

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 December 2022

Public Authority: Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested copies of FOI Round Robin List maintained by Cabinet Office ("CO") and circulated to Whitehall departments. CO withheld the information and relied on section 14(1) (vexatious request) of FOIA as its basis for doing so.
2. The Commissioner's decision is that CO have correctly relied on section 14 of FOIA to withhold the information. He does not require CO to take any steps.

Request and response

3. On 31 May 2021, the complainant made the following request for information under the FOIA for:

"All round robin lists, in date order, for year 2020. This covers both FOIA and EIR. If this exceeds the cost limit the [sic?] please disclose from 1 January 2020 as much as the limit provides. If my name appears, I do not want it redacted for personal data. You may redact the name or other personal data of the applicant. The names of senior civil servants should be disclosed."

4. CO responded on 28 June 2021 and refused to provide the requested information citing section 14(1) of FOIA to withhold the information. It explained that the complainant's request covered 208 Round Robin Lists and it estimated that it would take a minimum of 34 hours to determine whether it would be possible to disclose information contained within the lists. In CO's opinion the request was burdensome on the department and would negatively impact the effective function of the Cabinet Office Clearing House ("COCH") and FOI team. CO provided advice and

assistance to the complainant suggesting that they refine the time period of their request.

5. The complainant requested an internal review on the following terms:

"Please pass this on to the person who conducts Freedom of Information reviews. I am writing to request an internal review of Cabinet Office's handling of my FOI request 'Round Robins FOIA'.] [sic] The request was not vexatious".

6. The complainant further wrote as follows:

"Your [sic] wrote in your reply: - "For the period covered by your request there are 208 round robin lists that fal [sic] in scope. Each one would have to considered to determine whether it would be possible to disclose the information within them, or whether a relevant exemption applies. It is likely we would also have to consult third parties regarding any information relating to them. We estimate that this activity would take a minimum of 34 hours. As a result, we consider that spending this amount of time to do this would impose an unreasonable burden on the department and would negatively impact our ability to process FOI and EIR requests within the statutory timeframes, and inhibit the effective function of Clearing House." As a matter of law, you cannot claim for hours spent 'considering' the information requested. You would have considered the information before you created it. Nor can you claim for time consulting 3rd parties. That much is obvious".

7. On 8 September 2021, following an internal review, CO maintained its original position.

Reasons for decision

8. Under section 14(1), a public authority is not obliged to comply with a request for information if the request is vexatious. The Commissioner's guidance¹ states that a single request taken in isolation may be vexatious solely on the grounds of burden. That is, where complying with the request would place a grossly oppressive burden on the public authority's resources which outweighs any value or serious purpose the request may have. In the case of Independent Police Complaints

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/how-do-we-deal-with-a-single-burdensome-request/>

Commissioner vs The Information Commissioner (EA/2011/0222, 29 March 2012) the tribunal found that:

“A request may be so grossly oppressive in terms of the resources and time demanded by compliance as to be vexatious, regardless of the intentions or bona fides of the requester. If so, it is not prevented from being vexatious just because the authority could have relied instead on s.12 [section 12 of the FOIA].”

This was the position taken by CO in this case.

CO's position

9. CO explained by way of background that at the time of the complainant's request, COCH function was issuing Round Robin lists almost daily. It explained that the Round Robin lists comprised a reference number, the date the COCH function was first made aware of the request, name of the applicant, the text of the request, record of the departments that have notified receipt, the deadline for the response and advice on the approach to take. The Round Robin list advised government departments of FOI requests that have been received by other departments and also offered advice on the appropriate response.
10. CO maintains that the exemption at section 14(1) of FOIA is engaged as to comply with the request would impose an unreasonable burden on the department. It argues that the request in its totality is broad and covers a long time period of 12 months. CO says, this has produced a return of 208 lists that fall within the scope of the request.
11. The Commissioner asked the CO for further clarification about its sampling exercise. It explained that during a sample exercise using a single Round Robin list from January 2020, it took 1 hour and 20 minutes to review a 32-page list and mark it for redaction in accordance with the relevant exemptions under FOIA.
12. CO has explained that the redactions would need to be reviewed within the FOI team for clearance and additional peer review to ensure personal and other sensitive information has been properly identified as well as review by other third parties where other policy teams have provided the content of advice. CO estimates a duration 15 minutes for a single third party to conduct a review, and also an additional 15 minutes for the peer review to be conducted. It says that a definitive estimate for additional consultations will depend on the length of the lists, any changes in advice and number of third-party consultations. It estimates a total of 1 hour 50 minutes per list to review, redact and refer to third parties. It has argued that these estimates are considered conservative and does not take into account discussions and consultations that will take place with other third parties. In addition, CO contend that Round Robin lists vary in size; it says that a random week

was selected from 1 July to 8 July 2020 and the documents varied in length ranging from 51 to 59 pages longer than the list used in the sample exercise.

