

## **Freedom of Information Act 2000 (FOIA)**

### **Decision Notice**

**Date:** 7 November 2018

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested information held by the Cabinet Office relating to the Care Quality Commission between specified dates. The Cabinet Office originally refused the request under section 12 (cost limit), but during the course of the Commissioner's investigation sought to rely on section 14 (vexatious request) instead. The Cabinet Office claimed that section 14 applied because compliance with the request would constitute a grossly oppressive burden.
2. The Commissioner's decision is that the Cabinet Office has failed to demonstrate that the request is vexatious. Therefore the Cabinet Office was not entitled to refuse the request under section 14 of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the complainant that does not cite section 14.
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 FOIA and may be dealt with as a contempt of court.

## Requests and responses

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5. The complainant requested the following information from the Cabinet Office on 10 April 2017 (request 324499):  
  
*"1. All references to CQC or the Care Quality Commission in electronic communications to or from the Policy Unit at No.10 between the dates 1.11.11 and 1.7.13.*  
  
*2. A SAR for all electronic communications to or from the Policy Unit at No 10 between the dates 1.11.11 and 1.7.13*  
  
*3. A copy of the Cabinet Office's policies for responding to FOI requests and SARs."*
6. The Cabinet Office responded on 12 May 2017, refusing the request on cost grounds and citing section 12 of the FOIA.
7. The complainant submitted a further request on 12 May 2017 (request 324650), which repeated question 3 of request 324499. The Cabinet Office responded on 25 May 2017 and refused request 324650 under section 21 because it said the requested information was available on the Cabinet Office website.
8. The complainant requested an internal review of request 324650 on 25 May 2017. She advised the Cabinet Office that she had been unable to find the relevant policies on its website. The complainant did not receive the outcome of that internal review.
9. The complainant complained to the Commissioner on 4 October 2017. Following the Commissioner's intervention the Cabinet Office advised the complainant on 16 November 2017 that it upheld its reliance on section 21 in respect of request 324650. It provided a narrative explanation as to how requests are handled, but did not provide any further recorded information.

## Scope of the case

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10. The complainant contacted the Commissioner on 16 November 2017 to complain about the Cabinet Office's response to her requests.
11. The Commissioner considered that Part 2 of request 324499 was a subject access request within the meaning of section 7 of the Data Protection Act 1998, therefore it did not fall to be considered under the FOIA.

12. The complainant agreed that that the scope of the Commissioner's investigation would be the Cabinet Office's handling of part 1 only of request 324499 (ie reliance on section 12), and its handling of request 324650 (reliance on section 21 and maintaining that no further information was held).
13. On 30 April 2018 the Commissioner asked the Cabinet Office to clarify whether it wished to maintain reliance on section 12 in respect of part 1 only. The Commissioner advised that if not, the Cabinet Office ought to reconsider part 1 and issue a revised response to the complainant. Alternatively the Commissioner asked the Cabinet Office to provide an explanation of its reliance on section 12.
14. The Commissioner also asked the Cabinet Office whether it intended to maintain its reliance on section 21(1) on the basis that the requested information was available via the gov.uk website. The Commissioner asked the Cabinet Office to confirm whether it held any further recorded information that fell within the scope of the request, ie policies or procedures for responding to requests.
15. On 8 June 2018 the Cabinet Office advised the Commissioner that it had not in fact carried out an internal review regarding request 324499. However it maintained its position that section 12 was engaged.
16. Regarding request 324650 the Cabinet Office confirmed that it did hold recorded information that had not been disclosed to the complainant. The Cabinet Office advised that the information comprised guidance which was being revised, and that in its view the exemption at section 35 was engaged. However the Cabinet Office had concluded that the public interest lay in favour of disclosing the information. The Cabinet Office disclosed this information to the complainant on 14 June 2018.
17. The Commissioner did not consider that the Cabinet Office had provided sufficient information for her to make a decision regarding the Cabinet Office's reliance on section 12 with respect to request 324499, and she issued an information notice on 5 July 2018.
18. Regrettably the Cabinet Office did not respond to the information notice until 5 October 2018. At this stage the Cabinet Office withdrew reliance on section 12, and advised that it was now relying on section 14 on the grounds that the request was vexatious.

## Reasons for decision

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### Section 14: vexatious request

19. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request if the request is vexatious. The term vexatious is not itself defined in the legislation, but in *Information Commissioner v Devon County Council & Dransfield*<sup>1</sup> the Upper Tribunal commented that

*"The purpose of section 14... must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA."*

20. The Upper Tribunal concluded that 'vexatious' could be defined as the

*"...manifestly unjustified, inappropriate or improper use of a formal procedure."*

21. Therefore the key question is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. The Commissioner has published guidance<sup>2</sup> on section 14 and further considers that it 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.

