

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 24 September 2018

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

### Decision (including any steps ordered)

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1. The complainant has requested information in relation to the Ministerial Code. The Cabinet Office has refused the request relying on section 12 FOIA – costs of compliance exceeds the appropriate limit. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 12.
2. The Commissioner does not require the Cabinet Office to take any steps.

### Request and response

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3. On 15 December 2017, the complainant wrote to the Cabinet Office (CO) and requested information in the following terms:

*"I am writing to make a request for all the information to which I am entitled under the Freedom of Information Act 2000 in relation to the Ministerial Code. In particular, I would like to request:*

*For the dates from 1 November 2017 to date, copies of all communications including any minutes, notes or emails in relation to the Ministerial Code, following discussions in Parliament in response to the media coverage of the visit of Priti Patel MP to Israel in August 2017. See as background, referring to Code, the statement on behalf of the Prime Minister by Alistair Burt MP on 07 November 2017, available here:*

<https://hansard.parliament.uk/Commons/2017-11-07/debates/7ECC7695-F4BD-48A7-91A1->

*28A8BC28980D/IsraelMeetings"*

4. The CO responded on 17 January 2018; it refused the request citing section 12 FOIA.
5. Following an internal review request on 24 January 2018 the CO wrote to the complainant on 13 March 2018; it upheld its original position.
6. During the course of the Commissioner's investigation, the CO suggested a possible way of refining the request which would be likely to bring the request within the cost limit. It suggested that the complainant's request could be refined to information held by the Cabinet Office Propriety and Ethics team for the time period outlined.
7. The complainant set out that it was difficult to respond without knowing what information is proposed for release. She further explained that she was not confident that limiting the request to the information held solely by the Propriety and Ethics team would meet the purpose of the request which was to obtain information in relation to proposed amendments to and interpretation of the Ministerial Code in light of the visit of Priti Patel MP to Israel in August 2017. The request, she asserted was already refined by date. She set out that it remained the case that the CO had not described what type of information it has in relation to the request, how it is categorised or in what format and therefore it would be practically impossible to further narrow down the request.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 3 April 2018 to complain about the way her request for information had been handled.
9. The Commissioner considers the scope of her investigation is to determine if the CO is entitled to rely on section 12 FOIA.

### **Reasons for decision**

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10. Section 1(1) of FOIA 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 CO. 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 limit of 24 hours.

13. 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

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.”<sup>1</sup>

15. The CO explained in its submission that it had not identified any information within the scope of the request as identification and extraction of the information would in itself exceed the appropriate cost limit.

16. It is the CO’s position that the request casts a very wide net in seeking “all communications” relating to an issue that could potentially impact on any part of the CO’s policy responsibilities given that the Ministerial Code, and its appropriate application, governs all ministerial interaction

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<sup>1</sup> <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

with government officials, as well as external parties, in the discharge of ministerial duties.

17. The CO has explained that communications in relation to the Ministerial Code could touch on a wide range of policy areas and could originate from, or be referred to, almost any policy team within the CO. As an employer of some 5100 staff (not including executive agencies), the CO has asserted that any search for information over such a wide area would significantly exceed the cost limit.
18. The CO has explained that if 1 in 10 staff (510) were to conduct a search which only took 15 minutes, this would mean a related cost of £3187 which would exceed the cost limit of £600 by £2587.
19. In its submission, the CO explained that it is important that requests are sufficiently specific to allow it to identify the most appropriate areas of the department which may hold information within the scope of the request.
20. It further set out that whilst the request in this case is not specific, it understands that the requester may be interested in internal CO discussions around the propriety of the then Secretary of State for International Development, Priti Patel's trip to Israel in August 2017. It is for this reason that the CO considered that refining the request to the Propriety and Ethics Team would allow it to comply with that interpretation of the request. It acknowledges that it should have offered advice and assistance at the time of the request.
21. The Commissioner considers that the request is, as the CO has stated, very wide and that if the complainant were only interested in discussions about the propriety of Priti Patel's trip, she would have made that clear and perhaps would have been more likely to have considered the refinement being offered by the CO.
22. The Commissioner considers that the request relates to "all communications" following the discussions in Parliament and that these would include any communications about the visit insofar as those communications also related to the Ministerial Code. The request was also for any communications about discussions more generally (and not restricted to the visit) about the Ministerial Code.
23. The complainant set out to the Commissioner, following the CO's refinement suggestion, that the purpose of her request was to obtain information in relation to any proposed amendments to and interpretation of the Ministerial Code in light of Priti Patel's trip. This is in line with the Commissioner's interpretation of the request which relates to references made in Parliament (link above refers) to changes to and

tightening up of the Ministerial Code. Indeed, in the circumstances, the complainant herself acknowledges that it would be “practically impossible” to refine the request.

24. In these circumstances the Commissioner considers that the CO was correct to initially assert that in order to comply with the request its searches would need to cover a very wide range of policy areas and teams. She acknowledges that although the time frame is for a short period of approximately six weeks, the volume of staff participation required is significant. She has considered whether asking heads of department or heads of team would perhaps meet the terms of the request but given that the request is for “all communications” she considers that this would not be an appropriate search which would allow for compliance of this particularly wide request.
25. Based on the CO’s position that a search may take 15 minutes, the Commissioner considers that CO could have consulted only 96 staff in respect of any search for the requested information.
26. The Commissioner further considers that even if an estimate of 15 minutes is excessive for the requisite search, reducing it by two thirds to only 5 minutes would still limit the searches to 288 of the CO’s 5100 staff.
27. Whilst the Commissioner accepts that in order to comply with of the request there may be no need for the CO to ask all of its 5100 staff to conduct a search, she accepts also that the nature of the request is extremely wide and that as such, the CO cannot meet the request without exceeding the costs limit in relation to even locating and extracting the requested information. She considers that the CO is entitled to rely on section 12 to refuse the request.

## **Other matters**

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28. Section 16 places a duty on a public authority to provide advice and assistance, as far as is reasonable, to those who propose to make a request to it or who have made a request to it. The Commissioner acknowledges, as the CO has done, that it should have provided advice and assistance at the point at which it relied on section 12 to refuse the request. It is the Commissioner’s position that had it done so, this may have opened a dialogue between the complainant and the CO which may have avoided the need for the Commissioner’s involvement.
29. Although the Commissioner considers that the CO has complied with the duty set out at section 16, it is a public authority which is well versed in handling requests for information and should ensure in future that its

obligation under section 16 is met during its handling of the request. In this case it appears to have been little more than an afterthought at the point at which the Commissioner became involved.

## Right of appeal

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30. 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 7395836

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)

31. 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.
32. 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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**