

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004**

Decision notice

Date: 28 January 2013

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information concerning the involvement and association of the Cabinet Office with the organisation, Common Purpose. The Cabinet Office informed the complainant that it did not hold any such information. Following correspondence from the complainant disputing this assertion the Cabinet Office treated a further request for correspondence held concerning Common Purpose as vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the Cabinet Office has not dealt with the complainant's linked requests appropriately under the Act. Specifically, the Cabinet Office breached section 1(1) - the Commissioner has found that the Cabinet did hold one document that fell within the scope of the 27 October request. This document should have been disclosed. However, he found that the Cabinet Office held no further information. He has not ordered a step in respect of this information as the complainant has provided clear evidence that she already has the document.
3. The Commissioner also finds that the Cabinet Office were incorrect to rely on section 14(1) for the 2 December request.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the 2 December request (excluding reliance on section 14).

5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Requests and response

6. On 27 October 2011, the complainant wrote to the Cabinet Office and requested information in the following terms:

'Please provide the details of all involvement and association of the Cabinet Office with the organisation Common Purpose.

Please provide details of all Cabinet Office personnel in any way associated with Common Purpose.

Please provide details of any projects or activities involving Common Purpose, including its current and future proposed strategic position for delivery of the Big Society agenda'.

7. The Cabinet Office responded on 22 November 2011. It stated that, *'the Cabinet Office has no involvement or association with Common Purpose in any aspect of our work, including the delivery of Big Society Programmes'.*
8. Following an internal review the Cabinet Office wrote to the complainant on 29 November 2011. The review upheld the original response.
9. On 2 December 2011 the complainant wrote to the Cabinet Office and made a further request for information in the following terms:

'Please provide copies of all emails and any other communications or any other material, in unredacted form, between the Cabinet Office and the organisation Common Purpose from 1 January 2010 to the present date'.

And

'Please send any and all details, in any format, and copies of any and all communications, and any other material, relating to the processing of this request for information, i.e. this is to include, but not be limited to: the people you have contacted, people that have been copied in to the emails, copies of emails to third parties, telephone conversations and any attendant notes, memos etc. This is to exclude our exchanges'.

10. On 8 December 2011 the Cabinet Office wrote to the complainant and advised that as part of the 2 December request was a request for the complainant's personal data under the Data Protection Act 1998, proof of identity was required.
11. The complainant responded on 9 December 2011 and stated that '*in no way*' was she asking for her personal data. The complainant noted that, '*I am still awaiting your explanation, again suitable for presentation to both the Information Commissioner and the Police, why your office lied in its earlier response to me*'. The complainant wrote that she suspected that '*there is a cover-up going on*'.
12. On 23 December 2011 the Cabinet Office responded to the complainant's requests of 2 December. It confirmed that it was treating the requests as vexatious under section 14(1) of the FOIA and that they would not be complying with them.
13. Following an internal review the Cabinet Office wrote to the complainant on 12 April 2012. The review upheld the decision to apply section 14(1) to the 2 December 2011 requests.

Scope of the case

14. The complainant contacted the Commissioner on 14 February 2012 to complain about the way her requests for information had been handled.
15. The Commissioner confirmed the scope of his investigation in an email to the complainant of 26 June 2012. He confirmed that the investigation would encompass the Cabinet Office response to the request of 27 October 2011 (the held/not held issue) and the section 14(1) response of the Cabinet Office to the subsequent requests of 2 December 2011.
16. In an email of 27 June 2012 the complainant confirmed that the Commissioner's understanding of her complaint was correct.
17. On its website, Common Purpose describes itself as '*an independent not-for-profit organisation that runs leadership development courses which mix people from the private, public and not-for-profit sectors*'.

