

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 10 May 2019

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

Decision (including any steps ordered)

1. The complainant has requested information regarding the First World War Centenary Cathedral repairs fund (the fund). The Cabinet Office refused to comply with the request under section 12 of the Act as it considered compliance with the request would exceed the appropriate limit.
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 12(2) of the Act to refuse to comply with the request.
3. The Commissioner does not require the Cabinet Office to take any further steps.

Request and response

4. On 21 June 2018, the complainant wrote to the Cabinet Office and requested information in the following terms:

"In the Budget 2014 the chancellor announced the setting up of the First World War Centenary Cathedral Repairs Fund providing £20m for cathedral repairs.

On 16 March 2016 the chancellor extended the fund for another two years and provided a further £20m.

FOI requests to the DCMS on the origins and management of this fund and extension have highlighted they did not see a Green Book business case justifying the expenditure. Please can you answer the following questions:

- 1. Was a Green Book business case produced for the fund and/or extension by the Cabinet Office or other government department and if so please provide a copy.*
 - 2. Please provide copies of any documents supporting the creation of these fund(s) as created by or provided to the Cabinet Office.*
 - 3. Please provide copies of any documents sent to the Cabinet Office from the Church of England and/or Roman Catholic church requesting, suggesting or supporting the fund's creation and how it could be run.*
 - 4. Please provide a copy of any orders and instructions sent to DCMS to create the funds including how these should be arranged and managed."*
5. On 22 June 2018, the Cabinet Office responded and advised the complainant to direct his request to HM Treasury as it was *"more likely to hold material on such issues of public funding"*. The complainant confirmed the same day that he wished to understand whether there was Cabinet Office involvement in the grant creation.
6. On 20 July 2018, the Cabinet Office provided its response and refused to comply with the request on the basis of section 12. The Cabinet Office stated:

"I must inform you that the Cabinet Office is unable to comply with your request. Section 12 of the Freedom of Information Act relieves public

authorities of the duty to comply with a request for information if the cost of dealing with it would exceed the appropriate limit. The appropriate limit has been specified in regulations and for central Government this is set at £600. This represents the estimated cost of one person spending 3 1/2 working days in determining whether the Department holds the information, and locating, retrieving and extracting it.

The reason that your request exceeds the cost limit is that relevant information could be contained in very many files. Searching all those that might contain relevant information to determine whether the Cabinet Office holds any information relevant to your request will exceed the appropriate limit laid down in the regulations. If you wish, you may refine your request in order to bring the cost of determining whether the Cabinet Office holds relevant information, locating, retrieving and extracting it, below the appropriate limit. The period covered by your request is very long and one way to refine it would be to narrow the period it covers but even a shorter period would require us to search many files and would not be sufficient, on its own, to make it possible for us to comply with your request within the appropriate limit. Bearing in mind that our records are classified by broad subject areas, I consider that we will not be able to carry out a search for information unless you can relate the information you seek to a definite context such as a particular policy or region or a notable event or initiative. I must also inform you that if the Cabinet Office does hold any information, it may be subject to one or more of the exemptions contained in the Freedom of Information Act."

7. On 23 July 2018, the complainant refined his request to the following:

"Please provide correspondence to the Cabinet Office from the Archbishop's Council regarding the First World War Centenary cathedral Repairs Fund sent in 2013 or 2014."

8. On 21 August 2018, the Cabinet Office provided its response. It refused to comply with the request on the basis of section 12 and stated:

"I must inform you that the Cabinet Office is unable to comply with your request. Section 12 of the Freedom of Information Act relieves public authorities of the duty to comply with a request for information if the cost of dealing with it would exceed the appropriate limit. The appropriate limit has been specified in regulations and for central Government this is set at £600. This represents the estimated cost of one person spending 3 1/2 working days in determining whether the Department holds the information, and locating, retrieving and extracting it.

