

Freedom of Information Act 2000

Decision notice

Date: 22 November 2017

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 correspondence it received about a proposed visit from the President of the United States of America, Donald Trump. The Cabinet Office refused the request under section 12(1) of the Freedom of Information Act 2000 (the Act) as it considered that compliance with the request would exceed the appropriate limit.
2. The Commissioner's decision is that the Cabinet Office is not entitled to rely on section 12(1) of the Act.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a response to the complainant which does not refuse to comply with the request on the basis of section 12(1) 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 30 January 2017, the complainant wrote to the Cabinet Office and requested information in the following terms:

"the number of correspondence, letters and emails, the Prime Minister has received from members of the public in response to the proposed visit by US President Donald Trump between the dates 28th January 2017 - 30th January 2017"

6. The Cabinet Office responded on 27 February 2017 and refused the request under section 12(1) of the Act. It considered that compliance with the request would exceed the appropriate limit.
7. The Cabinet Office issued its internal review on 10 April 2017. This upheld the decision of its refusal notice and maintained the section 12(1) refusal.

Scope of the case

8. The complainant contacted the Commissioner on 10 April 2017 to complain about the way his request for information had been handled. Specifically, that his request had been refused under section 12(1) of the Act.
9. The Commissioner considers the scope of the case to be whether the Cabinet Office is entitled to refuse the request under section 12(1) of the Act.

Reasons for decision

10. Section 1(1) of the Act states that:

(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 12(1) of the Act states that:

(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.

12. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for central government departments such as the

Cabinet Office. 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 (or 1,440 minutes).

13. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) of the Fees Regulations 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.
14. 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. In accordance with the First-Tier Tribunal in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence".¹

Cabinet Office's estimate

15. The Cabinet Office reiterated the point it made to the complainant in its internal review that for the three day selected period there were 3,543 pieces of correspondence sent to the Prime Minister's Office.
16. The Cabinet Office stated that the correspondence is not sent via a single route and is not held in a single record keeping system or database. It confirmed that the majority of the correspondence received in that period came through the 10 Downing Street website, which has a contact form that allows people to message the Prime Minister's Office.² The Cabinet Office stressed that correspondence was received in other

¹

<http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf> - see paragraph 12

² <https://email.number10.gov.uk/>

forms as well, and that this included post and fax as well as messages directly delivered to the gates of 10 Downing Street.

17. The Cabinet Office explained that due to the variety of ways in which correspondence is received and recorded there was no single way to categorise the correspondence. For electronic correspondence basic text searches are allowed within the document, but there was no way to conduct a single search through what was held to guarantee mentions of a particular subject. The 10 Downing Street website does permit for a mention of subject matter to be included, but the Cabinet Office stated that messages can cover a number of topics but only allow one subject matter to be used, which makes such a search unreliable.
18. For information received in hard copy, the Prime Minister's Office determines whether it has been sent to the right location. If not, it is passed onto the relevant government department and no record of the correspondence is kept. Otherwise a copy is scanned and retained for a month before being securely destroyed.
19. For these reasons the Cabinet Office stated that it would be required to manually search each of the pieces of correspondence that had been received. It stated that in its view it would require thirty seconds per letter in order to ensure that it came within the scope of the complainant's request. For 3,543 pieces of correspondence this amounts to 1771.5 minutes, which is just over 29.5 hours, and thus exceeds the appropriate limit.

Commissioner's decision on section 12(1)

20. The Commissioner considers that the Cabinet Office's explanation of how the correspondence is received is of relevance to the section 12(1) consideration, and rightly points out the variety of ways correspondence can be received and the administrative complexity this creates.
21. However, the Commissioner is not persuaded that a manual search would be required for all of the correspondence. Firstly, whilst a piece of correspondence submitted through the 10 Downing Street website only allows for one subject matter, it also limits the text to 1,000 characters (including spaces). The first four paragraphs of this decision notice amount to 1040 characters, which is in 176 words in seven sentences. This does not leave correspondents much space to cover a number of different topics. Therefore it is reasonable to assume that the wording provided in the subject field will provide a sufficient indication as to the message content. Secondly, where such indication is not provided in the subject matter and the body of the message will need to be assessed, the 1,000 character word limit means that it is reasonable to afford less than 30 seconds per such message.

22. The Cabinet Office stated that the majority of correspondence was sent electronically, although it did not specify what proportion this majority was (i.e. 51% or 85% of the total etc.). However, the Commissioner considers that even using a simple majority means that most of the correspondence came through a messaging system that only allows for a small number of words, and it would not take the Cabinet Office 30 seconds to determine whether each item of that correspondence is of relevance to the request. Further, whilst there would no doubt be longer pieces of correspondence, it should still take less than 30 seconds to determine whether they are relevant through manually scanning for key themes rather than carefully reading each item of such correspondence.
23. The Commissioner notes that the Cabinet Office's calculation takes into account 3,543 pieces of correspondence, yet stated that some of the manual correspondence was forwarded on to other government departments without a copy being kept. Although the Cabinet Office has not confirmed what numbers were involved in that transfer, it seems highly likely that the figure of 3,543 would be reduced. However, the Commissioner does not consider that it is critical for the basis of her decision on the cost limit that the figure of 3,543 is reduced, so has proceeded with this figure with her own calculations.
24. In the Commissioner's view, the Cabinet Office should be able to locate the correspondence and to extract the relevant information (i.e. keeping a score of whether or not it related to President Trump's proposed visit) should take no more than 20 seconds. For 3,543 pieces of correspondence this comes to 1,181 minutes, which is inside the appropriate limit (and assumes that the body of each item of correspondence requires consideration, thus still allowing for the 'subject matter' argument for which the Commissioner has expressed some scepticism). The Commissioner acknowledges that this would still be a significant amount of work, but would nevertheless be reasonable for the purposes of section 12(1).
25. The Commissioner's decision is that the Cabinet Office has incorrectly applied section 12(1) of the Act. She requires the Cabinet Office to issue a new response to the complainant which does not refuse to comply with the request on the basis of section 12(1).

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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