

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 July 2014

Public Authority: The Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information about those nominated by the three main political parties to attend the funeral of Baroness Thatcher. The Cabinet Office refused to provide this information citing section 12 (Cost limit) as its basis for doing so. It upheld this at internal review.
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 12 as a basis for refusing this request.
3. No steps are required.

Request and response

4. On 23 April 2013 the complainant requested information of the following description:

"Under the Freedom of Information Act, I wish to request a copy of the original and unedited lists sent to the Cabinet Office of individuals recommended to attend Lady Thatcher's funeral last week by the three main political parties, (Conservative, Labour and the Liberal Democrats). These should include all entries, media, members of parliament, leaders of charities etc that were put forward".

5. The Commissioner served a decision notice regarding the Cabinet Office's failure to respond to this request on 4 September 2013.¹
6. On 15 October 2013, the Cabinet Office responded. It refused to provide the requested information and cited section 12 (Cost of Compliance Exceeds Appropriate Limit).
7. The complainant requested an internal review on 15 October 2013. The Cabinet Office sent him the outcome of its internal review on 6 January 2014. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 7 January 2014 to complain about the way his request for information had been handled. He disputed the Cabinet Office's use of section 12.
9. The Commissioner has therefore considered whether the Cabinet Office is entitled to rely on section 12 as its basis for refusing to provide the information described in the request.

Reasons for decision

Section 12 – Cost of compliance

10. Section 12(1) of FOIA states:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

11. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations") provide that the appropriate limit for central government public authorities is £600. This must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours. If a public authority estimates that the time spent on complying with a request would exceed 24 hours, or £600, section 12(1) provides that the request may be refused.

¹ http://ico.org.uk/~media/documents/decisionnotices/2013/fs_50505958.ashx

12. A public authority can only take certain activities into account when assessing whether compliance with a request would exceed the cost limit. These activities are:
 - determining whether it holds the information;
 - locating a document containing the information;
 - retrieving a document containing the information; and
 - extracting the information from a document containing it.
13. Section 12 makes it clear that a public authority does not have to make a precise calculation of the costs of complying with a request. Only an estimate is required.
14. To determine whether the Cabinet Office applied section 12 of the FOIA correctly the Commissioner has considered the submissions it provided to him during his investigation.
15. The Cabinet Office explained that all the information relating to the funeral was held in a single electronic file. It contained a list of those who had been invited to the service but not a single list showing who had been nominated by which of the three main political parties. It also explained that names of potential invitees arrived from a variety of sources and via a number of different means of communication over a short period of time.
16. It said that it would need to go through a folder of "18156 KB in size to check some 545 e-mails". It set out how this would not be a straightforward exercise because some of the emails included lengthy email chains. It would also need to consider email attachments. It commented that the subject line of an email would not necessarily be instructive and that the content of each would need to be checked for relevant information. It added:

"Given the exceptional circumstances of the period of the funeral with non-stop email traffic covering a range of subjects related to the funeral arrangements, it is quite possible that any e-mail might include a nominee in the main text".
17. It said that with an average of 5 minutes per email this exercise would take over 45 hours and noted that for the reasons set out above, this was a conservative estimate.
18. The complainant has asserted that his request for information "was very specific, targeted and time limited, requesting the lists of invitees sent to the Cabinet Office from the three major political parties. I do not believe that it could take more than a few moments to retrieve this information".

19. The Commissioner recognises why the complainant holds this view. Searches of electronically held information should, in theory, be easy and swift, particularly where the search parameters are not complex. It would seem reasonable to assume, as the complainant has, that nominee names were supplied in a straightforward list format in a steady series of communications from a small number of people and not, as the Cabinet Office has explained, in a piecemeal fashion across a number of different media where more than one subject was communicated in the same item of correspondence.
20. However, on the balance of probabilities, the Commissioner finds that Cabinet Office's explanation as to how nominations were submitted is plausible given the unique prevailing circumstances. The Commissioner recognises that, given the volume and variety of information, it would be difficult to formulate an effective set of electronic search parameters that would prove more efficient than, in effect, a manual search or read-through of both obvious and non-obvious sources.
21. In light of the above, the Commissioner is satisfied that the Cabinet Office is entitled to rely on section 12 as a basis for refusing to provide the requested information.
22. However, he is particularly concerned about the delays that arose in the Cabinet Office's handling of this request at every stage. He has already addressed the delays in the Cabinet Office's handling of the original request (see Note 1). He has also commented on the delays that arose at internal review (see Other Matters). As at the time of writing this Notice, the Commissioner is formally monitoring the Cabinet Office's compliance with the timeliness requirements of the Act.²

Other matters

23. Whilst there is no explicit timescale laid down by the Act for completion of internal reviews, the Commissioner considers that they should be completed as promptly as possible. The Commissioner believes that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it

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http://ico.org.uk/what_we_cover/~media/documents/library/Freedom_of_Information/Notices/list_of_ico_timeliness_monitored_bodies_01012014-31032014.pdf

may be reasonable to take longer but in no case should the time taken exceed 40 working days.

24. The Commissioner is concerned that in this case, it took 57 working days for an internal review to be completed. The Commissioner does not believe that any exceptional circumstances existed to justify that delay, and he therefore wishes to register his view that the Cabinet Office fell short of the standards of good practice by failing to complete its internal review within a reasonable timescale. He would like to take this opportunity to remind the Cabinet Office of the expected standards in this regard and recommends that it aims to complete its future reviews within the Commissioner's standard timescale of 20 working days.
25. He would also note that the delay that arose at internal review is particularly concerning. The Cabinet Office had failed to provide a response to the original request and only did so after the Commissioner had served a decision notice requiring it to do so.

Right of appeal

26. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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 Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF