

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 October 2016

**Public Authority:** Cabinet Office  
**Address:** Room 405  
70 Whitehall  
London  
SW1A 2AS

#### Decision (including any steps ordered)

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1. The complainant submitted a request to the Cabinet Office for files from the Prime Minister's Office in relation to the UK Government's relations with Libya. The Cabinet Office refused the request under section 14(1) of the FOIA on the basis that the request was vexatious.
2. The Commissioner's decision is that the request is vexatious and the Cabinet Office was entitled to refuse it under section 14(1). No steps are required.

#### Request and response

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3. The request which is the basis of this decision notice came after a separate request and subsequent discussions between the complainant and the Cabinet Office. The Commissioner has not included the full text of these responses as it is not necessary for the purposes of her decision in this case.
4. In short, the complainant had requested Prime Minister's Office files (PREM files) relating to Libya. The Cabinet Office stated that compliance with the request would exceed the appropriate cost limit at section 12 of the FOIA. At the complainant's behest, the Cabinet Office produced a list of 17 files that it had identified as being relevant to the request. From this list, the complainant made a request for six files. This request, set out below, is the focus of the decision notice.
5. On 9 February 2015 the complainant made the following request for information under the FOIA:

*"I would like to request the release under the FOIA of the following files:*

*John Major*

*Libya internal situation/relations - part 9 01/09/90 - 01/02/94*

*Libya internal situation/relations - part 10 24/12/94 - 01/05/97*

*Tony Blair*

*Libya internal situation/relations 1 02/05/97 - 25/02/99*

*Libya internal situation/relations 2 26/02/00 - 03/07/00*

*Libya internal situation/relations 3 04/07/00 - 07/06/01*

*Libya internal situation/relations 1 08/06/01 - 30/09/02".*

6. There followed some correspondence between the complainant, the Cabinet Office, and the Commissioner. It is not necessary to detail this in the decision notice. In short, the Cabinet Office did not issue a formal refusal notice and stated that the complainant needed to relate his request to specific events rather than files. The Commissioner disagreed and asked the Cabinet Office to proceed with the request as it was worded.
7. The Cabinet Office responded to the complainant on 27 November 2015. It refused the request under section 14(1) of the FOIA because it said it was vexatious. The Cabinet Office stated that the burden placed on its resources by complying with the request was such that the request could be seen as an unwarranted disruption to its functions.
8. Following an internal review the Cabinet Office wrote to the complainant on 5 February 2016, in which it upheld the section 14(1) refusal.

### **Scope of the case**

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9. The Commissioner considers the scope of the case to be whether the request is vexatious as per section 14(1) of the FOIA.

## Reasons for decision

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10. Section 1(1) of the FOIA states:

*(1) Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him.*

11. Section 14(1) of the FOIA states:

*(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.*

12. The term “vexatious” is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield.<sup>1</sup> The Tribunal commented that “vexatious” could be interpreted as the “manifestly unjustified, inappropriate or improper use of a formal procedure”. The Tribunal’s comments clearly establish that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

13. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.

14. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. It stressed that the:

*“[I]mportance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of*

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<sup>1</sup> GIA/3037/2011 – <http://www.osspsc.gov.uk/Aspx/view.aspx?id=3680>

*proportionality that typically characterise vexatious requests"*  
(paragraph 45).

15. In the Commissioner's view, this means that whether a request is vexatious is left open to consideration based on the circumstances of the case. Where a situation presents itself which does not fit neatly with the Commissioner's guidance – or the factors the Tribunal looked at in its case – it would not necessarily mean the request was not vexatious.
16. The Cabinet Office has stated that the request in this case is being refused under section 14(1) due to the burden of undertaking activities not included under section 12 of the FOIA. The Commissioner has issued guidance on the conditions for a refusal of this nature,<sup>2</sup> and considers that section 14(1) may be relevant where:
  - The requester has asked for a substantial volume of information; and
  - The authority has real concerns about potentially exempt information being contained within the requested information, and
  - Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.
17. Should the Commissioner find that all three criteria are met she is more likely to find that the request is vexatious as per section 14(1) of the FOIA.

#### The complainant's arguments

18. The complainant has argued to the Commissioner that there is a "clear and pressing public interest in understanding the development of the British Government's policy towards Libya over the course of the past 25 years." The requested information ranges from 1990 – 2002, during which time there were strained relations between Libya and the United Kingdom following the bombing of Pan Am Flight 103 over Lockerbie in 1988.
19. The complainant also referred to the attempts he had made to reduce the scope of his request. Further, the Cabinet Office's argument that a

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf#page=19>

request needed to be tied to a particular event rather than merely naming a file would make research difficult, as it would be impossible to secure information about any long term historical theme.

