

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 June 2024

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

Decision (including any steps ordered)

1. The complainant requested from the Cabinet Office copies of all email communication exchanged between nominet.uk and government.uk during 2022, containing words 'update' and 'domain'. Following the Cabinet Office's refusal based on section 12 (Cost of compliance exceeds appropriate limit) of FOIA, the complainant narrowed down his request to communications contained within four specified email addresses during the same period of time and containing the same key words.
2. The Cabinet Office refused the complainant's request citing section 14(1) (Vexatious requests) of FOIA.
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 further steps.

Request and response

5. On 14 August 2023 the complainant made the following request for information under FOIA to the Cabinet Office:

"Please provide copies of all emails exchanged between nominet.uk and .gov.uk during 2022 which contain both of words "update" and "domain".

Some example dates where this information is known to have transacted:

- * 2022/03/16*
- * 2022/03/04*
- * 2022/02/28*

Some example mailboxes where this information is known to have transacted:

- *[redacted] @dcms.gov.uk*
- *[redacted] @dcms.gov.uk*
- *[redacted] @dcms.gov.uk*
- *[redacted] @digital.cabinet-office.gov.uk*
- *[redacted] @digital.cabinet-office.gov.uk*
- *[redacted] @digital.cabinet-office.gov.uk*
- *[redacted] @digital.cabinet-office.gov.uk*
- *[redacted] @dcms.gov.uk*

Please note during your response to ICO decision reference IC-165170-X2F6 where proportionality of exemptions 41(1) are brought into question:

- > The Commissioner's decision is that section 41(1) does not apply the remaining disputed information.*
- > Provide the complainant with a copy of the email chain which has been withheld on the basis of section 41(1) of FOIA. In doing so the names of individuals can be redacted.*
- > The Commissioner has also found that DCMS breached section 10(1) by failing to respond to the request within 20 working days.*
- > A public authority has to provide more compelling submissions than stating that the detrimental nature of the material is implied. For example, why would disclosure of the specific information that has been withheld be likely to harm the third party's commercial interests? In what way or ways would this harm occur? And to, the complainant's point, in the context of this case to what extent does Nominet have commercial interests?"*

6. On 30 August 2023 the complainant wrote again to the Cabinet Office with clarification of his request saying:

"To avoid any future confusion please note this request is to include all .gov.uk emails which come under the responsibility of this department and not any other department (I have and will continue to make those requests separately).

If the above does not bring the search within your cost limit, please reduce the timeframe of searching to the first quarter of the year. Please however be aware that I will then be requesting the same for all quarters between then and now either after 60 days or through third parties so it is in the interests of everyone that you provide as much data within the cost cap."

7. The Cabinet Office responded on 12 September 2023. It refused to comply with the request, citing section 12 (Cost of compliance exceeds appropriate limit) of FOIA.
8. On 12 September 2023 the complainant refined his original request, asking for the following information:

"Please limit the request to the following mailboxes within the requested time period:

[redacted] @digital.cabinet-office.gov.uk
[redacted] @digital.cabinet-office.gov.uk
[redacted] @digital.cabinet-office.gov.uk
[redacted] @digital.cabinet-office.gov.uk

Only then if costs allow please expand the search to include a wider time period."

9. The Cabinet Office responded on 10 October 2023. It refused to comply with the request, citing section 14(1) (Vexatious request) of FOIA. It argued that dealing with the request would impose a significant burden on the Cabinet Office.
10. The complainant requested an internal review on 10 October 2023.
11. The Cabinet Office provided its response on 7 November 2023. It maintained that section 14(1) applies, on the basis of the burden of complying with the request.

Scope of the case

12. The complainant contacted the Commissioner on 17 November 2023 to complain about the way his request for information had been handled. Specifically he disputed the application of section 14 by the Cabinet Office to refuse his request.

13. The Commissioner considers that the scope of his investigation is to determine whether the Cabinet Office was correct to rely on section 14(1) to refuse the request for information.

