

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 22 January 2020

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

Decision (including any steps ordered)

1. The complainant, who is sight-impaired, sought to initiate a request to the Cabinet Office verbally. As set out in the FOIA section 45 Code of Practice (paragraph 2.5), a public authority should have procedures in place to accept verbal requests in such circumstances. He had repeated difficulties in accessing this and contacted the Commissioner about this. He raised concerns that the Cabinet Office was not complying with its obligations under FOIA section 16 (advice and assistance).
2. The Commissioner's decision is that at the time of the request, the Cabinet Office had appropriate systems in place to record and action requests made in this way in accordance with its obligations under section 16 of the FOIA with reference to the section 45 Code of Practice.
3. No steps are required.

Request and response

4. This complaint centres around ongoing difficulties the complainant has reported experiencing when trying to make an information access request to the Cabinet Office using its procedures for those who are sight-impaired or who may have other health-related or similar reasons for being unable to use its standard online or postal information access

request mechanism. A related matter had been dealt with in a previous decision notice of 2017 and it appeared that the difficulties referred to in that notice had been resolved.¹ At paragraph 21 of that previous notice, it is noted that the Cabinet Office introduced a revised system for handling requests of this nature.

5. This revised system has since been updated. The Cabinet Office has published a telephone number to facilitate information access requests in such circumstances.² A person can call the published number and, following instructions given in the message, leave a message requesting a call back. As part of the procedure, they will then receive a call back from a member of staff who will take down their request and send a written version of the request to them for them to agree.
6. The complainant first wrote to the Commissioner about this on 5 May 2019. In correspondence between the Commissioner and the Cabinet Office it appeared that the complainant may have incorrectly transposed the new number when noting it down. The Commissioner spoke to the complainant about this and the matter appeared to be resolved.
7. However, the complainant contacted the Commissioner again on 21 May 2019 and alleged that he had left a message on this new number but did not receive a call back. He did not provide the Commissioner with the date of the call but indicated that it was shortly prior to the telephone conversation with the Commissioner of 21 May 2019. He alleged that he had tried to call the Cabinet Office and leave a message on a number of occasions subsequently with a similar negative result. He deliberately left his mobile number when requesting a call back from the Cabinet Office because this is a number he rarely used as a contact number for incoming calls. A call to this number would not be missed in the same way that a call to a landline might. It should be noted that the Cabinet Office has since denied having a record of any message from the complainant requesting a call back.

Scope of the case

8. In the light of the above, and following a call from the complainant, the Commissioner took the complaint forward on 21 May 2019 and sought
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¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013808/fs50654647.pdf>

² <https://www.gov.uk/government/organisations/cabinet-office> (see Public Enquiries section)

to establish whether the Cabinet Office was complying with its obligations in respect of section 16 of the FOIA as regards the complainant's requests.

9. If a requester in the complainant's circumstances is unable to make an FOIA request because an inadequate system is in place to enable them to initiate the request verbally, this would appear to be a contravention of section 16 of the Act. This obliges a public authority to provide advice and assistance to requesters.
10. The Commissioner acknowledges it is difficult to establish the facts of the matter when the complainant asserts he has made a call and followed a specific procedure to leave a message and the public authority asserts that it has no record of it.
11. The Commissioner notes that the Cabinet Office is confident that its procedures are working. However, the complainant reported still experiencing difficulties as outlined above despite the introduction of the new system and the correction of his previous error in transposing numbers when dialling.

Reasons for decision

12. As noted above under section 16 of the FOIA a public authority is obliged to provide advice and assistance "to persons who propose to make, or have made, requests for information to it".
13. On 21 May 2019, the Commissioner wrote to the Cabinet Office to ask a series of questions about how messages initiating requests verbally via voicemail are picked up and acted upon. These were as follows:
 - "- How regularly is the mailbox for that number checked?
 - What are the Cabinet Office's timescales for following up an information access request made via the mailbox?
 - What happens when the person/people who normally check the mailbox are unavailable/on leave?
 - If someone leaves a telephone number, what happens if the first attempt to call them is unsuccessful?
 - Is a log kept of messages received and actions taken to follow up messages left?
 - Please provide any other relevant information about the monitoring of the mailbox".
14. Unfortunately, the Cabinet Office did not respond to this email despite the Commissioner chasing a response informally on several occasions. The Commissioner served an Information Notice on 5 November 2019

which required the Cabinet Office formally to respond within 30 days of the date of that Notice. Regrettably, it did not respond until 2 January 2020 following further intervention from the Commissioner.

