

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 February 2023

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested to know the number of times, between March and July 2020, that the Prime Minister and the Home Secretary met. The Home Office refused the request, citing section 12(1) (Cost of compliance exceeds appropriate limit) of FOIA.
2. The Commissioner's decision is that the Home Office was entitled to apply section 12(1) to refuse the request.
3. The Commissioner requires no steps as a result of this decision.

Request and response

4. On 13 July 2020, the complainant wrote to the Home Office and requested information in the following terms:

"How many times the Home Secretary had met with the Prime Minister during the period 23 March – 13 July 2020."
5. The Home Office initially confirmed that while the two met on at least 3 occasions, information about Cabinet committee and subcommittee meetings was exempt under section 35(1)(b) (Formulation of government policy - ministerial communications). However, during the Commissioner's investigation, the Home Office withdrew its application of that exemption and stated instead that it was not required to comply with the request because it engaged section 12(1) of FOIA.

Reasons for decision

6. The analysis below covers whether the Home Office was entitled to apply section 12(1) of FOIA to refuse the request. The complainant disagrees with its claim that section 12(1) is engaged.
7. Section 12(1) of FOIA states that a public authority is not required to comply with a request for information if it estimates that the cost of doing so would exceed the appropriate cost limit.
8. 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 government departments such as the Home Office, or 24 hours' work. If, on receipt of a request, the Home Office estimates that it would take longer than 24 hours to comply with the request, it is entitled to refuse it under section 12(1) of FOIA.
9. The Fees Regulations state that a public authority can only take into account the costs it reasonably expects to incur in carrying out the following activities:
 - 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.
10. The Home Office says that carrying out these tasks would exceed the appropriate costs limit. It told the complainant:

"...it could not easily be identified whether the Prime Minister was chairing the meeting. It would be necessary to locate and examine the documents relating to the meeting to determine this and hence if the meeting fell within scope of your request.

Although the period covered by the request is relatively narrow, these meetings were happening more than one a day in some cases and to track down the papers for each meeting would, we estimate, take more than 24 hours' work."
11. It is noted that the Home Office has not provided an actual time / cost estimation on this occasion. However, it has explained that more than 100 meetings potentially fell within scope of the request and that it was not readily apparent which ones would have been attended by both the Prime Minister and the Home Secretary. To ascertain this information it would be necessary for a number of staff to search their inboxes to locate the agendas for any meetings potentially within scope, and then

examine them to establish whether they revealed whether both parties were present at each meeting. It would also be necessary to consult further documents considered at a meeting, where an agenda itself did not reveal that information.

12. From the information the Home Office has provided, and bearing in mind the frequency with which potentially relevant meetings occurred, the Commissioner accepts that it would take a considerable amount of time to locate and review nearly four months' worth of meeting agendas, and any other associated documents, in order to ascertain who had attended particular meetings.
13. The Commissioner is therefore satisfied that the arguments provided by the Home Office are a reasonable estimation of the work involved. The volume of information to be searched would exceed what it would be able to review within the appropriate cost limit of £600, or 24 hours' work.
14. The complainant was asked to provide specific grounds for disagreeing with the Home Office's position. He said that he had requested similar information from the Department of Health and Social Care ('DHSC'), and that it had complied with that request.
15. The Commissioner notes in that case that the request had initially been refused under section 12(1) and that the complainant had subsequently agreed to reduce the timescale of the request to just two months. It was at this point that the DHSC was able to comply with the request without the work involved exceeding the appropriate limit. In contrast, the timescale specified in this request is nearly twice as long.
16. Having considered the explanations provided by the Home Office, and in the absence of convincing countering arguments, the Commissioner accepts the Home Office's estimate that complying with the request would exceed the appropriate limit.
17. The Commissioner therefore concludes that section 12(1) is engaged and the Home Office was not obliged to comply with the request.
18. Although the Home Office did not offer the complainant advice on how the request might be revised so as not to exceed the cost limit, the Commissioner considers it obvious from its explanations to him that reducing the time frame specified in the request (which covered nearly four months) may avoid engaging section 12, as might specifying particular subject areas of interest. The Commissioner therefore finds no failure to provide advice and assistance, and, therefore, no breach of section 16 of FOIA.

Right of appeal

19. 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

20. 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.
21. 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

Samantha Bracegirdle
Senior Case Officer
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Wycliffe House
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Wilmslow
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SK9 5AF