

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 April 2024

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

Decision (including any steps ordered)

1. The complainant made a request to the Cabinet Office for minutes and notes of the highest board of the Central Digital and Data Office.
2. The Cabinet Office refused the request under section 14(1) of FOIA (vexatious requests).
3. The Commissioner's decision is that the request was vexatious, based on the oppressive burden that complying with the request would impose, and therefore the Cabinet Office was entitled to rely upon section 14(1) of FOIA to refuse it.
4. The Commissioner does not require any steps to be taken.

Background

5. The Central Digital and Data Office ('CDDO') is part of the Cabinet Office. The CDDO leads and sets the strategic direction of the digital, data and technology function for government.¹

Request and response

6. On 23 August 2023, the complainant made the following request for information to the Cabinet Office:

"The Central Digital and Data Office (CDDO), is part of the Cabinet Office.

I presume, like the rest of the civil service, that there are a number of committees/boards operating in the CDDO.

Therefore there will be a committee/board that overlooks the working of the Office. When this meets, a record will be taken of the discussion and actions agreed.

Therefore I am requesting the minutes/notes taken for this topmost board, for the financial years 21/22 and 22/23."

7. On 21 September 2023, the Cabinet Office responded and refused to comply with the request, citing section 35(1)(a) of FOIA (government policy).
8. The complainant requested an internal review on 25 September 2023 disputing that section 35 applied in the circumstances.
9. The Cabinet Office provided its internal review on 23 October 2023 and revised its original position. It now cited section 14(1) of FOIA (vexatious requests) as its basis for refusing to comply with the request. The Cabinet Office argued that the request is vexatious because dealing with it would impose a significant burden on the Cabinet Office. It recommended that the complainant refine the request.

¹ <https://www.gov.uk/government/organisations/central-digital-and-data-office/about>

Scope of the case

10. The complainant contacted the Commissioner on 25 October 2023 to complain about the way their request for information had been handled. They dispute that section 14(1) applies.
11. As is the practice in a case where a public authority has cited section 14, the Commissioner asked the Cabinet Office to provide a more detailed explanation of its application of section 14 to the request.
12. The submissions were duly provided to the Commissioner.
13. This notice covers whether the Cabinet Office correctly determined that the request was vexatious.

Reasons for Decision

Section 14(1) – vexatious requests

14. 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.
15. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s 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.
16. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
17. 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.
18. Most people exercise their right of access responsibly. The Commissioner’s guidance on what may typify a vexatious request

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

stresses, however, that it is always the request itself, and not the requestor, which is vexatious.

19. 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.
20. 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.
21. 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).
22. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. Rather, it stressed the:

"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests."
(paragraph 45)
23. Sometimes it will be obvious that a request is vexatious and other times it will not. In considering such borderline cases, the key is to weigh up any purpose and value that the request represents against any disruption, irritation, or distress that compliance with the request may cause the public authority. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and

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

balance this against the purpose and value of the request. The UT stated in Dransfield that:

“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 arguments

24. In its internal review dated 23 October 2023, the Cabinet Office argued that the complainant's request would impose a significant burden on it as it consisted of a substantial amount of material, due to the amount of time required to review and prepare the information for disclosure, and as it cannot be easily isolated for redaction because it is scattered throughout the requested material. It explained:

“This request is burdensome as it substantially includes the burden of redacting multiple sources of information, in consideration of various applicable exemptions. Although it may have been possible to locate the information easily, redacting relevant information, consulting multiple third parties, and in general preparing the information for publication creates an unsustainable burden for the Cabinet Office.”

25. The Cabinet Office maintained in its submissions to the Commissioner dated 19 March 2024 that section 14 applies to the request.

26. The Cabinet Office's submissions first explained its interpretation of the request and that it understood that it was seeking meeting minutes of the "topmost board" of the CDDO for two full financial years (2021/22 and 2022/23). It stated that the CDDO considered that the Government Digital and Data Functional Leadership Group ('FLG'), which oversees CDDO overall and the cross government strategy and delivery work of the CDDO, to be the most senior board for the purposes of the request. It set out that:

“The FLG is a senior user-led board to address key strategic considerations related to the Digital and Data function and relevant issues, supporting government objectives and ensuring accountability of delivery, both centrally and within government departments. FLG's responsibilities include overseeing and monitoring progress against the key elements of Digital and Data transformation, as well as inputting into the future direction, and addressing strategic issues and risks that impact the Digital and Data function, advocating measured approaches and mitigations.”