The reason that your request exceeds the cost limit is that relevant information could be contained in very many files. Searching all those that might contain relevant information could be contained in very many files. Searching all those that might contain relevant information to determine whether the Cabinet Office holds any information relevant to your request will exceed the appropriate limit laid down in the regulations. If you wish, you may refine your request in order to bring the cost of determining whether the Cabinet Office holds relevant information, locating, retrieving and extracting it, below the appropriate limit. The period covered by your request is very long and one way to refine it would be to narrow the period it covers but even a shorter period would require us to search many files and would not be sufficient, on its own, to make it possible for us to comply with your request within the appropriate limit. Bearing in mind that our records are classified by broad subject areas, I consider that we will not be able to carry out a search for information unless you can relate the information you seek to a definite context such as a particular policy or region or a notable event or initiative. I must also inform you that if the Cabinet Office does hold any information, it may be subject to one or more of the exemptions contained in the Freedom of Information Act."

9. On 25 August 2018, the complainant requested an internal review of the handling of his request. The complainant disputed that the costs limit would be exceeded as the Cabinet Office had previously implied that little or no relevant information would be held. He also considered that a single organisation and subject should not be onerous to search for.
10. On 1 October 2018, the Cabinet Office provided the outcome of its internal review. It upheld its reliance on section 12. The Cabinet Office also stated:

"I have considered the points you make concerning a previous reply indicating that the Cabinet Office does not hold information. I am unable to determine if this is the case, as to search through the correspondence would exceed the time limit, although that does seem to be very probable."

Scope of the case

11. The complainant contacted the Commissioner on 16 October 2018 to complain about the way his request for information had been handled.
12. The Cabinet Office confirmed during the course of the investigation that it was relying on section 12(2) to refuse to comply with the request.

13. The Commissioner considers the scope of this investigation is to determine whether the Cabinet Office is entitled to rely on section 12(2) to refuse to comply with the request.

Reasons for decision

Section 12: Cost of compliance exceeds appropriate limit

14. Section 1(1) of the Act states:

"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."*

15. Section 12 of the Act states:

"(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.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit."

16. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004¹ (the Fees Regulations) at £600 for central government departments. The Fees Regulations also specify that the cost of complying with a request must be calculated at a flat rate of £25 per hour. This means that the Cabinet Office may refuse to comply with a request for information if it estimates that it will take longer than 24 hours to comply.

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:

¹ <http://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

- 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, or a document containing it.
18. Section 12 explicitly states that public authorities are only required to estimate the cost of compliance with a request, not give a precise calculation, however, the Commissioner considers that the estimate must be reasonable. The Commissioner follows the approach set out by the Information Tribunal in the case of *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency (EA/2006/004, 30 October 2007)* which stated that a reasonable estimate is one that is "...sensible, realistic and supported by cogent evidence".

The Cabinet Office's position

19. The Cabinet Office explained to the Commissioner that papers from previous administrations are sent for archiving to the Knowledge Information Management Unit within the Cabinet Office.
20. The Cabinet Office stated that the topic in question is not significant or broad enough to merit its own specific file and the Cabinet Office would therefore need to look across a range of Prime Ministerial and Cabinet Office series files that might contain the relevant information. The Cabinet Office confirmed that these files would cover both core policy files from the Culture and Faith series and more general files covering the wider work of HM Treasury and the Department for Media, Culture, and Sport (DCMS). The Cabinet Office confirmed that it had identified a total of 61 possible files which might potentially contain this information. The Cabinet described these files as follows:
21. The Cabinet Office confirmed that there are two retained hard copy files in the topic-based Culture series and two files in the Faith series that might cover the 2013/2014 budget negotiations.
22. The Cabinet Office stated that it is not possible to identify any papers without reading each file as the topic formed a very small part of the 2013/14 budget negotiations. The Cabinet Office set out that on average, the files contain 167 pages of information.
23. On the assumption that a page of information takes 1 minute to review, one file would require 2 hours and 40 minutes to read through to ascertain if information was held. The Cabinet Office therefore considers

that the overall time required to review these four files would be 10 hours and 50 minutes.

