

Freedom of Information Act 2000

Decision notice

Date: 7 March 2016

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information from the Cabinet Office relating to meetings between government ministers or their staff and representatives of the Duchy of Cornwall, including the Duke himself – His Royal Highness Prince Charles. The Cabinet Office refused the request under section 12(2) of the Freedom of Information Act 2000 (the Act).
2. The Commissioner's decision is that Cabinet Office has not sufficiently justified its use of section 12(2) of the Act.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response to the complainant which does not refuse the request under section 12(2) of the Act.
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

5. On 27 February 2015, the complainant wrote to the Cabinet Office and requested information in the following terms:

"I would like to request the following information under the Freedom of Information Act.

...

Please note that the reference to legislation should be taken to mean white papers, green papers, draft bills, actual bills, statutory instruments, other legislative instruments and government policy.

Please note that I am only interested in information which relates to the period 27 February 2014 to the present day.

1. During the aforementioned period has any member of the Ministerial team and or any member of staff from a Minister's private office met with the Duke of Cornwall to discuss legislation which could have implications either for him as the Duke of Cornwall and or the Duchy of Cornwall estate and its holdings and assets and employees. If the answer is yes could you please state the date, time and venue of the meeting (s). Could you also provide a full list of those present. If relevant could you please provide details of the legislation and or policy under discussion. Could you please detail any other issues under discussion.

2. During the aforementioned period did any member of the Ministerial team met with any representative and or employee of the Duke of Cornwall to discuss legislation which could have implications either for the Duke of Cornwall and or the Duchy of Cornwall estate and its holdings and assets and employees. If the answer is yes could you please state the date, time and venue of the meeting. Could you also provide a full list of those present. If relevant could you please provide details of the legislation and or policy under discussion.

3. During the aforementioned period did any Minister and or any member of staff in the Minister's private office exchange communications and or correspondence (including emails) with the Duke of Cornwall and or any of his employees and or legal representatives. Please note that I am only interested in those correspondence and communications which were about legislation which could have implications for either the Duke of Cornwall and or the duchy of Cornwall estate, its holdings, assets and employees. Please note that I am interested in receiving both sides of the correspondence.

4. Can the department please outline and changes to legislation and or policy which were made following consultation with the Duke of Cornwall and or his aforementioned employees and representatives?"

6. The Cabinet Office responded on 18 March 2015. It refused the request and stated that compliance with the request would exceed the appropriate limit established under section 12(2) of the Act.
7. Following an internal review the Cabinet Office wrote to the complainant on 13 May 2015. It upheld the decision of the refusal notice of 18 March 2015.

Scope of the case

8. The complainant contacted the Commissioner on 28 April 2015 to complain that the Cabinet Office had not issued an internal review. After the internal review was issued on 13 May 2015 the complainant confirmed that he wished to appeal against the section 12(2) refusal.
9. The Commissioner considers the scope of the case to be whether the Cabinet Office is correct to refuse the request under section 12(2).

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

10. Section 12 of the Act 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.”

11. The appropriate limit is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (Fees Regs). For central government bodies such as the Cabinet Office the limit is defined as £600. The Fees Regs state public authorities may apply this as £25 per hour for the following activities:
 - (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and

- (d) extracting the information from a document containing it.
12. At a rate of £25 per hour the appropriate limit is equivalent to 24 hours of work. As the Cabinet Office cited section 12(2) of the Act it considers that to confirm whether **any** relevant information is held would exceed the appropriate cost limit. This means that the steps required to simply determine whether any of the relevant information is held would exceed the appropriate cost limit. In the circumstances of this case (given how the request is set out) if the Cabinet Office can demonstrate that section 12(2) applies to one particular item of the request then the entire request can be refused under s12(2). However, section 16 of the Act would then require advice and assistance to be provided to enable the complainant to narrow the scope of the request, if appropriate.
 13. In making his appeal to the Commissioner, the complainant provided examples of other several other central government departments that were able to deny any recorded information was held within the appropriate cost limit. He stated that this would suggest that the Cabinet Office should be capable of complying with the request inside the appropriate limit.
 14. In its submissions the Cabinet Office broke the request down per item to explain the amount of work that would be required by each – except for the fourth item of the request as this was dependant on information being located from the previous three.
 15. For the first item of the request, on which it based its decision, the Cabinet Office stated that the information would be held as electronic information in the calendars and email correspondence of the ministers. The Cabinet Office explained that in order to determine whether the information is held it would need to conduct searches for all of the ministers' accounts and then go through the results manually to check whether it was relevant to the scope of the request.
 16. The Cabinet Office's figures show that the reason why its searches would take longer than the other government departments highlighted by the complainant is because of the number of ministers involved and also the size of the "ministerial team" specifically asked for in the request. The Cabinet Office took this to mean not only the minister but their private secretaries as well. The Cabinet Office provided the example of the Prime Minister's Office, which not only has a minister in charge but also 10 private secretaries. In addition to this there are eight other ministers within the Cabinet Office, each with their own private secretary.
 17. In reaching its conclusion the Cabinet Office worked on the assumption that the minister would not need to search their own records as this would be incorporated in the work of the private secretary. The Cabinet Office allocated 15 minutes for the search of one calendar month for