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)¹ 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. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
16. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is the position adopted by the Cabinet Office in this case.
17. The Commissioner considers that there is a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where:
 - i. the requester has asked for a substantial volume of information **and**
 - ii. the authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the Commissioner **and**
 - iii. any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

¹ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

The complainant's position

18. When complaining to the Commissioner, the complainant said:
"I provided what I believe to be a reasoned argument as to why my request had followed all guidance from the authority so as to not be considered vexatious and in the public interest to be completed in full; but the authority when conducting the review did not provide a substantiated response to these arguments and guidance on how the request could be progressed on a non-vexatious basis."
19. In his internal review request to the Cabinet Office the complainant argued that, following the Cabinet Office's guidance he narrowed down the scope of his request by specifying the mailboxes, limiting the time period and specifying the key words on which the search for requested information should focus.
20. He further explained that: *"Nominet is a member organisation granted its monopoly over UK domains by the government and subject to unique influence under the Communications Act 2003, as amended by the Digital Economy Act 2010, in the purview of the Secretary of State and the Cabinet Office. Nominet domains are (predominantly) purchased by UK-based businesses on behalf of UK taxpayers"* and that the information he was seeking relates to the important period in Nominet history during which certain events had taken place, such as:
- "* Nominet ended 25 years of being a neutral ccTLD by banning Russian registrars (<https://www.nominet.uk/an-update-on-ukra...>)*
 - * Had uncertainty about its status as CNI (ICO Case Reference IC-165170-X2F6²)*
 - * Had a change in CEO as a result of an EGM brought about by its member shareholders (<https://www.nominet.uk/nominet-appoints-...> announced 2021 but took up his appointment in Feb 2022)*
 - * Made significant investments of member funds (jointly and in partnership with gov.uk) into "safety technology" at a time when the Online Safety Bill was being formulated (<https://assets.publishing.service.gov.uk...> and <https://bills.parliament.uk/bills/3137/s...> and others)*

² [| Search | ICO](#)

* *Was in discussions with the UK government relating to potential abuse use of .UK domains (<https://www.nominet.uk/uk-domain-dispute...>)*

* *Received contracts to provide PDNS services to government departments, including the Cabinet Office (<https://www.nominet.uk/pdns-value-resear...>)*

* *Funded PICTFOR APPG events (<https://publications.parliament.uk/pa/cm...>)*

* *Provided ongoing updates to gov.uk on the health of the organisation and the influence of its members, without making its members privy to the same information (as revealed in previous FOIA)"*

21. To specifically rebut the application of section 14(1) in the Cabinet Office's refusal notice, the complainant referred to the four broad terms, characterised by the Upper Tribunal decision in the [*Information Commissioner vs Devon County Council & Dransfield \[2012\]*](#) UKUT 440 (ACC)³ ('Dransfield') which can assist public authorities when assessing whether a request is vexatious. These are: 'number and pattern' of requests, 'duration', 'breadth' and 'motive'.
22. The complainant explained that in relation to the number and pattern, all previous requests were necessary⁴ and proportionate to narrow down this request as much as possible and therefore could not be vexatious.
23. As for the duration element, the complainant explained that the sought information relates to various events that took place during the requested period of time which may have overlapped in various email threads, therefore the duration of this single request is appropriate and when weighed against value and purpose, the breadth of the request was sufficiently narrowed following the Cabinet Office's guidelines.
24. Further, the complainant explained that his motive is simply transparency on behalf of the wider internet community. He contended that he had demonstrated that his request is not vexatious and it is firmly in the public interest to show transparency in the communication between Nominet and the Cabinet Office. The complainant accepted however, that the nature of the communication may be subject to some reductions under section 24 exemption (National security). He also

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

⁴ Complainant made requests to other government department about the same subject matter but only one to the Cabinet Office, which is a subject of this case.

noted that any commercial interests under section 43 would be minimal and would not really apply to the government-granted monopoly over UK domains. This could only be applied to some extent in a case of real commercial competition, for example PDNS.⁵

25. Finally, the complainant disputed that his request would become unduly burdensome on the Cabinet Office's resources, having considered matters of a *"government-granted monopoly owned by its members and subject to government oversights and influence during a very eventful year"*.
26. He added that *"a governmental organisation the size of the Cabinet Office, should be well equipped to handle and support the rights and laws surrounding transparency in the interests of the public beyond all others"*.

