

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 March 2023

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has made a meta-request to the Cabinet Office for copies of email threads identified as part of a subject access request (SAR) disclosure. The Cabinet Office refused the request under section 14(1) of FOIA.
2. The Commissioner's decision is that the request was vexatious therefore the Cabinet Office is entitled to rely on section 14(1) to refuse it.
3. The Commissioner does not require any steps.

Request and response

4. On 13 July 2021, the complainant wrote to the Cabinet Office and requested information in the following terms:

"Dear Cabinet Office,

I would like all of the emails thread referred to in the attached document (that is all of the emails with the same subject line as those containing the attached quotes).

Please note that I am [name redacted] and that you do not need to redact personal information that regards me. Your colleagues from SAR can attest to this.

If you need any further information from me, please let me know as soon as possible.

Best,

[name redacted]"

5. The Cabinet Office responded on 6 August 2021. It stated that it was refusing the request under section 14(1) of FOIA. The Cabinet Office explained that it considered that the request was frivolous, an attempt to reopen issues that had already been comprehensively addressed through separate responses, complaints and litigation, and that the complainant had taken a scattergun approach by not specifying which information was of a particular interest.
6. On 6 August 2021 the complainant requested an internal review. The complainant challenged the Cabinet Office's assessment of the request as frivolous stating:

"I find this value judgement to be quite insulting, especially given the context of the request, which is to shed light on a severe failure by a UK agency [name redacted] to disclose documents as stated by the court judgement."¹

7. Following an internal review the Cabinet Office wrote to the complainant on 12 October 2021. It stated that it was upholding its position.

Scope of the case

8. The complainant contacted the Commissioner on 25 November 2021 to complain about the way his request for information had been handled. They outlined their grounds of complaint in the following terms:

"Hello, I'm a freelance journalist and I have made a SAR request to the Cabinet Office for personal information. I was dismayed to find out that instead of an applicant blind process, the Cabinet Office had coordinated the responses to multiple - unrelated - FOIAs that I had made to various UK agencies. The FOIAs were extremely diverse as they were related to different investigations. Some regarded the export of Ebola samples to the UK from West Africa in 2013-2016, another was about the UK's funding of the Ebola response in Congo, another about a mining project in Cameroon. The only point of commonality between these requests

¹ For the reasons referred to in paragraph 18, the Commissioner has not included the name of the public authority in question.

was that I had made them. As you know there is a parliamentary inquiry looking at whether the Cabinet Office is flouting the applicant blind principle of the FOIA. There is therefore a strong public interest in looking at how they coordinate FOIA response, and in my case in particular Under the SAR, the Cabinet Office provided very short excerpts of the emails regarding me and my FOIAs (I have made a complaint about this to the ICO). So I asked for all the emails in a FOIA. They refused in their response and confirmed this in an internal review. In addition to the failure to consider the very clear public interest in disclosure, the Cabinet Office has used very odd exceptions: vexatious (even though this is my first such request to them). In particular, they argue the request has a "scattergun approach" although I am asking for very specific emails and made the reasons for this clear. They also state this was a "futile request" which is very puzzling since there is an ongoing parliamentary inquiry into their practice of coordinating FOIA responses. I'm not sure if they also think the inquiry into them is "futile" but they are probably not the most objectively placed to judge this. It seems quite clear that the main reason that the Cabinet Office finds the request "vexatious" is because it seeks to highlight their failings."

9. The Commissioner considers the scope of the complaint to be whether the Cabinet Office is entitled to rely on section 14(1) to refuse the request.

Reasons for decision

Section 14(1) – vexatious requests

10. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
11. The word "vexatious" is not defined in FOIA. However, as the Commissioner's updated guidance on section 14(1)² states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
12. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is

² <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.

13. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
14. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("Dransfield")³. Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
15. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
16. The four broad themes considered by the Upper Tribunal in Dransfield were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
17. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They stated:

"all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA" (paragraph 82).

The Cabinet Office's position

18. In their submissions to the Commissioner the Cabinet Office explained that it viewed the request forming the basis of the present decision

³ <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

notice as linked to the complainant's prior complaints and litigation regarding FOI requests he had made to a particular government agency. Due to the risk of inappropriate disclosure of the complainant's personal data⁴ through direct reference to prior Tribunal decisions and complaints (including the name of the government agency), the Commissioner has expanded on paragraph 18 within a confidential annex which will be provided to the Cabinet Office and the complainant only.

19. The Cabinet Office highlighted the complainant's wish, as contained within their internal review request, to "shed light on a severe failure by a UK agency [name redacted] to disclose documents as stated by the court judgement". It is the Cabinet Office's position that by submitting an information request to their offices the complainant is seeking to use information to reopen a publicly litigated matter that has been concluded with an outcome favourable to the complainant. The Cabinet Office notes that, as it was not party to the earlier complaints or court proceedings it is unclear how any information it holds potentially within scope of the request "will explain the failings of [the government agency] to act in accordance with the FOIA".
20. The Cabinet Office further explained its position that it believed the request to take a "scattergun" approach; that the aim of the request is to "fish for information without any idea of what might be revealed which will suit the complainant's personal issues with [the government agency]. Thus, diminishing the serious purpose of this request. It is our belief that if the information were to be disclosed to the complainant it will only motivate them to unreasonably persist further with this matter."
21. In respect of the complainant's claims that compliance with the request would provide transparency on the Cabinet Office Clearing House (COCH) processes, the Cabinet Office stated that fulfilment of the request would not offer any new or significant explanations as to the Clearing House functions further to that already available in the public domain, such as the report on the Clearing House by the Public Administration and Constitutional Affairs Committee (PACAC)⁵ and documents available on the Cabinet Office website⁶ outlining the

⁴ The Commissioner does not include the name of the complainant in his decision notices.

