

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 June 2014

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

Decision (including any steps ordered)

1. The complainant requested information from the Cabinet Office ('the CO') about honours awarded to whistle-blowers.
2. The CO explained that to search for the information would exceed the appropriate limit and consequently refused the request citing section 12 – Cost of compliance.
3. The Commissioner considers that section 12 of the FOIA was applied correctly in this case. The Commissioner requires no steps to be taken.

Request and response

4. On 13 January 2014 the complainant wrote to the CO and requested information as follows:

"How many Civil Service Whistle blowers were awarded an honor [sic] (appeared on the honors [sic] list) between 2007 and 2013."
 5. The CO acknowledged receipt of the request on 13 January 2014 and provided its refusal notice on 29 January 2014 relying on section 12 of the FOIA.
 6. The CO's internal review upheld the application of section 12.
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Scope of the Case

7. The complainant contacted the Commissioner on 18 February 2014 to complain about the refusal notice.
8. The Commissioner considers the scope of his investigation to be the CO's application of section 12 of the FOIA to the requested information.

Reasons for decision

9. Section 12 states:

"(1) 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

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

10. Consequently, section 12 provides an exemption from a public authority's obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit.
11. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours in this case.
12. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
13. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate.

14. The CO explained to the complainant that the appropriate limit of £600, which represents 3.5 working days, would be exceeded in complying with the request.
15. The CO went on to explain to the complainant that in this case it would need to check every case in which honours had been awarded during the requested time period of 2007 and 2013. This covers 14 separate Honours Lists which number "more than 15 000 names". The CO also explained that honours are awarded for a range of activities. Whistle-blowing may form part of an individual's citation but the CO does not record honours under this as a category, therefore a search of all records would be necessary to extract the requested information.
16. In the Commissioner's view, although explaining in general terms why it considered that complying with the request would exceed the cost limit, the CO failed to provide a detailed estimate of the actual work required. Although such an explanation is not a statutory requirement it is the Commissioner's view that it is beneficial for a public authority to do so to enable the requestor to assess the reasonableness of the estimate.
17. The CO explained to the Commissioner that the lengthy citations relating to honours recipients are held electronically. However, a word search using the term 'whistle blowing' would not be adequate in order to establish the total number of individuals receiving an award where whistle-blowing activities had been taken into account. This is because there may be citations relating to the award of honours where whistle-blowing activities were taken into account but where the term 'whistle blowing' is not explicitly used. Additionally, 'whistle blowing' is not a category recorded on the system which holds the citations.
18. The Commissioner notes that the complainant specifically requests the number of "Civil Service whistleblowers". The CO is unable to determine this number without searching the long citations, as described above. Consequently the CO is unable to determine what information it holds in response to the request without exceeding the appropriate cost limit.
19. The Commissioner accepts therefore that in order to retrieve the requested information, the CO would be required to assess the content of the citations relating to each honour awarded in the period covered by the request. He also accepts that to search 15,000 citations would considerably exceed the appropriate limit. He notes that if each citation required only half a minute to check, the total time taken would still be 125 hours. The Commissioner is not suggesting that this would be a realistic timeframe for checking each citation, but this highlights the scale of the task involved owing to the number of honours awarded.

20. Consequently the Commissioner is satisfied that section 12 therefore applies and the CO is not required to comply with the request.

Section 16 advice and assistance

21. Section 16 places a duty on a public authority to provide advice and assistance to someone making an information request, including helping an applicant refine a request so that it can be answered within the appropriate costs limit.
22. The Commissioner considers that the best way to meet this requirement in a case involving the costs exemption will usually be to include a breakdown of the costs involved in meeting the request, and an indication of what could be provided under the limit, as part of the refusal notice.

23. In this case the CO told the complainant:

"You may refine your request in order to bring the cost of retrieving and extracting the information below the appropriate cost limit. This might be achieved by narrowing the period of your request, or else by being more specific with regards to the information you wish us to retrieve."

24. In the Commissioner's view the CO could have provided additional information to assist the complainant in considering whether to refine his request, including an estimate of the length of time it would take to check each citation. However, in light of the fact that the CO did explain that it would be required to review each citation and its suggestion that the complainant may wish to narrow the period of the request, the Commissioner considers it fulfilled its duty to provide advice and assistance.
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Right of appeal

25. 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

26. 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.
27. 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

Alexander Ganotis
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