

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 December 2023

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

Decision (including any steps ordered)

1. The complainant requested information from the Cabinet Office relating to wildfires. The Cabinet Office refused to comply with the request citing section 12 (cost limit) of FOIA.
2. The Commissioner's decision is that the Cabinet Office was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. The Commissioner also finds that the Cabinet Office complied with its obligations under section 16 to offer advice and assistance.
3. The Commissioner does not require the Cabinet Office to take any steps.

Request and response

4. On 5 May 2023, the complainant made the following request for information to the Cabinet Office:

'What documentation followed this document of 2019 has your office been involved in with regard to wildfire preparedness for the safeguarding of people and their homes near woodland?

Document-Home Office.

Wildfire Framework For England
<https://fireengland.uk/sites/default/files/2021-12/211220%20Wildfire%20Framework%20for%20England.pdf>

I have seen online Fire Service advise to countryside wildfire safety but nothing to wildfires spreading to inhabited homes not normally considered in the countryside. My serious concern is to the very many housing estates that border woodland. It is to this perceived danger that I seek information pertinent to Great Britain and Northern Ireland."

5. The Cabinet Office responded to the complainant's request on 6 June 2023, stating that it did not hold the requested information and suggesting a FOIA request to the Home Office. The complainant requested an internal review of the Cabinet Office's handling of their request, the result of which was provided to them on 11 July 2023. The complainant clarified that the request asked:

"What documentation followed this document of 2019 has your office been involved in with regard to wildfire preparedness for the safeguarding of people and their homes near woodland?"

Document - Home Office. Wildfire Framework For England
[https://fireengland.uk/sites/default/fil... .](https://fireengland.uk/sites/default/fil...)"

6. The reviewer stated that the Cabinet Office did hold information within the scope of the complainant's request, however it was applying section 12(1) of FOIA. The reviewer also offered the complainant advice and assistance in terms of potentially narrowing or refining their request or alternatively suggested that the complainant make the same request to the Home Office and provided details.

Scope of the case

7. The complainant contacted the Commissioner on 1 August 2023 to complain about the way their request for information had been handled. The complainant disagrees with the Cabinet Office's application of section 12 of FOIA. The Commissioner considers the scope of this case to be to determine if the Cabinet Office has correctly cited section 12(1) of FOIA in response to the request. The Commissioner has also considered whether the Cabinet Office met its obligation to offer advice and assistance under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

8. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
9. Section 12(2) of the FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. The Cabinet Office relied on section 12(1) in this case.
10. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the Cabinet Office is £600.
11. 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 Cabinet Office.
12. 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.
13. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, the Commissioner considers that any estimate must be “sensible,

realistic and supported by cogent evidence". The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.

14. 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 FOIA to consider whether there is a public interest in the disclosure of the information.
15. Where a public authority claims that section 12 of 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 FOIA.

Would the cost of compliance exceed the appropriate limit?

16. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked the Cabinet Office to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
17. In its internal review response and its submission to the Commissioner the Cabinet Office stated that it had interpreted the term 'document' to include emails, word documents, spreadsheets and presentations. It also stated that it had also interpreted 'involving' to mean documents on the subject of wildfire preparedness which the Cabinet Office created, has had some input into or on which the Cabinet Office has been consulted.
18. The Cabinet Office informed the Commissioner that an initial search was carried out by an official within the policy team believed to hold information in scope of this request for the period 1 January 2019 to the date of the request. It was established that the term 'wildfire' generated 3,568 emails. These emails, however, covered a wide range of subjects such as invitations to meetings, risk assessment and briefing notes. Several of these emails were also shared for information purposes, and therefore would not fall within the relevant subject matter for this request.
19. The Cabinet Office has estimated that it would take an average of 30 seconds for an official to determine whether an email would be within the scope of this request, to isolate this email and save it to a separate area if appropriate. It estimated that this stage would take approximately **29 hours** (3568 emails x 30 seconds).

20. In relation to documents, the Cabinet Office stated that a search was also carried out within the main file repository for emails held by the policy team for the search terms 'wildfire' and 'preparedness'. It was, however, not possible to limit the results of these searches for the period 1 January 2019 to date as the dates of these files were overwritten during the transition of the system to using Google products. These searches returned 1,687 returns, also covering a wide range of records. The Cabinet Office estimated this to also take an average of 30 seconds for an official to access and isolate each record. It estimated that this stage would take approximately **14 hours** (1687 x 30 seconds).
21. The Cabinet Office therefore concluded that conducting searches through for the terms that concern the scope of the request over 3,568 emails and 1,687 documents, as well as determining which records are in scope, would require approximately **43** hours to accomplish.
22. The Commissioner considers that the Cabinet Office estimated reasonably that it would take more than the 24 hours to respond to the request. The Cabinet Office was therefore correct to apply section 12(1) of FOIA to the complainant's request.

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

23. Section 16(1) of 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).
24. The Commissioner notes that the Cabinet Office offered the complainant advice and assistance in terms of potentially narrowing or refining their request or alternatively suggested that the complainant make the same request to the Home Office and provided details.
25. The Commissioner is therefore satisfied that the Cabinet Office met its obligations under section 16 of FOIA.

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

Right of appeal

26. 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

27. 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.
28. 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

Deirdre Collins
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