24. The Cabinet Office explained that the departmental-based files for HM Treasury and DCMS cover projects and policies that were created by, and were under the review of, other Governmental departments. The Cabinet Office stated that there is a larger number of possible files in which information in scope could be contained.
25. The Cabinet Office explained that as the project was created by DCMS and funded by HM Treasury, correspondence from the Cabinet Office to the Archbishops' Council could be held across the file series for those two departments.
26. The Cabinet Office confirmed that the Knowledge Information Management team have identified 23 files from the DCMS file series where this information could potentially be. The Cabinet Office stated that it would take 62 hours and 5 minutes to determine if any information is held within these files.
27. The Cabinet Office also confirmed that it had identified 34 files from the HM Treasury series from 2013-2014 where correspondence might be contained. The Cabinet Office stated that it would take one person 91 hours and 50 minutes to verify if the HM Treasury series holds any information.
28. The Cabinet Office confirmed that its estimates are based on having located all potential files where the information could be held and having one person read through all relevant files. The Cabinet Office confirmed that there is no other method for narrowing the scope of the search or determining which departmental files might contain relevant information.
29. The Cabinet Office also confirmed that the Archbishops' Council does not have a specified point of contact within the Cabinet Office.
30. The Cabinet Office stated that although the request was refined to correspondence for 2 years, the information could be contained in over 61 different files as the subject is not specific enough to stand out without the naming of individual files.

The Commissioner's position

31. The Commissioner is dissatisfied with the quality of the submissions provided by the Cabinet Office. Whilst a public authority is not required to make a precise calculation of the cost of complying with a request, she would expect to be provided with further detail than has been provided in this case.

32. She would expect to be provided with explanations of how a public authority came to an estimate, rather than just stating the time it would take to review a set number of files (see paragraphs 26 and 27).
33. The Commissioner is not persuaded that it would require a minute per page to ascertain the sender of the correspondence. She considers that it is likely to be quickly apparent from each page whether the information contained is correspondence from the Archbishops' Council.
34. However, using the figures provided by the Cabinet Office² of 167 pages per file, to locate information held within the 61 files identified would require review of approximately 10,000 pages. Furthermore, the Commissioner accepts that given the way in which the Cabinet Office's files are structured it would be necessary for it to search the 61 files it has identified in order to locate any information relevant to this request.
35. The appropriate limit for the Cabinet Office is 24 hours, or 1440 minutes. In order to review all the required pages within the appropriate limit, each page would have to be reviewed in just under 9 seconds. This does not take into account the time spent identifying and locating the appropriate files which would reduce the time for each page further.
36. The Commissioner therefore considers that it is unlikely that the Cabinet Office could review this amount of information within the appropriate limit and it is entitled to rely on section 12(2) of the Act to refuse to comply with the request.

Other matters

37. The Commissioner notes that the Cabinet Office appears to have used its reasons for refusing to comply with the request dated 21 June 2018 to refuse the request dated 23 July 2018 which had been substantially refined.
 38. The Commissioner is concerned that the Cabinet Office did not originally consider the refined request on its own merits as the Cabinet Office advises the complainant to relate his request to a "*a definite context such as a particular policy or region or notable event or initiative*". This appears to be a direct copy of its previous response to the complainant's
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²² The Commissioner acknowledges that the figures provided by the Cabinet Office do not exactly add up to the estimate provided, however, she considers that the margin of error is sufficiently small to be a likely rounding error.

wider request. As the complainant went on to refine his request to one external body's correspondence regarding a specified funding project, it is not apparent how this advice is relevant.

39. The Commissioner expects the Cabinet Office to take steps to ensure that each request is responded to individually and on the basis of the specific information request received.

Right of appeal

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 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: 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

Jonathan Slee
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Information Commissioner's Office
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SK9 5AF