27. The Cabinet Office went on in its submissions to set out more information about the FLG as follows:

"FLG holds the centre and government departments accountable for functional activity as follows:

- Developing capability:
 - Assures cross-government capability plans to ensure functional teams can deliver against priorities.
 - Assures and monitors risks of the talent pipeline into Director and Director General roles and advises on strategic actions to mitigate any identified risks.
 - Oversees Digital and Data Senior Civil Service (SCS) roles including ownership of SCS functional talent assessment and determining the level of functional support required for Director and Deputy Director Digital and Data vacancies, including recommending where roles might be best filled with internal candidates determined by talent discussions.
 - Championing and implementing the Digital and Data pay and capability framework and making recommendations on improvements.
- Expert advice:
 - Reviews and inputs to Spending Review bids, functional plans and surveys and ministerial submissions and business cases made to Cabinet Office and HM Treasury where relevant.
 - Inputs to progressing cross-government work across the function as necessary.
- Assure standards:
 - Make decisions on issues escalated by other Digital and Data Governance Groups, including overseeing performance management of digital services and technology in government.
- Drive continuous improvement:
 - Contributes to and tests new ideas and innovation in the Digital and Data space.
 - Shares best practice to achieve a more joined up and collaborative approach across government.
 - Identifies and builds links with other government functions where appropriate.
- Funding:

○ Advises on the approach to functional spend and resource where there is a cross-government priority or impact.”

28. The Cabinet Office further stated that the breadth of the request was significant. It said: “the request makes no attempt to identify any particular topic of interest and simply asks for all minutes of the top level board for two whole years.” Further, the Cabinet Office argued that:

“In light of the breadth of the request (which highlights no particular topic of interest and so might reasonably be described as a fishing request) and the volume of information that would need reviewing, there would clearly be a significant burden on the Cabinet Office / CDDO. This would be in comparison to the fact that the requester does not appear to be seeking anything in particular, and so it is against a very limited public interest in processing the request further.”

29. In its submissions to the Commissioner, the Cabinet Office expanded on its arguments about the burden of the request on the Cabinet Office.

30. The Cabinet Office provided the Commissioner with details about the amount of information falling in scope of the request. It explained that the CDDO holds 33 sets of minutes in scope of the request, which account for 161 pages of material.

31. The Cabinet Office also explained to the Commissioner what FOIA exemptions it believed will apply to the information and which material within the minutes is likely to engage the relevant exemption as follows. This included:

- section 22 (information intended for future publication)
- section 24 (national security)
- section 35(1)(a) (government policy)
- section 36 (effective conduct of public affairs)
- section 40 (personal information)
- section 43 (commercial interests)

32. The Cabinet Office argued that the purpose of the discussions and activity of FLG is so significantly broad in nature, as set out in para 27 above, that it had real concerns that information scattered throughout the minutes of all of the meetings was likely to involve the application of the above exemptions. It said:

“The Cabinet Office cannot easily isolate any potential exempt information from the requested material in scope, as the minutes

substantially cover all manner of topics, issues, and considerations covered by the above exemptions, and only a line by line review (with consultations) of all the information would confirm this.”

33. In addition, the Cabinet Office argued that the widely drawn scope of the request would require the material to be reviewed by numerous parties and stakeholders, including an initial review by the secretariat and central team, consultation with teams that contributed to the relevant sections of the minutes (or who owned the policy / operation matters discussed) and any third party or external stakeholders of which the minutes relate to. Relevant redactions would then need to be made and senior sign off would also be required.
34. The Cabinet Office estimated that it would take 38-54 hours to prepare the information, consult third parties and redact it. It provided the following summary to support this conclusion:

“**Prepare the information:** Reading and understanding 161 pages of A4, based on an average speed of 200-250 words per minute, with an A4 page typically containing around 250-300 words, would take approximately **2.6 hours**.”