Section 1(1) – The Held/Not Held Issue

18. Section 1 of FOIA states that:

'Any person making a request for information to a public authority is entitled –

- (a) *To be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) *If that is the case, to have that information communicated to him.'*
19. The test to be applied when determining whether information is held, as confirmed in the Tribunal decision of *Bromley v the Information Commissioner and the Environment Agency (EA/2006/0072)*, is not certainty but the balance of probabilities. This is the test which the Commissioner has applied in this case.
20. In determining whether information is held by a public authority, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority and/or any other reasons it has offered to explain why the information is not held. The Commissioner will also take into account any arguments or evidence put forward by the complainant as to why relevant information is held.
21. In its responses to the complainant's request of 27 October 2011 the Cabinet Office asserted, as noted above, that it has no involvement or association with Common Purpose in any aspect of the work of the Cabinet Office, including the delivery of Big Society Programmes.
22. In correspondence with the Cabinet Office, the complainant strongly disputed this claim. In support of her contention that the Cabinet Office does have involvement and association with Common Purpose, the complainant provided two relevant documents (later seen by the Commissioner) which had been previously released by the Cabinet Office in response to other FOI requests.
23. Document 1 is an email dated 18 May 2010, sent shortly after the General Election to the Minister for the Cabinet Office, Francis Maude, by Common Purpose Chief Executive, Julia Middleton. The email reads as follows:
- 'I think we – and quite a few Common Purpose alumni from the civil service – could help with the culture change you need to bring about. Could I and David Bell (Chair of Common Purpose trustees) come and see you for five minutes?'*
24. Document 2 is minutes from a meeting of the Senior Leadership Committee held on 9 June 2010. A number of Cabinet Office staff attended this meeting and it was chaired by the then Cabinet Secretary, Sir Gus O'Donnell. Also in attendance was Sir David Charles Maurice Bell, the Chair of Trustees of Common Purpose.
25. In submissions to the Commissioner, the Cabinet Office advised that Sir David Bell held a position as non-executive member of the Committee

from 2005 to July 2011 when he retired from his position as director of Pearson plc (multinational education and publishing company). The Cabinet Office stated that Sir David had not attended the meeting in his capacity as the Chair of Trustees of Common Purpose and noted that the minutes list him as 'Pearson'.

26. The minutes refer, under any other business, to *'Running workshops for the Top 200 under the Common Purpose model was proposed. Committee members agreed to consider the costs'*. The Top 200 was set up in March 2006 as the corporate leadership group for the Civil Service. It is made up of the most senior Civil Service leaders, permanent secretaries and director generals. The purpose of the Group is to improve public services, deliver government business and build a strong Civil Service. It meets every six months to share best practice and to find solutions to cross-cutting issues – especially those identified by the capability reviews.¹
27. In submissions to the Commissioner the Cabinet Office advised that the email from Ms Middleton to Mr Maude (Document 1) was not replied to and that no meeting took place. The Cabinet Office does not consider that *'the receipt of one unsolicited email, which received no response, can possibly be construed as 'association or involvement' on any reasonable interpretation'*. In support of this contention, the Cabinet Office advises that some 30,000 emails are sent to its email addresses every day, the content of such emails ranging from important government business to unacknowledged comments from members of the public and advertising or spam mail.
28. The Cabinet Office have stated that, *'it is important to consider the definitions of 'association' or 'involvement' in the specific context of Ms X's original request which asked specific questions about any 'projects or activities involving Common Purpose' and which was originally addressed to the team responsible for work on the Big Society'*.
29. The Commissioner does not agree that the wording of the complainant's request of 27 October 2011 supports such a contextualisation. The complainant's request of 27 October 2011 was three-fold (see paragraph 5 above). Point one of the request was clearly and widely worded in asking for information concerning *'all involvement and association of the Cabinet Office with the organisation Common Purpose'*. This part of the request was neither restricted to any projects or activities involving Common Purpose nor any work being carried out by the Cabinet Office

¹ Information obtained from www.civilservice.gov.uk

in connection with the Big Society. The Commissioner has focused on the Oxford English Dictionary definitions of term association – “a connection or cooperative link between people or organizations” and involvement – “the action or process of being involving something or someone; the fact or condition of being involved”.

30. The Cabinet Office confirmed to the Commissioner that, *'We remain of the firm opinion that our clear and unequivocal statement that we have no association or involvement with the organisation Common Purpose was and still is correct, and that this was the appropriate explanation to give as to why no information held. That there had been an unsolicited and unacknowledged request for a meeting, which did not take place, but which had been provided to another individual in response to a different FOI request is entirely irrelevant'*.
31. When the Commissioner queried why Document 1 had been provided to a previous requester by the Cabinet Office but not to the complainant, the Cabinet Office explained that the previous request had asked for 'correspondence' between the Cabinet Office and Common Purpose, the implication being that the complainant would have been provided with Document 1 if she had worded her request in a likewise fashion.
32. The Commissioner has considered the informal nature of the email and the use of first name terms and whether it could be reasonably assumed that both parties have a prior association.
33. The Cabinet Office have contended that, *'the points about first names are not significant (unsolicited callers will normally speak to you on first name terms), nor about any previous dealings the individual from Common Purpose may have had with Francis Maude before he was the Minister for the Cabinet Office (the request is only concerned with association with the Cabinet Office not with Francis Maude)'*. This is not correct. In her request of 27 October 2011 the complainant asked for the details of *'all Cabinet Office personnel in any way associated with Common Purpose'*. That is to say, the complainant was not just seeking information about Common Purpose's collective association or involvement with the Cabinet Office, but information as to any individual association and involvement as well.
34. The Commissioner accepts that the fact that Mr Maude did not reply to Ms Middleton's email of 18 May 2010 tends to show that whatever the prior association or involvement (if any) which Mr Maude may have had with Common Purpose, the newly appointed Minister did not, at the time of receiving the email, have any association or involvement with Common Purpose *in his capacity as Minister for the Cabinet Office*.