⁵ <https://committees.parliament.uk/publications/22055/documents/163743/default>

⁶ <https://www.gov.uk/government/publications/cabinet-office-and-freedom-of-information>

Clearing House remit and processes. It is important to state at this point that the PACAC report post-dates the complainant's request, therefore the availability of this information is not relevant to the Commissioner's role in determining whether the request is vexatious.

22. Lastly, the Cabinet Office stated that compliance with the request at a practical level would place a significant burden on its resources. It took the position that most of the information would "attract a variety of potential exemptions and it would take an unreasonable amount of time for officials to give proper consideration as to which exemptions may apply to certain entries in the circumstances." It also claimed that there is limited public interest in processing and disclosing this type of information.

The Commissioner's position

23. The Commissioner's position is that the Cabinet Office are entitled to rely on section 14(1) to refuse the request. The Commissioner does not require any steps.
24. The Commissioner is mindful that the request holds serious purpose in seeking to elicit a better understanding of how requests are referred to the COCH, and recognises that there has been public interest in the Cabinet Office's handling of information requests generally, the matter having attained high profile media interest over the past two years. The Commissioner is also aware that a number of journalists and democracy campaigners in particular felt that the Cabinet Office handled their requests with a disregard for the "applicant-blind" principle of FOIA. Indeed, in their grounds of complaint to the Commissioner the complainant alleges that "instead of an applicant blind process, the Cabinet Office had coordinated responses to multiple – unrelated- FOIAs that I had made to various UK agencies". As such, the Commissioner does not consider the request to be futile or frivolous on the basis that it lacks purpose, however he does not consider the request to carry as much value as the complainant believes it to. While he understands the complainant's rationale, the Commissioner considers it unlikely that compliance with the complainant's request specifically will deliver information of value that is likely to satisfy any public interest in the activities of the COCH. Nor it is likely to offer the public a valuable, significant or conclusive finding as to whether the Cabinet Office are adhering to the "applicant-blind" principle of FOIA, or would it have done

at the time the request was made when the PACAC inquiry into the COCH was ongoing.

25. Furthermore, within their submissions the Cabinet Office has directed the Commissioner to information contained on the 'Cabinet Office and Freedom of Information' section of its website, which contains documents detailing the Clearing House Remit and Cabinet Office FOI Referral Criteria (published March 2021, predating the complainant's request). While he has not had sight of the complainant's information requests to other government departments, he is aware of the nature of the information sought by them and considers it plausible to assume that requests of this type could have triggered referral to the Cabinet Office based on the criteria given. This offers an alternative view to the complainant's assertion that the Cabinet Office are coordinating complaints without adherence to the "applicant-blind" principle. It is also important to note that the departments to which the complainant made their information requests fall within the COCH remit.
26. The Commissioner is in agreement with the Cabinet Office's position on the complainant's motive in respect of the previous appeal regarding requests made to another government agency, and the value of the request in relation to its potential burden on the Cabinet Office. Taking into account the significant background context surrounding the request, and having had sight of the SAR disclosure and the nature of the information referenced within it, the Commissioner agrees that it is likely that the complainant's motivation for making their information request is to obtain information that will enable them to reopen matters that have previously been subject to complaints and litigation.
27. In their request for internal review, the complainant has given the context surrounding their request as seeking to "shed light on a severe failure by a UK agency". That public authority's handling of the complainant's prior requests has already been formally recorded by the Commissioner and the Tribunal; the First-tier Tribunal decision passed critical commentary on the authority's mishandling of the requests, however, there is nothing contained within their decision to suggest that the Cabinet Office or the Clearing House were involved in coordinating the requests at the time they were made, nor were either offices involved in the complainant's appeal. From the information available to him, it appears to the Commissioner that it was through their SAR that the complainant became aware of correspondence between the Cabinet Office and other bodies, in which references to their information requests is contained. The Commissioner therefore considers that the information request to the Cabinet Office has been made speculatively, and with the intention to unearth information contained within the correspondence referenced in the SAR disclosure that may prove useful

to the complainant in respect of reopening prior complaints and litigation against the government agency in question.

28. In their submissions to the Commissioner, the Cabinet Office explained that it had conducted a sample search of one shared mailbox and identified 44 emails that would require review in order to confirm whether they fell within scope of the request, before then considering whether any exemptions apply. It also explained that review of the emails would also require the removal of duplicates due the manner in which Gmail formats email chains. The Cabinet Office stated that it had "significant concerns that various exemptions under the FOI Act will apply to at least some of the information in scope. It is believed, at the very least, that most information would be redacted under section 36(2)(b)(i), (ii) and (c) prejudice to the effective conduct of public affairs, section 42(1) legal privilege and section 40 personal information." Ultimately, the Cabinet Office concluded that complying with the request would be burdensome and take an unreasonable amount of time, and it was outside of the public interest to do so.
29. The Commissioner's opinion is labour required from the Cabinet Office in order to process the request is disproportionate to its limited value. That is not to say that the processes as described at paragraph 28 are particularly extraordinary or would require an obvious resource surplus, but that they are not justifiable in the given context. The information requested is of principal significance to the complainant, and in the Commissioner's view is of limited wider interest.
30. As a final point, the Commissioner wishes to state that this is a difficult, borderline case without clear precedence, and in reaching his decision he has undertaken a balanced assessment of arguments presented to him from both parties. The Commissioner therefore finds that section 14(1) is engaged for the reasons given at paragraphs 23 to 29 above. He does not require any steps.

Right of appeal

31. 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

32. 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.
33. 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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