15. It explained the following:

- its FOIA team try to check the voicemail box once a week although this may slip in busy periods. It noted that the box itself is never full to capacity because of the very low volume of messages (which may or may not be valid FOIA requests) and that, as a consequence, messages are unlikely to be missed between checks.
- It treats calls to the mailbox as it would every other FOIA request and seeks to respond within 20 working days. Messages left on the voicemail box are timed and dated so that it can easily log them accordingly – it went on to explain that it logged verbal requests as it would log written requests. It further explained that in a typical week this would be only 2-3 requests and described 80-90% of these as not being valid FOIA requests. It said that they were often general enquiries or concerns and these were directed to an appropriate alternative inbox or policy team.
- When a person was absent due to leave, there is always appropriate coverage from other team members. It set out who had access to the mailbox and where detailed instructions for accessing the mailbox are located.
- Verbal FOIA requests were very rare but they were always followed up even if efforts to contact the caller failed initially.

The Commissioner's conclusion

16. The Commissioner's previous decision notice (of 2017) referred in detail to the FOIA section 45 Code of Practice. This Code was revised in 2018 and a new Code was published on 4 July 2018.³

17. Paragraph 2.5 of the revised Code states the following:

"2.5 There may be circumstances where a person is unable to frame their request in writing, for example owing to a disability. In these instances the public authority should make sure that assistance is given to enable them to make a request for information. For example, advising the person that another person or agency (such as a Citizens Advice

³ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Bureau) may be able to assist them with the application, or make the application on their behalf. Public authorities may also consider, in exceptional circumstances, offering to take a note of the application over the telephone and sending the note to the applicant for confirmation. Once verified by the applicant this would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received.”

18. The Commissioner has commented more generally on this paragraph in the Other Matters section of this Notice.
19. Turning to the detail of this case, the Commissioner is satisfied that the Cabinet Office now has an appropriate system and related procedures in place for handling verbal requests for information. She has dialled the number and followed the instructions of a recorded message to the voicemail box – she did not leave a message seeking a call back by this system. Considering the matter to the civil standard, that is, on the balance of probabilities, she is prepared to accept the Cabinet Office’s word that it would call back anyone who left a message with a verbal FOIA or EIR request. She is also satisfied that this system was in place when the complainant sought to make a request. She is disappointed that it took the Cabinet Office so long to provide this detail to her.
20. The Commissioner would note that Code of Practice says that the statutory time limit for reply starts when the Cabinet Office has received written confirmation from the complainant as to what the request is. As a consequence, the Commissioner would encourage the Cabinet Office to ensure that it calls back anyone who leaves a verbal request message as promptly as possible in order to avoid unnecessary delay in obtaining that written confirmation. In other words, it does not have 20 working days to pick up and respond to a message. It must do so sooner in order to avoid unnecessary delay for the requester.
21. The Commissioner is satisfied that the complainant sought to use the Cabinet Office’s telephone mailbox system after the matter of the transposed number had been resolved. In other words, she is satisfied that he called the correct number in the matter under consideration. He reports that he deliberately left a particular number in his message to manage any returned calls from the Cabinet Office. He has also successfully used the telephone mailbox system at the Commissioner’s office which indicates that he is familiar with using such systems. The Cabinet Office, on the other hand, denies having any record of messages from the complainant on its mailbox system and says it would have called the number if it had received such a message.
22. As noted above, the Commissioner must consider the matter on the balance of probabilities. She therefore concludes that although there

appears to have been some sort of technological problem which meant that the complainant's message was not registered on the Cabinet Office's mailbox system, the Cabinet Office did, at the time of the request, have an adequate system in place which accorded with the suggested requirements of paragraph 2.5 of the section 45 Code of Practice.

23. Had the Cabinet Office picked up the request but taken 20 working days to get in contact the complainant to check the wording of his request, the Commissioner may have concluded that the Cabinet Office had not complied with its obligations under section 16 of the Act. The "20 working day" provision to respond to requests under FOIA does not fall to be considered until the request is received in writing. It would be unreasonable for any public authority to add unnecessary obstacles and delay to processing requests just because the requester is sight-impaired. That did not arise in this case and so the Commissioner has made no decision on that point.
24. The Commissioner would also note that under the EIR, requests can be made verbally. More details about this are on the Commissioner's website.⁴

Other matters

25. The Commissioner notes the suggestion in the section 45 Code of practice that public authorities advise a requester that they may use an authorised third party, such as the Citizens Advice Bureau ("CAB"), to act on their (the requester's) behalf. The Commissioner notes that it is a suggestion rather than a requirement. It should not be the only way a person who cannot readily make a written request is assisted to make a request. In the Commissioner's view, exercising your information access rights does not require specialist knowledge or legal expertise.
26. The Commissioner does not act on behalf of requesters but can offer general information on how to make a request. If a person is unable to access, the Commissioner's website for information about this, the Commissioner's helpline number is **0303 123 1113** (local rate – calls to this number cost the same as calls to 01 or 02 numbers).

⁴ <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/receiving-a-request/>

27. The Commissioner is disappointed that a relatively straightforward matter could not be resolved informally. Unfortunately, the Cabinet Office did not respond to the Commissioner's final enquiries in this matter and she needed to serve an Information Notice in order to obtain that response from the Cabinet Office.

Right of appeal

28. 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

29. 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.
30. 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

Elizabeth Hogan
Senior Case Officer
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