35. Having considered all the arguments the Commissioner finds that document 1 did not fall within the scope of the 27 October request. The document does present any clear association and involvement.
36. With regard to the minutes of the Senior Leadership Committee meeting of 9 June 2010, the position is less open to interpretation. At the end of the minutes, under the heading 'any other business' it is noted that, *'Running workshops for the Top 200 under the Common Purpose model was proposed. Committee members agreed to consider the costs'*. This is a clear reference to Common Purpose and the organisation's model was evidently already familiar to the members of the Committee (which included a number of individuals from the Cabinet Office). The Commissioner does not agree with the Cabinet Office's argument that, *'no association with the organisation Common Purpose could be derived from the record of the meeting'*.
37. In submissions to the Commissioner the Cabinet Office advised that, *'The term 'Common Purpose' seems to have become synonymous with a particular methodology and a potential use of this methodology in the context of workshops for the Top 200 civil servants was proposed at the Senior Leadership Committee meeting of 9 June 2010'*. The Cabinet Office confirms that no decision was taken and in the event, no action was taken on the proposal. The Committee did not engage Common Purpose to deliver any workshops or other activity on their behalf. The Cabinet Office advises that there was no further discussion of the matter within the Committee and no discussions with Common Purpose took place.
38. As with Document 1 examined above, due context needs to be applied to the Committee minutes (Document 2). The Cabinet Office submissions suggest that they regard mutual engagement (i.e. a common decision to take action) as an essential prerequisite in order for the finding of an 'association' or 'involvement'. The Commissioner finds this to be an overly restrictive definition. The Commissioner is satisfied that Document 2 was within scope of the complainant's request of 27 October and should have been disclosed accordingly. In reaching this finding the Commissioner accepts the Cabinet Office's contention that it has no commercial or working relationship with Common Purpose. For this reason the Commissioner would not expect the Cabinet Office to usually hold information concerning Common Purpose. However, it does not necessarily follow that the Cabinet Office has (or has not previously) no association or involvement with Common Purpose.

39. Indeed, the Cabinet Office has confirmed that responsibility for the National School of Government (NSG) was transferred to the Cabinet Office on 1 April 2011 for the last year of its existence². The NSG provided training and development services to the civil service as a whole and used Common Purpose as a sub-contractor to deliver senior leadership training. The Cabinet Office confirms that the transfer was solely to manage the closure of the NSG, whose successor organisation, Civil Service Learning, became operational on 1 April 2011. The Commissioner recognises that this transfer was purely temporary but considers that this was clearly an association or involvement with Common Purpose by the Cabinet Office on any commonly understood and accepted meaning of the terms.
40. The Commissioner has investigated whether the Cabinet Office retains any information (such as training records) from the NSG. The Cabinet Office advises that with the exception of personnel and finance records which need to be retained for set periods of time, NSG's records were not selected for preservation under the Public Records Act 1958 and were destroyed when the NSG was decommissioned. The Cabinet Office confirms that they do not hold information on training and development undertaken by individual members of staff, other than mandatory training. Each member of staff maintains a personal development plan, covering skills, competences and knowledge needed to meet objectives, a model which is commonplace and well established in the civil service.
41. The Commissioner accepts that on the balance of probabilities the Cabinet Office does not hold any information within scope of the complainant's requests relating to the transfer of the NSG.
42. With regard to information falling within scope of the complainant's request of 27 October 2011 more generally, the Commissioner has investigated what checks and searches the Cabinet Office carried out to ascertain whether it held any relevant information. The Cabinet Office confirmed that it carried out its usual searches of electronic and paper records for information within scope of the request. These included title and content searches within its electronic document management systems and focussed searches within those management units whose work might bring them into association with an organisation like Common Purpose. Financial records were searched for evidence of any payments to the Common Purpose Charitable Trust and Common Purpose UK. None were found. The Cabinet Office advised that

² As part of the Government's 'Public Bodies Review' published in October 2010

particular searches were undertaken in the area of the Department responsible for the 'Big Society' as the original request was sent directly to them.