### The Cabinet Office's position

22. The Cabinet Office considered the request vexatious on the basis that to review and appropriately redact all of the information in scope of the request would impose a disproportionate burden.

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<sup>1</sup> UKUT 440 (AAC), 28 January 2013

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

23. The Cabinet Office explained that it had searched the Cameron Archive (the digital and paper records held from David Cameron's premiership, which covered the timescale of the request). This did not return any references to either "CQC" or "Care Quality Commission" within the electronic communications held in the archive. It did identify nine paper files, covering a broad range of health policy issues.
24. The Cabinet Office considered the Cameron Archive to be the most likely place that the requested information might be held. For this reason it did not conduct a comprehensive search of all archives within the time period, and in any event such a search would have exceeded the cost limit.
25. The Cabinet Office conducted a further search for relevant information in the nine identified files. A search for reference to "CQC" or "Care Quality Commission" identified 371 pages of documentation, although it did not specifically identify whether all of these papers had either originated from or been directed to the Policy Unit at No 10 (as per the request). However the Cabinet Office was concerned that the 371 pages of information were not exclusively about the Care Quality Commission and may cover sensitive topics. Each document would need to be carefully reviewed in order to determine how much information in each document was in scope of the request (both in terms of subject matter and material that had passed through No. 10 Policy Unit) and to ensure that any out of scope or sensitive information was redacted and withheld.
26. The Cabinet Office set out that reviewing and extracting relevant information from the 371 pages of documentation would be a significant undertaking, and would also require the Cabinet Office to consult a number of third parties. It argued that this would constitute a disproportionate burden on the department.
27. The Cabinet Office argued that many of the 371 documents would need to be significantly redacted, which meant it was unlikely that release would offer much value to the public at large. In the Cabinet Office's view this significantly reduced the value of any public interest consideration given the level of effort and cost required to provide the information. The Cabinet Office concluded that the value of the information would not justify the impact on both itself and other public bodies and third parties that would need to be involved.
28. Finally the Cabinet Office said it had taken into account the lack of focus in the request. It argued that any information of interest to the complainant would have been previously located during the SAR

process. This had identified only two pieces of personal data, both of which had been provided to the complainant.

29. The Commissioner's published guidance sets out her view that a public authority may apply section 14(1) where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation. However the Commissioner considers there to be a high threshold for refusing a request on such grounds. This means that the public authority must be able to provide clear and persuasive evidence of such a burden.
30. In this case the Cabinet Office has stated that the requested information is contained within 371 pages of documentation. It has also stated that it would need to consult with third parties, and redact information that is either out of scope or exempt. However, the Cabinet Office has failed to explain in any detail how these steps would constitute a grossly oppressive burden. For example it has not provided the Commissioner with any kind of estimate as to the time or other resource required to complete these activities.
31. The Commissioner has commented in previous decision notices that the onus is on the public authority to demonstrate that it has properly refused a request. When the Commissioner receives a complaint under section 50 of the FOIA she advises the public authority that her approach is to allow the authority one opportunity to justify its position to her before issuing a decision notice.
32. In light of the above the Commissioner has considered whether to offer the Cabinet Office a further and final opportunity to provide more detailed arguments to support its position in this case. However the Commissioner notes that her investigation has been delayed by the failure of the Cabinet Office to provide a timely response to the Commissioner's enquiries, to the extent that the Commissioner issued an information notice in July 2018. The Commissioner is extremely disappointed that the Cabinet Office failed to comply with the 30 day deadline set out in the information notice, and did not in fact provide a substantive response until 5 October 2018, some three months later.
33. The Commissioner has concluded that it would not be proportionate to invite the Cabinet Office to provide a further submission. She has therefore proceeded to make a decision on the basis of the information provided to her by the Cabinet Office to date.

34. In this case the Commissioner finds that the Cabinet Office has failed to demonstrate that the compliance with the request would impose a grossly oppressive burden as described in the published guidance. The Commissioner is mindful that section 14 is only applicable to the extent that a request is vexatious, and this is a judgement that must be made on the merits of the request in question. It should not be used as a blanket approach to refuse to consider requests for large amounts of information.
35. The Commissioner is also disappointed that the Cabinet Office failed to inform the complainant of its change of position. Again, the Commissioner routinely advises public authorities that if they wish to introduce reliance on any provision not previously claimed, it is the authority's responsibility to inform the complainant. If a public authority wishes to rely on section 14 on grounds of burden the Commissioner would also expect the authority to explain its reasoning to the complainant and consider providing advice and assistance with the aim of making a more manageable request. As it stands the complainant in this case has had no such opportunity.
36. In light of the above, the Commissioner is not satisfied that the request in this case is vexatious, therefore she finds that section 14(1) is not engaged.

## **Right of appeal**

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37. 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 1234504  
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)

38. 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.
39. 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**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**