The Cabinet Office's position

27. In its correspondence to the complainant, particularly its response to the refined request and the internal review response, the Cabinet Office, referring to the Commissioner's guidance, stated that it believed it satisfied the requirements of section 14.
28. The Cabinet Office also provided detailed submissions, including a sample of the withheld information, in response to the Commissioner's investigation, where it explained its reasons for the application of the above mentioned provision.
29. The Cabinet Office explained that the grossly oppressive burden would be caused by the time invested in the preparation of the information for disclosure. And, although the Cabinet Office recognised that it may have been possible to find the relevant information easily, preparing information for publication, redacting information for disclosure, consulting multiple third parties and applying and considering exemptions, created an unsustainable burden for the Cabinet Office. It further added that it had real concerns about potentially exempt information which could not be easily isolated for redaction because it was scattered throughout the requested material, which consist in excess of 140 email chains with multiple emails within.
30. The Cabinet Office told the Commissioner that *"It would take an estimated 700 minutes, or 11.6 hours, to prepare all 140 email chains to be transferred into PDF format which would enable the future*

⁵ [Protective Domain Name Service \(PDNS\) - NCSC.GOV.UK](https://www.ncsc.gov.uk/protective-domain-name-service-pdns)

publication (if applicable), but also to enable the use of redaction software. The calculation is based on five minutes per email chain, and takes into consideration the time taken to export, save and organise the documents into a format which enables further processing of the information for the purposes of release. We consider that it would take in excess of 60 minutes per email chain, totalling a minimum of 140 hours, to both apply and consider any exemption, redact the information for disclosure if we deem that appropriate, and consult any third party to the information. The calculation is based on a minimum of one hour per email chain, however, this could be considerably more dependent on the information recorded. There are multiple third parties included within the email chains, all of whom would need to be consulted on the specific content, especially where that content is considered to be confidential or commercially sensitive”.

31. The Cabinet Office also explained to the Commissioner what FOIA exemptions it believed will apply to the information and which material within the emails is likely to engage the relevant exemption as follows. This included:
 - Section 31 - law enforcement
 - Section 40 - personal information
 - Section 41 - information provided in confidence
 - Section 43 - commercial interests
32. It told the Commissioner that to establish whether exemptions might apply would necessitate *“qualitative assessments of the sensitivity of the content of the email chains information as well as carry out consultations with third parties, in order to identify and redact sensitive material.”*
34. Further, in its submissions to the Commissioner, the Cabinet Office addressed points raised by the complainant in his internal review request such as the purpose, value and the motive of the request. Referring to the Commissioner’s guidance ‘key question’⁶ the Cabinet Office contended that the value and purpose of the request in question is not enough to justify the impact on the authority.
35. In support of its position, the Cabinet Office pointed out that the complainant expressed his views on the applicability of section 43 to information relating to Nominet as well as his belief about transparency regarding Nominet. However, the Cabinet Office argued that it is

⁶ [Does the value and purpose of the request justify its impact? | ICO](#)

unlikely that the information the complainant described would be releasable once the exemptions were fully applied. It further argued that, although the stated purpose is very clear, very little information within the scope could be released thus decreasing its value. Consequently, the value of the information would not counterbalance the significant burden imposed on the authority by complying with the request.

36. The Cabinet Office further addressed the complainant's argument that the resources available to the Cabinet Office should be sufficient to comply with the obligations created by FOIA legislation. It argued that Parliament, when considering the legislation during the passage of the bill, clearly did not envisage unlimited resources being spent in order to comply with the request made to public authorities and the provision of section 14, as well as section 12, ensure that the resources are not diverted unreasonably from other functions of public authorities.
37. Finally, the Cabinet Office contended that the request was 'fishing' in nature. It pointed out that, despite narrowing the request by naming specific individuals, it still asked for "*all emails with Nominet for an entire year that contain generic terms-i.e. 'update' and 'domain'.*" The Cabinet Office argued that considering the role and function of Nominet in relation to domain names, the terms specified in the request do not allow any useful context to refine searches or identify smaller pieces of information that could be of interest to the requester. In fact, in the Cabinet Office's view, the information requested does not assist in a meaningful way to identify what is of interest to the requester.

The Commissioner's view

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).
39. Following the Upper Tribunal's decision in the Dransfield case⁷ a question should be asked to whether the request has a value or serious purpose in terms of an objective public interest, which is usually bound up with the requester's motive.

