

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 December 2020

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information regarding the use of Zoom video-conferencing software at a particular Cabinet Office meeting. The Cabinet Office interpreted the request to be for information regarding the use of Zoom at all meetings and refused the request under section 12 of the FOIA (costs of compliance). The complainant argued that this broad interpretation of the request was incorrect and that the Cabinet Office had therefore incorrectly refused it.
2. The Commissioner's decision is that there is only one objective reading of the request and that the Cabinet Office did not interpret the request in line with this objective reading.
3. The Commissioner requires the Cabinet Office to take the following step to ensure compliance with the legislation:
 - Issue a fresh response to the request based on the correct objective reading.
4. The Cabinet Office must take this step 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 7 April 2020, the complainant wrote to the Cabinet Office and requested information in the following terms:

"Freedom of Information request - Use of Zoom for Cabinet Meeting on 31 March 2020

Dear Cabinet Office

On 31 March 2020 the Government held a meeting using the Zoom Conferencing software.

(1) Who was responsible for making the decision to use Zoom?

(2) What privacy and security assessment was undertaken to enable the decision to be taken?"

6. The Cabinet Office responded on 11 May 2020 and refused to comply with the request under section 12 of the FOIA (costs of compliance). It stated:

"The use of Zoom videoconferencing software and services to conduct internal and external meetings is currently engaged throughout a number of Department's and agencies across Government, and information on those meetings are not held centrally within a single department, neither are details of individual meetings within departments held centrally. In order for your request to not exceed the statutory cost limit, you will need to refine your request in order to be more specific about the meeting(s) that you are referring to (for example, by specifying the subject and/or participants of the meeting)."

7. On 12 May 2020 the complainant wrote to the Cabinet Office to request an internal review. He reiterated that his request referred solely to the Cabinet meeting on 31 March 2020 and not to any other meetings held in government.
8. Following an internal review the Cabinet Office wrote to the complainant on 9 June 2020. It maintained its position that section 12 was engaged.

Scope of the case

9. The complainant contacted the Commissioner on 11 June 2020 to complain about the way his request for information had been handled.

Specifically, he argued that the Cabinet Office had misinterpreted his request and had, therefore, incorrectly refused it.

10. The Commissioner's initial assessment of the case was that the request had one clear objective reading and that the Cabinet Office had failed to objectively read the request. The Commissioner wrote to the Cabinet Office on 2 October 2020 to advise it of her preliminary view and to ask it to reconsider the request and provide a revised response in line with the objective reading.
11. The Cabinet Office responded on 16 October 2020 and stated that, having reviewed the Commissioner's correspondence and its original handling of the request, it agreed that it had misinterpreted the request to be excessively broad. It confirmed that it would issue a revised response to the complainant.
12. The Commissioner asked the Cabinet Office to do so by 29 October 2020. The Cabinet Office replied and stated that, as it was looking at the request afresh, it would require additional time and requested an extension until 6 November 2020. The Commissioner agreed to this extension.
13. Despite several further extensions, to date the Cabinet Office has failed to provide a fresh response. The Commissioner has therefore prepared this notice to formally set out her decision and to compel the Cabinet Office to provide a fresh response.
14. The scope of this case and the following analysis is to consider whether the Cabinet Office's interpretation of the request is an objective reading.

Reasons for decision

Interpretation of the request

15. Section 1(1) of the FOIA states that:

"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."

16. Section 8(1) of the FOIA states:

"In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested."*

17. Section 84 of the FOIA defines "information" in this context as being information "recorded in any form."
18. Public authorities must interpret information requests objectively. They must avoid reading into the request any meanings that are not clear from the wording. If the request clearly specifies exactly what information or documents the requester wants, then there will only be one objective reading to the request.
19. In cases where the objective meaning of the request is in dispute and the request was not clarified, the Commissioner will consider both the complainant's and the public authority's interpretations and decide whether each of these are the objective readings of the request.
20. If the complainant's intended interpretation is an objective reading of the request then the Commissioner will issue a decision notice which orders the public authority to issue a fresh response based on the complainant's interpretation of the request. If the complainant's interpretation is not an objective reading, and the public authority's is, then the Commissioner will issue a decision notice which finds that the request has been interpreted correctly by the public authority.

The complainant's interpretation

21. The complainant specified that his request related solely to the use of Zoom at the Cabinet meeting held on 31 March 2020, and not to the Cabinet Office's wider use of the software.
22. He told the Commissioner *"At both the initial response and review stages I asked specifically for information about one and only one meeting, the Cabinet Meeting held on 31 March 2020."*

The Cabinet Office's interpretation

23. The Cabinet Office's interpretation of the request was much broader. It considered that the request was for information about the use of Zoom at all meetings held by a number of departments and agencies across Government, rather than the specific meeting referred to in the request.

The Commissioner's decision

24. The Commissioner considers that the request clearly described the recorded information that was sought by the complainant. It is her view that there is only one objective reading, which is the interpretation set out by the complainant.
25. The request clearly asks for information regarding who was responsible for making the decision to use Zoom and what privacy and security assessment was undertaken to enable the decision to be taken to use Zoom at the Cabinet Office meeting held on 31 March 2020.
26. The Cabinet Office has since agreed that it originally misinterpreted the request. At paragraph three above, the Cabinet Office is now required to issue a fresh response to the request based on the objective reading. For the avoidance of doubt about what the Commissioner considers an objective reading of the request to be, the Cabinet Office should refer to the complainant's description of his request as quoted at paragraph 22 above.

Right of appeal

27. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.
29. 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

Ben Tomes
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