13. CO also argues that the request is grossly oppressive in terms of the resources and time demanded for compliance irrespective of the complainant's intention. It emphasizes that the complainant has requested for a substantial volume of information, and it has real and valid concerns about potentially exempt information which cannot be easily isolated within the documents as they are scattered throughout them. CO maintains that if the department were to comply with the request this would negatively impact on work on wider FOI requests. It argues that there is significant information in the public domain regarding COCH functions.
14. In its submissions to the Commissioner, CO stated that there is no evidence that the complainant has a serious purpose. It made reference to the complainant's request for information in which they stated:

"You are referred to the recent FTT decision First-tier Tribunal (General Regulatory Chamber), Information Rights Decision, notice fs50841228, Appeal Reference: EA/2020/0240.

In the relevant DN the IC said this:

"The Commissioner does not consider that there is a strong public interest in withholding the round robin list within the scope of the complainant's request. The Commissioner does not consider that publishing the list would severely impact on the quality of advice provided by Clearing House to departments. Whilst officials could become more guarded with their advice as a consequence, she is not persuaded that this would interfere in any significant way with their ability to provide sound advice which is primarily what departments require in order to provide an FOI and/or EIR compliant response to applicants."

CO argues that it considers that responding to the request in full would cause a level of disruption that would be disproportionate and unjustified.

The Commissioner's view

15. In reaching his decision, the Commissioner has considered the complainant's request, CO's refusal notice and internal review response as well as the further submissions. The Commissioner is unable to determine from the information before him, the complainant's aim for their request. In an email dated 29 September 2022, the complainant stated that Round Robins are a matter of considerable concern, and that the Commissioner should take an interest in this. However, They do not

provide any further details about the concerns they refer to. The Commissioner is not persuaded that CO responding to this request would assist the complainant in their endeavours. He has reached this finding for a number of reasons.

16. Firstly, this is to do with the framing of the request. As CO noted, the request is sufficiently broad and covers a period of one year. In its refusal notice, CO offered advice and assistance under section 16 of FOIA asking the complainant to refine their request by reducing the period it relates to. The Commissioner is not persuaded that the complainant has a serious purpose as they have not taken the opportunity to refine their request.
17. Although the Commissioner's guidance states that requests should generally be considered "motive blind" the motive behind the request is relevant when considering whether section 14(1) is applicable. The Commissioner considers that the reason the complainant may have submitted their request is because of the outcome of the Tribunal decision in EA/2020/0240. The Commissioner has noted that the period to which the Round Robin list in the case EA/2020/0240 pertains to, is shorter (2 months) than the period to which the complainant's request relates to (1 year). Although the Commissioner asked the complainant why they disagreed with the decision by CO, he notes that he has not received any further submissions from the complainant to justify their position.
18. Secondly, the Commissioner has considered the time it will take CO to comply with the request. CO states that the 208 Round Robin list equates to about 381 hours of work and emphasize that there are lengthier lists that may require much longer time to review. Also, CO has discussed its concerns about potential exempt information which cannot be easily isolated within the lengthy documents, as it is scattered throughout. Details of the information the CO considers to be exempt cannot be included in this DN, but has been taken into consideration by the Commissioner. Considering the information before him, the Commissioner accepts that given the nature of the request, complying with the request would impose a grossly oppressive burden on CO resources.
19. Taking all the above into account, the Commissioner is satisfied that the impact of complying with the request significantly outweighs the limited purpose and value of the request. CO was therefore entitled to rely on section 14(1) of FOIA to refuse the request.

Other matters

20. The Commissioner recognises that there is now in the public domain substantial amount of information regarding COCH functions which was published after the complainant's request².

² <https://www.gov.uk/government/publications/cabinet-office-and-freedom-of-information>.
<https://committees.parliament.uk/publications/22055/documents/163743/default/>
<https://committees.parliament.uk/publications/22985/documents/168393/default/>

Right of appeal

21. 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

22. 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.

23. 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

**Esi Mensah
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**