43. The Cabinet Office advised that it had no reason to believe that any relevant information was ever held, in either paper or electronic format.
44. The findings of the thorough and comprehensive searches undertaken by the Cabinet Office (that no information is held) are consistent with the conclusions which the Commissioner has reached in previous cases (FS50207668 and FS50443450) which concerned the Cabinet Office and Common Purpose. In FS50207668, the Commissioner concluded, in paragraph 34, that:

'The Commissioner has conducted external searches to ascertain if there is indeed a government policy with respect to Common Purpose. No such policy has so far been identified. The Commissioner is therefore satisfied, on the balance of probabilities, that there is no recorded information outlining the government's policy with regards to Common Purpose as there is no 'government policy' in place with respect to Common Purpose and as such the Cabinet Office would have been in a position to inform the applicant that information is not held'.

Conclusion

45. As noted in paragraph 41 above, the fact that the Commissioner accepts that the Cabinet Office is not involved in any projects or activities involving Common Purpose, does not detract from his finding that the Cabinet Office did not correctly interpret and process the complainant's request with regard to Document 2. In failing to disclose document 2 to the complainant, the Cabinet Office breached section 1(1) of the Act.

Use of Section 14(1)

46. Section 14(1) of the FOIA states that:

'Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious'.

47. In considering whether the Cabinet Office was correct to apply section 14(1) to the complainant's requests of 2 December 2011, the Commissioner has examined the reasonableness of the response provided to the complainant's earlier linked request of 27 October 2011 since the two are contextually connected.

48. In its response of 23 December 2011, the Cabinet Office advised the complainant that, *'taking into account all the circumstances of the case, including the long series of correspondence, your pattern of behaviour (including the various allegations and threats you have made), your refusal to accept the responses and explanation we have given and the following factors'* (the Cabinet Office listed the criteria noted below) it had determined that the 2 December 2011 requests were vexatious. The criteria issued were those provided by the Commissioner as guidance for public authorities in determining whether a request is vexatious, namely:
- The request can fairly be seen as obsessive;
 - The request is harassing the authority or causing distress to staff;
 - The request is designed to cause disruption or annoyance;
 - The request lacks any serious purpose or value.
49. In submissions to the Commissioner, the Cabinet Office stated that the complainant's contention that a relationship exists between the Cabinet Office and Common Purpose is *'entirely groundless'*. In this context, the Cabinet Office explained that the complainant's refusal to accept what she described as *'fabricated'* evidence, her continued contention that she had obtained evidence of a meeting from the Cabinet Office when this could not have been the case and her use of abusive and threatening language left it with no alternative other than to apply section 14(1) to the requests of 2 December 2011.
50. The reference to a meeting above was the contention by the complainant that Mr Maude had met with two senior members of Common Purpose, Ms Middleton and Sir David Bell, on 30 May 2010. The Cabinet Office responded to the complainant's claim on 1 December 2011 and confirmed that it held no information or record of any such meeting. In addition, it provided the complainant with a copy of the published list of the Minister for the Cabinet Office's engagements in May 2010. It was this documentation that the complainant had alleged to be fabricated.
51. The Commissioner has seen no evidence to dispute the Cabinet Office assertion that no such meeting took place on 30 May 2010. The fact that this date fell on a Sunday makes any such meeting less likely.
52. Having examined the complainant's chain of correspondence to the Cabinet Office throughout this matter the Commissioner considers that the tone and language used was often unhelpfully hostile. The complainant has repeatedly accused the Cabinet Office of *'lying'* and comments such as *'indicate the nearest police station to your office'*

could be seen as threatening. The Commissioner cannot condone such correspondence which is not conducive to resolving information requests.

