

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 January 2022

Public Authority: The Foreign, Commonwealth and Development Office

Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant requested from the Foreign, Commonwealth and Development Office (FCDO) information relating to the correspondence between the Secretary of State and the Prince of Wales during a specific time period. The FCDO refused to confirm or deny whether it held information within the scope of the request, citing section 12(2) (cost limits) of the FOIA.
2. The Commissioner's decision is that the FCDO was entitled to refuse to comply with the request in accordance with section 12(2) of the FOIA. He also finds that the FCDO met its obligations under 16(1) of the FOIA to offer advice and assistance.
3. The Commissioner does not require the FCDO to take any steps.

Request and response

4. On 25 November 2020, the complainant wrote to the FCDO and requested information in the following terms:

"I would like to request the following information under the Freedom of Information Act and the Environmental Information Regulations. I understand my request will take 20 working day to process but I would be grateful if you could acknowledge receipt.

Please note that this is a request for historic material relating to both the Foreign Secretary and the then holder of the post of Secretary of State for International Development. I understand that the Foreign, Commonwealth and Development Office now holds documentation previously held by Dfid.

Please note that the reference to the Prince of Wales in the questions below should include the Prince of Wales (irrespective of which of his official titles he is using), his Principal Private Secretary(ies), any Assistant Private Secretary(ies), and anyone in his private office able to correspond and communicate on his behalf.

Please note that the reference to the Secretary of State in the questions below should include those two individuals who held the post of Foreign Secretary and International Development Secretary at the time, their principal private secretary(ies), any other private secretaries and anyone in their private offices able to correspond and communicate on their behalf.

Please note that the reference to written correspondence and communications should include all traditional forms of correspondence such as letters and faxes, all emails irrespective of whether they were sent through official or private accounts and all messages sent through encrypted messaging services.

Please note that I would like to receive copies of any actual correspondence and communications rather than just excerpts from correspondence. For instance, I would like the copy of any actual letter to include the letter heading and any other design features, the date, and the actual signatures. If the body of the text contains any other information which the department believes is non environmental can you, please redact that information where it appears in the letter or email etc. That way I will be able to understand that location and extent of the redaction.

Please note that I am only interested in information which was generated between 1 February 2000 and 1 June 2000.

Please note that I have restricted the request to a particular time frame to ensure it complies with the relevant access legislation. But I am interested in all the department's contacts with the Prince of Wales. So, if you are aware of correspondence and communication which falls outside this time frame, please let me know the relevant dates and I will submit a new request for information.

Please note that the Environmental Information Regulations (EIRs) also includes information relating to 'the state of human health and safety, conditions of human life, cultural sites and built structures.'

1... During the aforementioned period did the Prince of Wales write and communicate with the Secretary(ies) of State. If the answer is yes can you, please provide a copy of this correspondence and communication.

2... During the aforementioned period did the Secretary(ies) of State write and communicate with the Prince of Wales. If the answer is yes can you, please provide a copy of this correspondence and communication.

3... If documentation relevant to this request has been transferred to an archive. Can you please identify the archive? Can you please state when the material was transferred? Can you please supply any relevant file names and reference numbers?

4... If material relevant to this request has been destroyed. Can you identify which documents were destroyed and why. In the case of each destroyed piece of documentation can you please provide a brief outline of its contents. In the case of each destroyed piece of correspondence and communication can you identify the author(s), the recipients and the date generated. If destroyed documentation continues to be held in another form can you, please provide a copy of that destroyed documentation."

5. The FCDO responded on 11 January 2021 and refused to confirm whether or not it held information within the scope of the request citing section 12(2) (cost limits) of the FOIA.
6. On 25 January 2021, the complainant wrote to the FCDO to request an internal review

7. Following an internal review the FCDO wrote to the complainant on 9 March 2021. The FCDO maintained its reliance on section 12(2) (cost limits) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 15 March 2021 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of this case to be to determine if the FCDO has correctly cited section 12(2) of the FOIA in response to the request.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

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 FOIA states that:

"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 cost limit."

12. Section 12(2) of FOIA states that:

"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."

13. 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 public authorities such as the FCDO.

14. 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 time limit of 24 hours for the FCDO.
15. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - 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.
16. A public authority does not have to make a precise calculation of the cost of determining whether the information is held, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/00041*, the Commissioner considers that any estimate must be "*sensible, realistic and supported by cogent evidence*".
17. The task for the Commissioner in a section 12(2) matter is to determine whether the public authority made a reasonable estimate of the cost of determining whether the requested information is held.
18. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under the FOIA to consider whether there is a public interest in the disclosure of the information.
19. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

The FCDO's position

20. As is the practice in a case in which the public authority had cited the cost limit under section 12 of the FOIA, the Commissioner asked the FCDO to provide a detailed explanation of its estimate of the time and cost of responding to the request.

21. In its submissions to the Commissioner, the FCDO maintained its reliance on section 12(2) of the FOIA and offered an explanation for how it had calculated that the request exceeded the appropriate limit.
22. The FCDO explained that the majority of information it holds from between 1 February 2000 and 1 June 2000 is held in hard copy file format. Therefore, the FCDO estimated that it would have to review the lists of approximately 20,429 files to determine if it held the requested information. This figure only includes files formerly held by the Foreign and Commonwealth Office from the year 2000. The FCDO stated that due to the broad nature of the request, it was unable to narrow its search to a particular subject, topic or country.
23. The FCDO explained that when it carried out an initial search for the requested information, it identified a total of 43,122 files from the year 2000 and beyond. The FCDO explained that it would then have reviewed the list of files to determine whether any of the files contained information within the scope of the request.
24. The FCDO explained that whilst it holds lists of files, not every document within a file is registered. Therefore, to determine whether a file contained any information within the scope of the request, each file would need to be checked.
25. When calculating at a rate of £25 an hour, the FCDO calculated that it would cost approximately £6 to search each file and extract the relevant information. This is the equivalent of around 14 minutes per file. This means that the FCDO could only search 100 files within the cost limit of £600.

The Commissioner's position

26. The Commissioner accepts that the FCDO would be unable to narrow its search for the requested information by subject, topic or country due to the broad nature of the request.
27. The Commissioner considers the FCDO estimate of 14 minutes to search and extract the relevant information from each file to be reasonable. As there are 43,122 files that would need to be searched, the Commissioner is satisfied that the cost of determining whether the requested information was held would exceed the appropriate limit. Based on the FCDO's estimated cost of £6 to search 43,122 files, the total cost to comply with the request would total £258,732.
28. Even if the FCDO was to take only 5 minutes to search and extract information from each file, the cost of determining whether the requested information was held would still be far in excess of the appropriate limit under the FOIA.

29. The Commissioner's decision is that the FCDO estimated reasonably that the cost of determining whether the requested information was held would exceed the cost limit. Therefore, the FCDO was correct to apply section 12(2) of the FOIA to the request.

Section 16(1) – the duty to provide advice and assistance

30. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
31. The FCDO advised the complainant that he could submit a new request with a reduced scope. The FCDO suggested to the complainant that he could narrow the scope of his request by limiting the request to a particular subject, topic or country.
32. The Commissioner considers that this was an appropriate response in the circumstances given the broad scope of the original request. He is therefore satisfied that the FCDO met its obligations under section 16(1) of the FOIA.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

33. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

34. 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.
35. 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

Michael Lea
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