

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 July 2017

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall

London

SW1A 2AS

### Decision (including any steps ordered)

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1. The complainant has requested copies of all correspondence in any direction between Government Ministers, civil servants and the Met Office on the subject of a named statutory instrument regarding Winter Fuel Payments, a Met Office Report and its initial feasibility study.
2. The Cabinet Office relies on section 12 not to confirm or deny that it holds information requested by the complainant.
3. The Commissioner's decision is that Cabinet Office has failed to persuade her that the said exemption is engaged.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - To confirm or deny to the complainant that it holds the requested information.
5. 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.

### Background

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6. A Winter Fuel Payment is an annual tax-free payment made to eligible people to help towards their winter heating costs. It is a lump sum and in most cases is paid automatically, but some people will need to claim.

7. The Social Fund Winter Fuel Payment (Amendment) Regulations 2014 restricted entitlement to winter fuel payments for some of those living abroad<sup>1</sup>.

## Request and response

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8. On 17 May 2016, the complainant wrote to the Cabinet Office and requested information in the following terms:
- *“Statutory Instrument 2014 N° 3270: The Social Fund Winter Fuel Payment (Amendment) Regulations 2014*
  - *Met Office Report: “Winter average temperatures for EEA countries and their regions”–Produced for the Department of Work and Pensions, dated 12th December 2012*
  - *Initial Feasibility Study for above report – based on France*

*I should be grateful if you would send me copies of all correspondence in any direction between Government Ministers, civil servants and the Met Office on the subject of the above statutory instrument, the Met Office Report and the initial feasibility study”.*

9. On 15 June 2016, the Cabinet Office responded. It refused to confirm whether it held the requested information. It cited the following exemption as its basis for doing so:
- Section 12 (Costs)
10. Following an internal review the Cabinet Office wrote to the complainant on 6 September 2016. It stated that it upheld its decision.

## Scope of the case

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11. The complainant contacted the Commissioner on 10 September 2016 to complain about the way his request for information had been handled.
12. As part of her investigation into the matter, the Commissioner wrote to the Cabinet Office on 21 November 2016 and 13 February 2017. The purpose of this correspondence was to invite and enable the Cabinet Office to make full submissions to support its reliance on section 12.

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<sup>1</sup> <http://www.cle-france.com/pdfs/uksi-20143270-en-1.pdf>

13. The Cabinet Office's substantive reply<sup>2</sup> to the Commissioner's enquiries is considered below.

## Reasons for decision

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14. Section 1(1) states that any person making a request for information is entitled to be informed by the public authority whether it holds the information, and if so, to have that information communicated to them. This is subject to any exemptions or exclusions that may apply.
15. The Commissioner's role here is simply to decide whether the Cabinet Office should inform the complainant whether it holds the requested information or is not compelled to do the same by virtue of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("Fees Regulations").
16. This limit is set 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 effectively imposes a time limit of 24 hours in this case.
17. 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.
18. In the Commissioner's letter<sup>3</sup> to the Cabinet Office (referring to the four activities set out in paragraph 17 above) it was asked to provide a detailed estimate of the time/cost required to determine whether it holds the information falling within the scope of this request.
19. The Commissioner further asked that when providing these calculations the Cabinet Office includes a description of the nature the type of work
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<sup>2</sup> 20 December 2016

<sup>3</sup> 21 November 2016, ibid

that would need to be undertaken (e.g. searching X number of files– 1 hour).

20. Laid out below is the Cabinet Office's explanation regarding its cost estimate:

- *The Cabinet Office's unique placement at the centre of Government means that a large number of documents and policies will be sent to this department.*
- *However, in order to find out whether we hold this information we would have to contact a number of teams in the department that could hold this information and get them all to search their files and this would take us over the appropriate cost limit.*
- *The report from the Met Office appears to have been commissioned by the Department for Work and Pensions (DWP), and the initial feasibility study for the same report is likely to have been done by, or for, them too.*
- *Bearing that in mind DWP are also more likely to hold correspondence between Ministers, civil servants and the Met Office on this subject.*
- *We advised the complainant that as the policy lead for this area the DWP would be better placed to deal with his request, and we also provided him with the contact details for the department.*

21. The Commissioner, not necessarily being persuaded by the Cabinet Office's above submissions, provided it with a further opportunity<sup>4</sup> to provide full submissions by comprehensively answering her letter of 21 November 2016.

22. The Cabinet Office's reply was that to *"find out whether we would hold the information sought by... (the complainant)... we would have to search all files and emails we hold from the relevant period. It would be impossible to narrow this down, as we do not have a team responsible for this policy. This means there are no appropriately named files or folders where information relating to this request might be contained. When carrying out a search in only the FOI team files for example, for the search term "winter fuel payment", 179 different documents were returned, all of which would need to be searched to see if they contained information relevant to the request. This process would need to be*

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<sup>4</sup> 13 February 2017, ibid

*repeated for every team in the Cabinet Office. It is for this reason that we have applied Section 12 to the request. We have also suggested ... (the complainant)... contact the appropriate department, where information relating to his request would more easily be found".*

23. Having considered the Cabinet Office's submissions, the Commissioner is not satisfied (on a balance of probabilities) that the exemption provided by section 12 is engaged. The purpose of the Commissioner's queries put to the Cabinet Office is to enable it to lay out analytically why section 12 is engaged.
24. The Cabinet Office has explained that there are no appropriately named files, and it has given an example of how many documents are held by just one department using the most relevant search term. However, while these are relevant factors, they are not sufficient explanations to demonstrate the engagement of section 12.
25. The Cabinet Office has further failed to provide an estimate of the time required to confirm or deny that the requested information is held.
26. For example, the Cabinet Office has not explained how long it would reasonably take to search through the documents identified using appropriate search terms; nor has it explained how many different departments are likely to hold the relevant information, if it is held (or why the entire Cabinet Office would need to be searched); and 'number of teams' has not been elaborated upon.
27. The lack of a fuller explanation of this kind, as well as of a time estimate supported by a reasonable explanation means that the submissions made by the Cabinet Office do not lay out, in any meaningful detail, how confirming whether the requested information is held would exceed the cost limit as set out in the Fees Regulations. Accordingly the Commissioner cannot find that section 12 is engaged.
28. The onus is on the public authority to show to the Commissioner that the exemption relied on does allow it not to meet its statutory duty under section 1. Mere assertions or poorly conceived submissions are, as is the case here, unlikely to be sufficient. Unless it is plain to the Commissioner that an exemption is engaged, she cannot fill in the gaps in insufficient submissions or explanations from, and for, a public authority.

## Right of appeal

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29. 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: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

30. 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.

31. 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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