Consult third parties: locating contacts for each section of the minutes (unspecified amount of time due to officials leaving post, teams/departments changing etc) and then writing an email to relevant officials would take approximately 10 minutes per email. Assuming at least 30 consultations were needed, this would take approximately **5 hours**. It's possible far more consultations would be needed and in some instances it would take additional time to find a relevant official to look at the information.

Responses from those consultations would then need to be considered, collated and centrally highlighted (some would likely require additional discussion). It is estimated this would take more than **10 hours**.

Redaction: Assuming some information was deemed disclosable, CDDO would be required to make comments and mark up the information on each section of the minutes to summarise why sections were exempt and highlight what sections to redact. This would take 30-60 minutes for each set of minutes. **15-30 hours**.

Once agreed, each set of minutes would need to be converted into a pdf file and securely redacted. At 10 minutes per set, this would take **5-6 hours**.

The total time required for these tasks, which is not an exhaustive list as outliers would most likely be the case, would be in the range of **38-54 hours**. This does not include any delays there might be in finding officials to comment on some of the older sets of minutes.

35. The Cabinet Office concluded that the burden Cabinet Office officials would have imposed upon them preparing the requested material for disclosure would therefore be a grossly oppressive one.

The complainant's view

36. The complainant is of the view that section 14(1) does not apply to the request.
37. They said in their internal review request on 25 September 2023, although primarily arguing about the incorrect application of section 35 to the request, that:

“what we are talking about here are the use of AI/digital in the civil service (in which there is a keen, and increasing public interest) and that the release of the CDDO board minutes would have no chilling effect whatsoever on policy formation, discussions, on safe spaces, or affects collective responsibility, then the balance is firmly on the side of releasing the requested information.”

The Commissioner's decision

38. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate, or improper use of FOIA. As previously discussed, there is a high bar for engaging section 14(1).

Value or serious purpose

39. When considering this issue, the UT in Dransfield asked itself, “Does the request have a value or serious purpose in terms of there being an objective public interest in the information sought?” (paragraph 38). The public interest can encompass a wide range of values and principles relating to what is in the best interests of society, including, but not limited to:
- holding public authorities to account for their performance;
 - understanding their decisions;
 - transparency; and
 - ensuring justice.
40. In its submissions to the Commissioner, the Cabinet Office argued that the value and purpose of the request was diminished because the request did not identify any particular topic of interest and simply asks for all minutes of the top level board for two years.

41. The Commissioner reiterates that under FOIA, a requester need not explain why they want the information or justify their request⁴. The Commissioner therefore is not persuaded by the Cabinet Office's argument that the request should be afforded less weight because the complainant did not identify any particular topic of interest. In addition, the Commissioner rejects the Cabinet Office's attempts to characterise this request as a fishing expedition.
42. In this instance the Commissioner notes that it is clear from the complainant's internal review request that the request was focused on the use of AI and digital in the civil service and by extrapolation, the thinking behind the government's public plans to transform its ways of working via a digital transformation.⁵
43. The Commissioner therefore accepts that at the time the request was made it had a value or serious purpose.
44. However, even if the request does have a value or serious purpose, there may be factors that reduce that value. One such factor is the burden the request places on the public authority.

Burden

45. From the evidence he has seen, the Commissioner is satisfied that the complainant has requested a substantial volume of information. He also accepts that the Cabinet Office has real concerns about potentially exempt information being captured by the request, and that some of the information is particularly sensitive.
46. The Cabinet Office stated that in order to comply with the request, a considerable amount of time would need to be spent determining what exemptions apply to the information and weighing up the relevant public interest factors.
47. Overall, the Commissioner notes that the Cabinet Office has carried out a detailed sampling exercise. The Cabinet Office state that the amount

⁴ https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/consideration-of-the-applicant-s-identity-or-motives/#Circumstances_motives

⁵ <https://www.gov.uk/government/publications/roadmap-for-digital-and-data-2022-to-2025>

of work that would be involved in dealing with the request would be 38-54 Hours.