⁷ [Information Commissioner vs Devon County Council & Dransfield \[2012\]UKUT 440 \(ACC\)](#)), para38

40. The public interest can encompass a wide range of values and principle 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.
41. In this case and as summarised in paragraph 25 of this decision notice, and as confirmed by the complainant, the main motive of the request is transparency in the communication between Nominet and the Cabinet Office, which in the complainant's belief is firmly in the public interest.
42. The Commissioner acknowledges that transparency is an important motive which has an inherent value in principle, and particularly when there are events, as it is in this case and described in paragraph 20, which may be of interest to some and increase their need for transparency.
43. However, even if the request does have a value or serious purpose, this has to be balanced against the impact on a public authority in answering the request.
44. From the evidence he has seen, the Commissioner is satisfied that the complainant has requested a substantial volume of information, containing in excess 140 email chains, with multiple emails within.
45. The Commissioner notes the Cabinet Office's explanation that even if finding the information in scope had been a relatively easy task, it is the preparation of that information for disclosure that is the cause of the excessive burden. The Cabinet Office estimated the time that it would need to invest to prepare the information is an average of 60 minutes per email chain amounting to a total of 140 hours.
46. It is not clear to the Commissioner that the Cabinet Office's figure of 60 minutes per email is based upon a sample or test of the time it would actually take to prepare an email for publication. Rather the figure of 60 minutes would appear to be simply the Cabinet Office's estimate of the time it would take each of the emails in question to be prepared. The Commissioner expects the estimates provided to him to be based on evidence and this usually involves the public authority conducting an adequate sampling exercise before responding to the Commissioner. The Commissioner would add that details of such an exercise would arguably support the validity of any claimed time estimate or burden.

47. In considering the estimation given by the Cabinet Office in terms of reasonableness, the Commissioner has carefully reviewed the sample information provided and in doing so he has concluded that for some of the emails the estimated time of 60 minutes would appear to be excessive. This is in light of the length of the emails, ie not all contain lengthy chains or attachments. Furthermore, in the Commissioner's view it could be the case that it will be clear from the email or attachment which exemption or exemptions applies. He notes that Cabinet Office officials have significant expertise regarding the application of FOIA exemptions to requested information. In other words, the Cabinet Office may well be able to quickly recognise whether certain information would be exempt under a particular exemption and so it would not be required to carry out exhaustive checks for each and every email to decide whether a particular exemption applied
48. However, at the same time, the Commissioner accepts that the process of reviewing the content of some other emails and their attachments, as well as conducting the necessary consultations, would be involved and time consuming. In reaching this finding he notes the Cabinet Office's point that there are multiple third parties included in the email chains that would need to be consulted. He also accepts, having seen a sample of the withheld information, that parts of the content are clearly detailed and complex and as a result are likely to require careful consideration in relation to potential disclosure.
49. 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.
50. Even if the Cabinet Office were able to review each email in half the time estimated - ie 30 minutes per email - which the Commissioner considers to be a more realistic estimate of the time required - complying with the request would still take an excess of 70 hours of staff time. The burden which would be imposed upon the Cabinet Office to comply with the complainant's request would therefore be an oppressive one. The Commissioner is unconvinced that the burden of responding to this request could realistically be brought down to a reasonable size.

51. In reaching this finding the Commissioner also considered the Cabinet Office's explanation about the difficulty of isolating the information within scope for redaction for the reason of it being scattered throughout the requested material and to do it, it would be necessary to check each email manually.
52. He considered the withheld information in the sample provided by the Cabinet Office and accepts the Cabinet Office concerns about potentially exempt information being captured by the request.
53. The Commissioner considered the complainant's argument of transparency in communication between the Cabinet Office and Nominet as being firmly in the public interest. This being, as specified by the complainant, the wider internet community. He particularly noted the complainant's contention that the request encompasses various important events relating to Nominet that took place within period of time specified by the complainant, which, in the Commissioner's understanding was the motivation for the request.
54. The Commissioner accepts that transparency is an important principle which can increase the public's trust in the functioning of the governmental departments, and as such should be given due consideration. However, it is also of equal importance that this needs to be balanced against other factors related to the specific circumstances of a case.
55. The Commissioner conducted some searches through information available on the internet to ascertain the level of possible interest of the public in the information requested by the complainant. However, he was unable to identify any information sources, debates, media reporting etc., focusing on the information in question.
56. Therefore, although the Commissioner accepts that the events related to Nominet indicated by the complainant in his request may be of some importance to a specific group of the society, he is not satisfied that this is commensurate with the wider public interest.
57. He also notes the Cabinet Office's point that even if the request were processed that it would be unlikely to result in a significant amount of information being disclosed.
58. Taking the above into account, the Commissioner is satisfied that, given the burden and impact on the Cabinet Office of complying with the request, balanced against the limited value in disclosure, the effort required to respond to the request is disproportionate to the value of it.

59. It follows that the Cabinet Office is entitled to adopt the position that the request is vexatious under FOIA and it can therefore rely on section 14(1) to refuse it.

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

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