each individual concerned, which amounts to 180 minutes for the 12 month scope of the request. For the 18 members of staff who need to conduct searches this amounts to 3,240 minutes – which is equivalent to 54 hours of work to determine whether relevant information is held.

18. The Commissioner responded to the Cabinet Office with queries over its submissions. His guidance on section 12 refusals ask all public authorities to demonstrate that a reasonable search strategy has been employed, so the Commissioner asked further questions to determine whether the Cabinet Office's approach to this request was reasonable. For example, in the Commissioner's view it seemed reasonable that rather than search through every minister and private secretary's account the Cabinet Office could contact the relevant member of staff in control of a minister's diary to determine whether they had met with the Duke. A meeting with a high profile figure such as His Royal Highness would seemingly be memorable, even for a government minister.
19. The Cabinet Office responded and confirmed that this was not the case. Whilst a meeting may be memorable for a member of the public, Cabinet Office ministers and their private secretaries meet high profile figures on a daily basis, so the exact details of whether a formal meeting with the Duke had been arranged would be difficult to determine for certain. Further, diary secretaries – the individuals who would likely set up the meetings for the minister, would take care of the administration surrounding the meeting but would not attend the meeting itself, which reduces the chance it would be remembered.
20. The Cabinet Office also explained that trying to contact the relevant diary and private secretaries would be problematic. These positions have a high turnover of staff, so it was unlikely that all of the individuals who held the roles at the time of the request would have held them for the entire scope of the request. This would require further searches to identify which individuals held the posts throughout the scope of the request before they could even be asked.
21. Finally, the Cabinet Office also made an argument that it would be incredibly difficult to carry out the searches as the Commissioner suggested. Since the request there had been a general election and a Cabinet reshuffle, which led to a large turnover of staff. It was argued that this would further complicate matters and make the Commissioner's proposed search strategy unreasonable. Whilst the Commissioner does not usually accept arguments that refer to facts made after the date of the request, in this instance the Commissioner considers that it does have practical implications for the Cabinet Office's search strategy as things now stand. However, the Commissioner can only apply his decision to circumstances which prevailed at the time of the request, which was prior to the 2015 general election.

22. As previously stated, in order for section 12(2) to apply it would have to take the Cabinet Office more than 24 hours of staff time to identify whether *any* relevant information is held for any of the four items of the request. It is not sufficient to apply section 12(2) because it would take more than 24 hours of staff time to identify *all* the relevant information held. The Cabinet Office's submissions confirmed that it could not confirm whether information is held due to the extensive searches that would be required.
23. In this instance, the Commissioner considers that the Cabinet Office's search strategy was not reasonable in the circumstances. He is of the view that his own suggested search strategy would likely enable the Cabinet Office to identify whether any relevant information held for the request. He acknowledges that it might not reveal the full extent of the information held by the Cabinet Office, and that further searches would be likely. However, this does not mean that it could not be used to identify whether any information is held, which is the test for section 12(2). In the Commissioner's view, his search strategy could be used to reduce the amount of time required to identify some of the relevant information. Whilst the Cabinet Office's arguments show why this might be problematic they do not adequately show that the Commissioner's strategy is unreasonable in identifying whether any relevant information is held.
24. The Commissioner asked the Cabinet Office to adopt his search strategy during the investigation. The Cabinet Office provided arguments – detailed above – about why it considered the strategy to be unreasonable. The Commissioner acknowledges that the Cabinet Office's arguments have merit, but they do not sufficiently persuade him that the refusal of the request under section 12(2) is valid. Consequently it remains the Commissioner's view that his suggested search strategy could well identify relevant information held by the Cabinet Office within the appropriate limit.
25. Therefore, the Commissioner's decision is that the Cabinet Office has not provided sufficient evidence to support its 12(2) refusal. He requires the Cabinet Office to issue a response under the Act to the complainant which does not rely on section 12(2).

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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://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

**Alexander Ganotis
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