

Freedom of Information Act 2000

Decision notice

Date: 12 October 2015

Public Authority: Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information relating to a speech by the then Minister for the Civil Service. The Cabinet Office refused the request under section 12(1) of the Freedom of Information Act 2000 (the Act) as it considered compliance with the request would exceed the appropriate limit.
2. The Commissioner's decision is that the Cabinet Office can refuse the complainant's request under section 12(1) of the Act. No steps are required.

Request and response

3. On 10 December 2014, the complainant wrote to the Cabinet Office and requested information in the following terms:

"According to:

<https://www.gov.uk/government/news/government-saves-over-1-billion-on-procurement>

the Minister for the Civil Service said:

"It is bonkers for different parts of government to be paying vastly different prices for exactly the same goods. We are putting a stop to this madness which has been presided over for too long."

Please provide all information (of which you hold a record) relating to the preparation of all or any part of that statement, including (without prejudice to the generality of the foregoing):

(a) drafts of that statement and/or any part of it; and

(b) comments, observations, suggestions (including suggestions as to alternative wording), opinions, objections and/or criticisms expressed by any person (including but not limited to any official and/or any minister, whether in the Cabinet Office or otherwise) relating in any way to the drafting of that statement and/or any part of it and/or to the part played by any previous government in creating and/or contributing to and/or presiding over the purchasing practices, procedures and/or arrangements criticised in that statement.

By way of further clarification, but not limitation, (b) includes any comments etc relating to the role played by any previous government in abolishing centralised Government procurement organisations such as the Property Services Agency, the Crown Suppliers, and/or Her Majesty's Stationery Office and/or to the drafting of the statement in relation to that role."

4. The Cabinet Office responded on 13 January 2015. It refused the request as to comply with the request would exceed the appropriate limit established under section 12(1) of the Act.
5. The Cabinet Office issued its internal review of the request on 20 February 2015. The review upheld the original decision and informed the complainant that the request could be brought within the appropriate limit if the scope was reduced only to item (a).

Scope of the case

6. The complainant contacted the Commissioner on 19 April 2015 to complain about the way his request for information had been handled.
7. The Commissioner considers the scope of the request to be whether the Cabinet Office is entitled to refuse the request under section 12(1) of the Act. He will also consider whether the Cabinet Office has met its obligations under the Act to provide advice and assistance to the complainant.

Reasons for decision

Section 12 – compliance exceeds the appropriate limit

8. Section 12(1) states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
9. The appropriate limit is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. Under regulation 3 the appropriate limit is set at £600 for a public authority such as the Cabinet Office. Under regulation 4 the Cabinet Office may apply a rate of £25 per hour to determine whether information is held, and then locate, retrieve and extract the information. At this rate, the appropriate limit equates to 24 hours – or 1,440 minutes – of work.
10. In its submissions to the Commissioner the Cabinet Office stated that the scope of item (b) of the request was wide enough that it was not possible to comply with request within the appropriate limit. The information the complainant requested would encompass documents and correspondence relating to Francis Maude's – the then Minister for the Civil Service – statement. The Cabinet Office did not provide an indication about how much actual information would be within the scope of the request, but focussed on how difficult it would be to determine whether the information was relevant. The correspondence or documents would need to be scanned for any mention of the former Minister's statement, as the scope of the request includes any "comment" or "observation".
11. Due to part b) of the request asking for a wide range of potentially held information from "any" person, the Cabinet Office stated that its searches would need to reflect this and cover different locations within its records. The Commissioner considers this to be reasonable. The terms of the request potentially covers a variety of different documents and items of correspondence. This – factored in with the complainant's request asking for the information to come from any person – means that the searches would need to look beyond a single location. The information would not necessarily be easily accessible and this would increase the amount of work required by the Cabinet Office to comply with the request.
12. The Cabinet Office stated that it asked a private secretary to search the shared mailbox of the then Minister for Civil Service. Whilst it was not specified by the request, the search was carried out for the two months prior to the statement being made. The Cabinet Office provided examples of the search terms used and in the Commissioner considers

these reasonable under the circumstances. The search terms relate to the subject matter of the request such as extracts from the minister's statement. In the Commissioner's view this shows that the Cabinet Office has made attempts to identify the information specific to the request.

13. The Cabinet Office confirmed that this search identified "thousands" of emails. From scanning through the subject lines of the emails the Cabinet Office said that it was not clear whether it would contain information that came within the scope of the request. Therefore, it would be necessary for a member of staff to read the emails and interpret their content to determine whether the information was relevant to the scope of the request.
14. Given the sheer number of emails that come within the search results – and this is only emails, not other documents which might come within the scope of the request – the Commissioner agrees that compliance with the request would exceed the appropriate limit. As stated previously, the appropriate limit is set at 1,440 minutes. Even an indicative search of only two months' worth of emails using a number of specific phrases from the minister's statement brought up thousands of emails which would need to be reviewed, and the Commissioner considers it would not be possible for the public authority to identify which information is relevant and then extract it so it can be provided to the complainant within the appropriate limit. In order for this to be possible it would require a drastic reduction in the time required to identify relevant information and it is not evident how this would be possible.
15. The Commissioner notes that even should a method be found, there would still be a necessity to look for correspondence before the two month period and any documents held, given that these might contain information relevant to the request. Based on this he is satisfied that item (b) of the request cannot be complied with within the appropriate limit, and therefore the request as a whole has been correctly refused under section 12(1).

Section 16 – advice and assistance

16. Section 16 of the Act states that public authorities have an obligation to provide advice and assistance to requesters where it is reasonable to do so. In relation to section 12 refusals the Commissioner considers that this obligation means a public authority should provide a requester with recommendations on how to reduce the scope of their request so that some relevant information of interest can be provided.
17. In this case, the Cabinet Office informed the complainant in its internal review decision that the request could be complied with inside the

appropriate limit if it was restricted only to item (a). The Commissioner's view is that this information should have been provided in the Cabinet Office's initial refusal, but considers that this advice does meet the obligation established under section 16 of the Act.

Other Matters

18. During the course of his investigation the Commissioner asked the Cabinet Office to provide its submissions to justify its use of section 12(1). However, the Cabinet Office was not forthcoming with its response, so the Commissioner had to resort to an information notice. This is usually a last resort and is not a measure that the Commissioner takes lightly.
19. In order to reach an informed decision the Commissioner requires the cooperation of a public authority in order to explain why an exemption has been applied. By delaying its submissions the Cabinet Office caused the Commissioner's investigation to run on unnecessarily and delayed the Commissioner in fulfilling his statutory obligations. The Commissioner asks that the Cabinet Office take greater steps to ensure that it provides its submissions more promptly in the future.

Right of appeal

20. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

21. 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.
22. 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

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