53. However, when determining whether any of the criteria listed by the Cabinet Office can be applied to a specific request(s), the Commissioner will consider the history and context of the request(s). It is the request and not the requester that must be vexatious for section 14(1) to be engaged.
54. At the time that the complainant made her requests on 2 December 2011, the email of 18 May 2010 (Document 1) was in the public domain. The complainant herself drew attention to the email in her correspondence with the Cabinet Office.
55. The Cabinet Office has stated that, *'the email itself is simply evidence that a meeting was sought by Common Purpose – not that one took place between the Cabinet Office and Common Purpose'*. Whilst the Commissioner accepts that in the event no meeting took place between the individuals concerned, it would not be unreasonable to assume that a meeting may well have taken place, or at the very least Ms Middleton would have received a reply to her email.
56. It is clear that the Cabinet Office do not consider that the email (or the Committee minutes) fall within the scope of the complainant's request of 27 October 2011. The complainant's subsequent request of 2 December 2011, was worded as follows, *'please provide copies of all emails and any other communications or any other material, in unredacted form, between the Cabinet Office and the organisation Common Purpose from 1 January 2010 to the present date'*. This was essentially a request for all correspondence between the Cabinet Office and Common Purpose.
57. Regardless of whether the email fell within the scope of the 27 October request, it is clear that it was caught by the wording of the 2 December request. The Cabinet Office disclosed the email in response to a very similar request from another requester (FS50443450). Moreover, in submissions to the Commissioner the Cabinet Office noted that, *'the only contact we have had with that organisation is the receipt of one email which went unanswered'*. Since the Cabinet Office clearly accept that the email constitutes correspondence from Common Purpose, it is not clear why they did not disclose a copy of the email to the complainant in response to her request of 2 December 2011.
58. Instead of disclosing the email, the Cabinet Office chose to treat the 2 December request as vexatious. Yet, according to the interpretation of 'involvement' and 'association' taken by the Cabinet Office, this request was different to the request of 27 October. Had it not been so, then the

decision to apply section 14(1), especially when taken in conjunction with the nature of correspondence from the complainant, would have had stronger justification.

59. When viewed objectively and in context of the Cabinet Office response to the request of 27 October, the Commissioner considers that the complainant's action in making the subsequent request of 2 December was understandable and predictable. The complainant had sight of a piece of information (Document 1) which appeared to refute the Cabinet Office assertion that it held no information within scope of her request of 27 October. When the complainant subsequently brought this to the Cabinet Office's attention, it made no attempt to explain (as it later did to the Commissioner) why it did not consider the email (or the Committee minutes) to fall within scope of the 27 October request. In the absence of such an explanation, and given that, as the Commissioner has found, the email was within scope of the October request, it is not surprising that the complainant questioned what she was being told by the Cabinet Office, albeit in a fashion that was not fruitful to engagement and resolution.
60. The Commissioner finds that, given the context in which that request was made, the complainant's request of 2 December should not have been classified as vexatious.
61. Viewed in the context of the request of 27 October 2011 and the Cabinet Office response to the same, the Commissioner does not consider that the 2 December request was obsessive or designed to cause disruption or annoyance. It may well have been seen as harassing, due to the inappropriate language and tone adopted in surrounding correspondence, but it cannot be said to have lacked serious purpose or value, since the complainant was in possession of information which contradicted the Cabinet Office response to the request of 27 October. Whilst the Commissioner accepts the hostile nature of the correspondence and its potential to harass this is at the lower end of the spectrum when compared to other section 14 cases where the Commissioner has upheld the use of the provision. However, the Commissioner would warn the complainant that in other circumstances correspondence of this nature, extended over a significant period, could legitimately be used as a factor in refusing a request as vexatious. Consequently, the Commissioner is satisfied that the Cabinet Office wrongly applied section 14(1) to the request of 2 December 2011.
62. However, in considering submissions from the Cabinet Office, the Commissioner is mindful and not unsympathetic of the position in which it finds itself more generally in terms of dealing with information requests concerning Common Purpose. It is apparent, from websites to which the Cabinet Office directed the Commissioner, that the

organisation Common Purpose is viewed with considerable suspicion and hostility, as are those seen supporting it, by a number of anti-Common Purpose campaigners. Much of this material could, at the very least, be considered to be obsessive.

63. The Cabinet Office has made its position very clear in responding to a number of information requests in recent years that it is not involved in any projects or activities involving Common Purpose and has no association with the organisation. This is consistent with the Commissioner's investigations and findings in FS50207668. The Commissioner would therefore not expect the Cabinet Office to hold a significant amount of information concerning Common Purpose and the specific information in the present case is very much the exception rather than the rule.
64. The Commissioner would stress that his finding on 14(1) is on the basis of the circumstances of the request and other relevant connected factors, and it does not preclude the Cabinet Office from considering section 14 for future requests about Common Purpose.

Right of appeal

65. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

66. 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.
67. 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

Steve Wood
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF