

Freedom of Information Act 2000

Decision notice

Date: 24 November 2015

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information from the Cabinet Office relating to the appointment of qualified persons within the Public and Health Service Ombudsman (PHSO). The Cabinet Office refused this request under section 12(1) of the Freedom of Information Act 2000 (the Act) because it considered complying with the request would exceed the appropriate limit.
2. The Commissioner's decision is that the Cabinet Office correctly refused the request under section 12(1) of the Act. However, the Cabinet Office breached section 16 of the Act as it failed to give adequate advice and assistance to the complainant when handling her request. The Cabinet Office has also breached section 17(5) of the Act as it did not provide its refusal notice within 20 working days. The Commissioner does not require the Cabinet Office to issue a new response as a separate request with a reduced scope has already been submitted by the complainant.

Request and response

3. On 19 September 2014, the complainant wrote to the Cabinet Office and requested information in the following terms:

"Please could you provide all communications from the cabinet office to the PHSO and vice versa on Qualified Persons (designation with regard to the FoIA), post 1997.

This would include the names of Qualified persons, the date of their appointment and any communication between the two offices on the subject."

4. The Cabinet Office responded on 4 December 2014. It refused the request under section 12(1) of the Act as compliance with the request would exceed the appropriate limit, but did not provide any indication why this was the case other than stating the fact. The estimate did not include any detailed estimate or evidence about the work involved in complying with the request. The Cabinet Office did state that the complainant could reduce the cost of compliance with the request by limiting the number of years within the scope of the request.
5. The complainant requested an internal review of the response to her request. In making this request for an internal review, the complainant provided the following options for reducing the scope of her request:

"A) January 1, 1993 to the date of request.

B) January 1, 2002 until the date of request.

If it is necessary to narrow the time period further, since a period of years does not seem unduly excessive to locate what can only be a handful of legally required letters, then I will narrow it further to:

C) January 1, 2011 - to the date of request."

The complainant also stated that if the Cabinet Office were to provide cogent evidence about why compliance with the request would exceed the appropriate limit then she might be able to be more exact about the information she was particularly interested in.

6. Following an internal review the Cabinet Office wrote to the complainant on 24 February 2015. It upheld the decision to refuse the request under section 12(1) of the Act and similarly did not provide a thorough estimate about why compliance would exceed the appropriate limit. The review noted the complainant's suggestions for reducing the scope of the request but did not confirm whether any of them would bring the request within the appropriate limit. The review stated that the complainant may wish to be more specific about what information she was interested in, but did not go into detail about how this applied to the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 22 October 2014 to complain that her request had not been responded to within the time limit set out in the Act. Following the Cabinet Office's internal review response the complainant appealed about the section 12(1) refusal of her request.

8. The Commissioner considers the scope of the request to be whether the Cabinet Office is entitled to refuse the request under section 12(1) of the Act. The Commissioner will also consider whether the Cabinet Office complied with its obligation under section 16 to provide advice and assistance to the complainant where reasonable, and also whether the Cabinet Office issued a valid response to the complainant within the time limit established the Act.

Reasons for decision

Section 17(5) – timescale for response where section 12 is applied

9. The complainant submitted her requested to the Cabinet Office via the Whatdotheyknow website on 19 September 2014. The Cabinet Office stated that it did not receive the request until 18 November 2014, after it had received contact from the Commissioner and the request was re-sent by the complainant.
10. The Act provides a time limit of 20 working days from the date of receipt of the request. The Cabinet Office issued its initial refusal to the complainant on 4 December 2014, which is within 20 working days of when it stated it received the request, but not within 20 working days of when the complainant sent the request.
11. The issue here is whether the Commissioner can say with reasonable certainty that the Cabinet Office received the request when the complainant first sent it. The Commissioner's guidance on the subject states the receipt means "*the day on which the request is physically or electronically delivered to the authority*"¹.
12. The Commissioner notes that there is evidence to show that around the period the request was made the Cabinet Office was having difficulty receiving emails from the Whatdotheyknow site.² However, the Commissioner was given confirmation from the Whatdotheyknow website that the request in this instance was received by the Cabinet Office's email servers.

¹ <https://ico.org.uk/media/for-organisations/documents/1165/time-for-compliance-foia-guidance.pdf> see section 27, page 8

² https://www.whatdotheyknow.com/request/electoral_registration_10

13. The Commissioner considers that there is sufficient evidence to show that the Cabinet Office had received the request on the date it was sent by the complainant. As it did not issue its refusal notice within 20 working days, it breached section 17(5) of the Act.

Section 12(1) – where cost of compliance exceeds the appropriate limit

14. Section 12(1) states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit.
15. The appropriate cost limit is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. Under regulation 3 the appropriate cost limit is set at £600 for a public authority such as the Cabinet Office. Under regulation 4 the Cabinet Office may charge up to £25 per hour to determine whether information is held, and then locate, retrieve and extract the information. At this rate, the appropriate cost limit equates to 24 hours – or 1440 minutes – of work.
16. The Commissioner considers it pertinent for his decision on whether section 12(1) has been applied correctly that the request asks for “all” communications between the Cabinet Office and the PHSO on the subject of Qualified Persons (QP) in relation to section 36 of the Act. The complainant is of the view that her request is only asking for two documents, as evidenced from her correspondence with the Commissioner and the comments she has made available on the Whatdotheyknow site:³

“Taking the clarification into account, surely two appointment letters to Ann Abrahams and Dame Julie Mellor cannot involve that amount of work?”

“Apparently the Cabinet Office is incapable of finding two letters ... written to Ann Abrahams and Dame Julie Mellor , on their appointments as qualified persons - as its filing system is far too complex.”

“Could you please tell me why it is impossible for the Cabinet Office not to search it's electronic files for two names in recent Cabinet Office appointments.

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https://www.whatdotheyknow.com/request/phso_appointment_of_qualified_pe

I would like to know how the vast amount of time you state is necessary to find two simple documents has been worked out."

17. The Commissioner disagrees with the complainant's view. Requesting "all" communications is far removed from asking for two documents. The complainant has argued that the title she gave to the request on the Whatdotheyknow site, as well as the second sentence of her request, shows the specific information she wanted.
18. However, the Commissioner's view is that the title is immaterial, as this is not part of the request. The second sentence merely states the information that the complainant would like to see included, it does not specifically state that it is the entirety of the relevant information that she wishes to obtain. Section 8(1)(c) of the Act states a request must "describe the information requested". In this instance, the complainant asked for all communications, so the Commissioner's decision must reflect that.
19. The Commissioner has explained this to the complainant, who maintains her view. However, during the course of the Commissioner's investigation the complainant also submitted a separate request for the two documents she referred to and the Cabinet Office was able to provide some information of relevance within the appropriate limit.⁴ The Commissioner wishes to stress that he does not consider that continuing with this appeal is entirely necessary given another request has been made which specifies the particular documents referred to in paragraph 16. Furthermore, the complainant is far more likely to obtain the information in a direct request for the specific documents rather than a catch-all request for all communications on the subject.
20. In its submissions to the Commissioner, the Cabinet Office also focussed on the complainant's use of "all" and how this made the scope of the request beyond the appropriate limit. The Commissioner checked with the Cabinet Office and it confirmed that for its submissions it was working with the timescale *January 1, 2011 - to the date of request* as specified by the complainant (see paragraph 5 of this decision).
21. The Cabinet Office stated that this subject matter was not something that had been handled as a single issue, and so could be potentially captured within sets of information relating to freedom of information

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policy in general, or other issues relating to the Ombudsman. The Cabinet Office argued that this meant the information would likely be contained across a number of different teams which interact with the PHSO, such as its Knowledge and Information Team, Legal Department, and the Propriety & Ethics Team.

22. The Commissioner has considered this argument and accepts this as reasonable. The complainant did not specifically ask for information on the appointment of individuals to be QPs, but instead all information relating to the subject. This could be the PHSO asking for advice on the application of section 36 of the Act, Ombudsmen issues in general, as well as communications relating to the appointment of QPs.
23. The Cabinet Office's position is that the wide scope of the request brings into contention a large number of individuals within at least four business units, as well as three individuals from private offices. As stated above the information could potentially encompass a range of subjects relating to QPs so the information would not just require a search of the information but also additional time to extract the relevant information from what could be identified. Even with the complainant's reduced scope of 43 months the Cabinet Office argued that it would require more than 24 hours of work to obtain the requested information.
24. The Cabinet Office's estimate showed that it would need "at least" three individuals for each of the different business areas – plus an additional three from the concerned private offices – to help identify the relevant information. The Cabinet Office stated that the wide scope of the request meant that it estimated it would take each member of staff approximately five hours to locate all of the relevant information, which comes to a minimum of 75 hours. It also provided an estimate on how long it would take to extract the information, which was given despite not knowing how much information would be located. The Cabinet Office stated it considered it reasonable to assign an additional 28 hours to this activity, allowing for two people to spend two days doing the necessary work.
25. The Commissioner agrees with the Cabinet Office's position that the scope of the request is likely to require more than 24 hours' worth of work and so exceed the appropriate cost limit. Given the number of teams and private offices involved, and the staff levels that would be involved as a result, the Commissioner sees it as reasonable that the scope of the request would exceed the appropriate limit. Whilst the Commissioner has borne in mind that the Cabinet Office's estimate for extracting any relevant information is at best an educated guess, he acknowledges that some time would need to be afforded for this activity, and given the wide scope of the request it would be unreasonable to assume that this activity could be completed in a short space of time.

26. The Commissioner also notes that the Cabinet Office has provided information of relevance to the complainant's request once the scope was reduced to more specific areas.
27. The Commissioner's decision is that section 12(1) of the Act applies and the request can be refused. He does not require any further steps from the Cabinet Office.

Section 16 – duty to provide advice and assistance

28. Section 16 of the Act places an obligation to offer advice and assistance to requesters where it is reasonable to do so. When a request is refused under section 12(1) of the Act, the Commissioner's view is that section 16 obliges public authorities to provide practical suggestions on how the scope of the request could be reduced so that information of interest to requester might be provided.
29. The Commissioner notes that the Cabinet Office suggested the complainant should reduce the period covered by the request in order to limit the scope. However, the Commissioner also notes that the complainant followed these instructions when asking for an internal review and it made no discernible difference to the Cabinet Office's response.
30. The Commissioner's view is that the Cabinet Office has breached section 16 of the Act. The complainant followed the Cabinet Office's instructions for limiting the scope of the request, yet was refused again once she followed them. The Commissioner also considers that had the Cabinet Office also provided a reasonable estimate to support its section 12(1) refusal, the complainant would have had more information to work from and could have made suggestions that limited the scope of the request to the point where it came within the appropriate limit.
31. As the complainant has submitted a new request with a much reduced scope the Commissioner does not consider it reasonable to have the Cabinet Office respond on this matter with further suggestions, as the matter is already at hand. However, the Commissioner asks that the Cabinet Office makes greater efforts to provide useful and meaningful advice to requesters who require assistance on reducing the scope of their requests.

Right of appeal

32. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

33. 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.
34. 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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