20. Additionally, the complainant considered that the Cabinet Office was trying to narrow the information that could be obtained through the FOIA. He referred to a First-tier Tribunal case for similar information, which had been settled through a consent order.<sup>3</sup> In his view, this was a similar case that had produced satisfactory results for the applicant, and now this sort of request was being closed down by the Cabinet Office under section 14(1).

### The Cabinet Office's arguments

21. The Cabinet Office also made arguments as to the efforts it had put into trying to assist the complainant in potentially obtaining information of interest, whilst also asserting that information might be withheld under exemptions within the FOIA. It stated that it had made its point clear to the complainant that it could not comply with the request unless the scope was reduced.
22. The Cabinet Office provided evidence in accordance with the criteria established in the Commissioner's guidance for demonstrating that the burden imposed by a request can make it vexatious.

### *The requester has asked for a substantial volume of information*

23. The Cabinet Office confirmed to the Commissioner that the six files contained 1,053 pages. The Cabinet Office provided estimates on how long it would take to ensure that the information could be reviewed in order to ensure that all exempt information was withheld. It stated that its Archives Team would need to copy each page, and at one page per minute this was effectively 18 hours (1,080 minutes). The Cabinet Office also stated that each page would then need to be reviewed to check for exemptions, to which it attributed three minutes per page. Finally, it stated that time would be needed for redactions, and – at what it considered a low estimate of half the pages needing redactions – it stated that it would need a further 500 minutes to comply with the request. This made the total time required to comply with the request 4,820 minutes, which is in excess of 80 hours.

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<sup>3</sup> The consent order is not available online, but the Commissioner's decision notice is – [https://ico.org.uk/media/action-weve-taken/decision-notice/2010/530012/FS\\_50205398.pdf](https://ico.org.uk/media/action-weve-taken/decision-notice/2010/530012/FS_50205398.pdf)

*The authority has real concerns about potentially exempt information being contained within the requested information*

24. As evidence for the time required to consider exemptions for the PREM files, the Cabinet Office stated that there would likely be information which would engage the following exemptions:
  - Section 23 – information supplied by, or relating to, bodies dealing with security matters.
  - Section 27 – international relations.
  - Section 40(2) – third party personal data.
25. The Cabinet Office also argued that there would have to be considerations for the balance of the public interest for sections 23 (given the age of the information) and 27; and also whether there were legitimate interests that outweighed any named individual's privacy right, which would justify disclosure of third party personal data. The Commissioner accepts that such consideration would be required, although consideration time alone is not in itself conclusive evidence that a request is vexatious.
26. The Cabinet Office argued that the Foreign and Commonwealth Office (FCO) as well as security services would need to conduct their own reviews of the PREM files. The Cabinet Office claimed 18 hours each for both the FCO and security services to review the withheld information. This brought its estimate for the total time for compliance up to 6,980 minutes.
27. In addition, the Cabinet Office informed the Commissioner that due to the nature of the information it would need to consult senior members of its own staff, which would make demands on their already busy schedules. Given the size of the information within scope, this would be an unwarranted intrusion on their other activities. The Cabinet Office also made the point that its own Libya policy team were busy at the time of the request with the events taking place in Libya, which was in the midst of a civil war. Finally, it stated that its archive team were currently busy working towards the '20 year rule' for information to be moved to The National Archives, which meant that it was already having to transfer two years' worth of information every year.

*Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material*

28. The Cabinet Office confirmed this was the case. It referred to its procedure which was that any file which would require more than 25 redactions would be retained. The information would be held

chronologically and it would not be evident which reports and correspondence would be potentially exempt until they were reviewed.

The Commissioner's view

29. The Commissioner wishes first to respond to the complainant's arguments, before going on to those of the Cabinet Office, and setting out her own view on matters.
30. First, the Commissioner does not dispute that the motive for the complainant's request is one very much in the public interest, and that there will be information in these files that would be of enormous benefit to understanding the development of relations between the UK and Libya. However, this does not mean that the request is not vexatious. No matter how serious a request's purpose, there comes a point when the burden it places on a public authority is such that it outweighs the value in compliance. The Upper Tribunal recently confirmed that the public value in a request is "*important but not the only factor*" in determining whether a request is vexatious.<sup>4</sup>
31. Similarly, the Commissioner acknowledges the efforts of the complainant to try and reduce the scope of the request, but this does not mean that the information now in scope should not be seen as a burden. Whilst acknowledging that the complainant was not privy to this knowledge at the time, the Commissioner considers that 1,053 pages is a significant volume of information, and even if this was reduced from a much larger one it can still be evidence that the request may be vexatious. Again the Commissioner would however stress that the volume of information itself is not a decisive argument; it is a factor in considering the burden of compliance.
32. The Commissioner notes the complainant's argument that the Cabinet Office is trying to reduce the scope of what can be disclosed under the FOIA, but the fact of the matter is that reliance on section 14(1) in respect of disproportionate burden has been established for some time now.<sup>5</sup> That a previous appeal was settled by a consent order does not preclude the Cabinet Office from using a defence of its resources that has been accepted previously by both the Commissioner and the First-tier Tribunal. In each case it is for the public authority to satisfy the