48. The Commissioner considers that in many cases it will be immediately obvious from the minutes which exemption applies. The Commissioner is therefore sceptical of the Cabinet Office's contention that for each set of minutes it would need to consult on every line with internal and external parties to consider whether any exemptions apply (and then do the necessary redactions). While the Commissioner does accept that the Cabinet Office has valid concerns about exempt information within the minutes, he notes that, Cabinet Office officials have significant expertise regarding the application of FOIA exemptions to requested information. Consequently, the Cabinet Office would be expected to be able to quickly recognise whether certain information would be exempt under a particular exemption(s) and so it would not be required to carry out exhaustive checks for each line of the minutes to decide whether a particular exemption(s) applied. Nevertheless, the Commissioner recognises that not every entry in the minutes would lend itself to such immediate exemption recognition due to the wide ranging responsibilities of the FLG.
49. Notwithstanding the Commissioner's doubts in the para above, he accepts that the actual burden which would be imposed would still be considerable. The Commissioner is unconvinced that that the burden of responding to this request could realistically be brought down to a reasonable size.
50. Whilst the limit laid down by The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 is not directly relevant to the application of section 14 FOIA, these give a clear indication of what Parliament considered to be a reasonable charge for staff time. The limit prescribed for central government authorities applying section 12 of FOIA is 24 hours, and this provides a useful starting point for assessing the burden of complying with a request, however it is important to note that the threshold is high for refusal of a request under section 14 based on the time needed for processing.
51. The Commissioner considers that there is a high threshold for refusing a request on such grounds and a public authority is most likely to have grounds for refusal when:
 - a. The requestor has asked for a substantial volume of information, **and**
 - b. The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO, **and**

- c. Any potentially exempt information cannot easily be isolated because it is scattered through the material.
52. On its face, the 38-54 hour estimate is, at the higher end of this range, more than double the 24 hour limit. The volume of information indicated by the Cabinet Office that could fall within the request could potentially be within the threshold for refusing the request. The task of redacting such volume of information would not be straightforward but rather complex and time consuming.
 53. Even if the Cabinet Office were able to redact the information in half the time (taking 15 hours instead of 30), complying with the specific request in this case would still take 38 hours of staff time.
 54. In this particular case, the request is for all minutes of the top level board for two years. The minutes consist of 161 pages of A4 - the volume of information falling within the scope of this request is one that can be described as a considerable volume. The lengthy time frame of the request is also significant. The Commissioner further notes the wide ranging responsibilities of the FLG as set out above. He therefore accepts that preparing the minutes for disclosure would likely involve a close and forensic analysis by staff/stakeholder/third parties with the relevant experience and knowledge to fully understand the implications of a disclosure of the information in question. The Commissioner is also satisfied that exemptions are likely to apply in a scattered manner in the minutes.
 55. The Commissioner does recognise that there is public value in matters such as those contained in the minutes being dealt with as transparently as possible. However, the burden which would be imposed upon the Cabinet Office to comply with the wide ranging scope of the complainant's request in this particular case would be burdensome.
 56. In this case, from the evidence he has seen, the Commissioner is therefore satisfied that, in the particular circumstances of this case, the Cabinet Office has demonstrated that the amount of time to review and prepare the information for disclosure would impose a grossly oppressive burden.
 57. In conclusion, the Commissioner has taken into account all of the above, and considered whether, on a holistic basis, he considers that the request is one that typically characterises a vexatious request - and he finds, in the particular circumstances of this case when assessed against the specific request in this case, that it does.
 58. The Commissioner considers that such is the weight of the burden which would be imposed upon the Cabinet Office in terms of the expenditure of time and resources, and distraction and diversion of the same, that this would be disproportionate to the legitimate purpose and value which

would be served by responding to the request. Consequently, the Commissioner is satisfied that the Cabinet Office were entitled to rely on section 14(1) FOIA to refuse the complainant's request.

59. The Commissioner notes that when refusing a request as vexatious under section 14, unlike in section 12 (costs limit) refusals, public authorities are not required to provide advice and assistance under section 16 of FOIA. However, the Commissioner notes that in its internal review response, the Cabinet Office did suggest that the complainant should consider making a more specific request by reducing its timeframe or naming a specific topic.

Right of appeal

60. 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

61. 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.

62. 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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