not hold this information in an electronic form. It also stated that there *"is a considerable volume of material relating to the Precedent Book, which as you are aware, the Cabinet Office is reviewing with a view to publication in the future"*.
7. The complainant responded on 22 November 2012 and requested an internal review. He made the point that the Cabinet Office had not issued a valid refusal notice specifying any exemption from Part II of the FOIA and also referred to section 11 of the FOIA providing that a public authority should supply information in the form preferred by the complainant if it is reasonably practicable to do so.
8. By the date of this notice the Cabinet Office had failed to respond with the outcome of the internal review.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 3 January 2013 to complain about the handling of his information request, including the failure by the Cabinet Office to respond with the outcome of the internal review.
10. The ICO contacted the Cabinet Office on 12 February 2013 and asked that it respond to the complainant with the outcome of the internal review within 20 working days of the date of that letter. Regrettably, neither the ICO nor the complainant received a response to that letter.
11. The complainant confirmed to the ICO on 10 April 2013 that he had yet to receive a response giving the outcome of the internal review. Rather than contact the Cabinet Office again at that point to press it to complete the internal review, in view of the delay this case was progressed to decision notice without contacting the Cabinet Office again.

## Background

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12. The request is for the "*precedent book*". The National Archives website gives the following description in relation to archived versions of this<sup>1</sup>:

*"The Cabinet Office precedent books were written to provide a convenient digest and working guide of information on procedural matters relating to the Cabinet, Cabinet Minutes, Cabinet Committees and Cabinet documents."*

## Reasons for decision

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### Sections 1, 11 and 17

13. Section 1(1)(a) of the FOIA provides that a public authority should confirm or deny whether it holds information falling within the scope of a request. Section 11(1) requires that a public authority should give effect to any preference expressed by the requester as to the form in which they wish the information to be provided, where it is reasonably practicable to do so. Section 17 provides that where a public authority does not intend to disclose any relevant information it holds, it must respond to the complainant within 20 working days of the date of the request stating under which provision of the FOIA it is refusing the request.
14. The Commissioner's view is that in this case the Cabinet Office did not comply with any of these requirements. The correct approach for the Cabinet Office to have taken in response to the complainant's request would have been to first identify whether it held the precedent book. It should then have responded to the complainant with confirmation or denial as to whether this information was held.
15. Secondly, if it did hold this information, it should then have considered whether it was appropriate to disclose that information. If so, it should have then have considered whether it would have been reasonably practicable for it to comply with the preference expressed by the complainant to be supplied with the information in an electronic form. If it did not believe that this was reasonably practicable, section 11(3)

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<sup>1</sup> <http://discovery.nationalarchives.gov.uk/SearchUI/details?Uri=C15553>

would have required that it was obliged to respond to the complainant stating this and explaining why.

16. Alternatively, if the Cabinet Office believed that the information should have been withheld under any provision of the FOIA, it should have responded to the complainant with a notification of which provision it relied upon and an explanation as to why this provision was believed to apply. It should also, in relation to any qualified exemption upon which it relied, have given the complainant an explanation of its reasoning as to why the balance of the public interest favoured the maintenance of the exemption.
17. In the event, it appears to the Commissioner that the Cabinet Office failed to properly engage with the complainant's request. Responding stating only that the requested information was not held in electronic form, but then going on to vaguely refer to information that was held and in relation to which there was a brief mention of an intention to publish in future, was not adequate for the requirements of any of sections 1, 11 or 17.
18. As a result of the complainant responding and requesting an internal review, the Cabinet Office had an opportunity to remedy these issues. Instead, by failing to respond promptly with the outcome of the review the Cabinet Office compounded the poor handling of this request.
19. The step at paragraph 3 above effectively requires the Cabinet Office to start again with this request.

### **Other matters**

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20. A record has been made of the various issues in the handling of this request. Should future cases reveal there to be systemic issues with the procedures of the Cabinet Office to comply with the FOIA, enforcement action will be considered. In any event, the Commissioner would expect the Cabinet Office to take appropriate steps to ensure that there is no repetition of the issues that have arisen in this case in relation to future requests.

## Right of appeal

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21. 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)

22. 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.
23. 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**