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<sup>4</sup> CP v The Information Commissioner [2016] UKUT 0427 (AAC)

<sup>5</sup> See

<http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i873/20121030%20Decision%20amended%2031-10-12%20EA20120047.pdf>



Commissioner, and consequently the Tribunal, that it has handled a request properly.

33. The Commissioner accepts that the Cabinet Office has demonstrated that the criteria to show that the request in this case would impose a grossly oppressive burden in terms of activities that are not covered by the section 12 cost limit:
- Despite the scope of the request being reduced by the complainant, it still encompasses a substantial amount of information.
  - The Commissioner accepts that the exemptions indicated would be highly likely to apply to some of the information contained within the PREM files, given that they comprise high level documents about the relationship between the UK Government and Libya. Given the exemptions cited and the nature of the information the Commissioner accepts that it will require the work of senior members of staff with appropriate clearance in order to check what information is suitable to be disclosed into the public domain. Events taking place in Libya meant that these individuals would likely have a number of existing pressing concerns, and that this request would divert them from their existing workloads. The Commissioner also accepts that the Cabinet Office would have to expend its own resources in consulting with the FCO and security bodies to check whether information could be disclosed.
  - The Commissioner appreciates that the information is not easily identified within the files themselves. The Commissioner has looked through PREM files for a separate matter and noted that there was not a filing system in place to help organise what information would be exempt and that which would not be. Given the nature of the files, the Commissioner accepts that it is likely most pages will need to be reviewed.
34. However, the Commissioner does not accept without question the Cabinet Office's arguments: firstly, about the time cited for its activities; and secondly, about the time that was attributed to the FCO and security services conducting their own reviews.
35. Firstly, the Cabinet Office has estimated that it would take 1,053 minutes to photocopy the information. This is far beyond what can reasonably be accepted, as it is demonstrably obvious that it does not take one minute to produce a photocopy of one page. The Commissioner has undertaken this activity with files older than those relevant to this request and found that at least two pages could reasonably be copied in one minute. Whilst the Commissioner does not



consider this invalidates the Cabinet Office's argument, it is important to offer accurate estimates in every aspect; otherwise it might cause reasonable doubt about other aspects that cannot be corroborated from general experience.

36. Secondly, the Commissioner has not accepted the 2,160 minutes claimed by the Cabinet Office for the FCO and security bodies to conduct their own review of the information. The Commissioner notes that she has accepted the time required by the Cabinet Office to consult with these bodies, and that there is precedent for this.<sup>6</sup> However, the Cabinet Office has not provided sufficient explanation as to why the review by the FCO and security bodies would take as long as the Cabinet Office has suggested. The Cabinet Office is ultimately responsible for its own records, and there was no indication that these other bodies were consulted when the decision was made to retain the files or at any other crucial stage. With this in mind it is not clear how the Cabinet Office was able to satisfy itself that an appropriate review by each additional body would require 18 hours.
37. As stated previously, the Commissioner is prepared to accept arguments such as these which are not detailed in her guidance, or already established under legal precedent such as those in the Dransfield case. There is no single definition of a vexatious request under the FOIA, and it is not beyond the realms of possibility that a public authority could demonstrate the burden caused by a separate authority or organisation needing to be consulted before the information could be disclosed. However, the Cabinet Office has not provided sufficient information in this instance to make that point.
38. The Commissioner considers that she must be cautious not to allow for a blanket provision of any organisation that might wish to be involved in the handling of a request being able to claim for its time in compliance, lest the use of section 14(1) for burden alone become routine, at a detriment to requesters.

### Conclusion

39. The Commissioner's decision is that the Cabinet Office has met the criteria for proving that a request is vexatious based purely on the burden it would impose upon its own resources. Whilst the Commissioner notes the complainant's points regarding the public interest in the information, and the efforts to reduce the scope of the

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<sup>6</sup> [https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1624536/fs\\_50618433.pdf](https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1624536/fs_50618433.pdf)

request, the amount of relevant information and detailed considerations that would be required means that compliance with the request in this case would represent an unjustified burden upon the Cabinet Office's resources.

## Right of appeal

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40. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

41. 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.
42. 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** .....

**Sarah O’Cathain**  
**Senior Case Officer**  
**Information Commissioner’s Office**  
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**Water Lane**  
**Wilmslow**  
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