

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 March 2016

Public Authority: Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested from the Cabinet Office information about spending over £25,000. It refused to provide it citing section 22 (information intended for future publication) as its basis for doing so. It upheld this at internal review.
2. The Commissioner's decision is that the Cabinet Office was not entitled to rely on section 22 as a basis for refusing to provide this information. However, given that it has now published the requested information, no steps are required.

Request and response

3. On 3 June 2015, the complainant requested information of the following description:

"I notice that you haven't published any spending data for any month since July 2014.

I'd like to make a request under the freedom of information act for all transactions over £25,000 from August 2014 until the end of April 2015. Please provide the data in a machine readable format (pref csv). As a minimum, please make sure to include the date, value and recipient of each transaction. Please also provide details on the procurement category of each transaction if you have it".

4. On 16 June 2015, the Cabinet Office responded. It refused to provide the requested information. It cited the following exemption as its basis for doing so:

- section 22(1) (Information intended for future publication).
- 5. The complainant requested an internal review on 18 June 2015 and referred to a decision notice of the Commissioner in support of her position.¹ She also referred to her organisation's own experience of redacting any sensitive information from high volumes of similar data and the reasonable delay this might give rise to. In her view, the delay in publication here was not reasonable.
- 6. She chased the internal review on 4 August 2015.
- 7. Following the Commissioner's intervention on 25 August 2015, the Cabinet Office sent her the outcome of its internal review on 4 September 2015 (see Other Matters). It upheld its original position.

Scope of the case

- 8. The complainant contacted the Commissioner on 25 August 2015 to complain about the way her request for information had been handled. At that stage, no internal review had been completed and, given the protracted delay in conducting one, the Commissioner agreed to take the case forward without it.
- 9. The Commissioner has considered whether the Cabinet Office was entitled to rely on section 22(1) as its basis for refusing to provide the requested information.

Reasons for decision

Background

- 10. In May 2013, the government published guidance to support its policy of ensuring that all government spending over £25,000 was published regularly.² At paragraph 2.6 it says:

"2.6 Consistent with producing raw data quickly, the expectation is that the published data reflects how each individual item was originally

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2014/954966/fs_50511252.pdf

² <https://www.gov.uk/government/publications/guidance-for-publishing-spend-over-25000>

recorded in financial systems. You are not currently required to reflect corrections/journals, if you subsequently find that an amount paid was incorrectly posted. We strongly recommend, however, that you correct significant errors."

11. At paragraphs 2.10 – 2.12 it says:

"2.10 Spend is to be published one month in arrears, ie by the last working day of the month following the month to which the data relates. If the data is available before the end of the month, it should be published as soon as the department has cleared it for release. This data is to be published in individual monthly files.

"2.11 You should not hold up the publication of your data where you have unresolved individual queries. You should publish the cleared data within the publication timescales, and amend the data at a later date if necessary. See section 2.5 for further detail on applying redactions to the data [actually section 2.14 onwards³]"

2.12 If you identify an error or wish to make an amendment to a previously published file (for example, adding a new item which you had previously withheld pending clearance), you should update it as soon as the changes have been approved. You need to amend the metadata description and related narrative accordingly".

12. As the complainant's request indicates, at the time of her request (June 2015) no data of this kind had been published by the Cabinet Office since July 2014. Almost a year's data was therefore missing.

Section 22 – Information intended for future publication

13. Section 22(1) provides that –

"Information is exempt information if-

(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),

(b) the information was already held with a view to such publication at the time when the request for information was made, and

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198197/Guidance_for_publishing_spend_over_25k.pdf

(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a)."

14. Section 22(1) is qualified by a public interest test.

15. There are, therefore, four questions to consider:

- Is there an intention to publish the requested information at some future date?
- Is the information already held with a view to publication at the time the request was made?
- Is it reasonable to withhold the information from disclosure until the intended date for publication?

Where the answer to the above three questions is "yes", the exemption is engaged but a fourth question must be addressed:

- Does the public interest favour maintaining the exemption or disclosing the information?

Is there an intention to publish the requested information at some future date?

16. In a letter of 23 November 2015, the Cabinet Office referred to the government's commitment on publishing any spending over £25,000 and explained that the requested data was still being quality checked but would be published "shortly" (see Notes 2 and 3). In a letter of 14 December 2015, it explained that its publication plans were well advanced – it provided specifics which indicated to the Commissioner that publication was imminent. It also explained that a backlog had unfortunately developed which it hoped to clear.

17. The Commissioner is satisfied that there was an intention to publish given the government's formal commitment (see Note 2) to publish such information.

Is the information already held with a view to publication at the time the request was made?

18. The Commissioner is satisfied that the requested spend data was held at the time of the request albeit not fully checked for accuracy. However, the Commissioner notes that the published guidance does not require fully accurate spend data to be published and that any amendments can be completed retrospectively. The published guidance is also mindful of the importance of redacting sensitive information, for example, to

comply with the requirements of the Data Protection Act 1998 ("DPA") and this is referred to at paragraphs 2.14 onwards of the guidance.

19. For example, at paragraph 2.19, the guidance says the following regarding concerns about publishing sensitive information:

"2.19 You should seek guidance from your departmental information rights specialists, where necessary. Issues with individual pieces of data should not be used to hold back spending data releases. Any items in question should be withdrawn from the files for publication until the issue has been resolved. Upon clarification of the issue, and if appropriate, the item should be added to the previously published data."

Is it reasonable to withhold the information from disclosure until the intended date for publication?

20. In light of the fact that the guidance at Notes 2 and 3 make specific reference to the need to publish promptly and to resolve any issues about accuracy retrospectively, it is difficult to conclude that the Cabinet Office has withheld information reasonably. The guidance also specifies how to handle sensitive information – it should not be a reason for withholding non-sensitive information in the same batch of data.
21. From a practical perspective, the Commissioner is aware that backlogs can develop for the completion of new challenges and he acknowledges that there may be a wholly plausible explanation as to why delays occurred in this case. However, that does not mean that it is acceptable or reasonable in the context of the section 22 exemption.
22. From a detailed reading of the government's guidance on the publication of spend data, it is clear that there are high expectations for relevant authorities to publish this data. There are also a number of safeguards in place to take account of matters of accuracy and sensitivity. In light of this, the Commissioner is unable to conclude that it was reasonable to withhold the information from disclosure until the intended date for publication. In this case, the original intended date of publication was, in fact, nearly a year prior to the request. The revised publication date was not more specific than "shortly". The Commissioner has no doubt that publication was intended. However, there was a published expectation that data will be published a month in arrears and this was missed by a considerable margin.

Section 22 - Conclusion

23. The Commissioner has concluded that section 22 is not engaged in this case. The Cabinet Office clearly intended to publish this information. The guidance to which it is working makes clear that inaccuracies are permissible and can be corrected. Concerns about inaccuracies and the

checking of sensitivities appear to have been the chief reason why there has been such a lengthy delay in publication. However, the aforementioned guidance makes clear that sensitivities can be given further consideration and information added later where appropriate. It explicitly states that "You should not hold up the publication of your data where you have unresolved individual queries. You should publish the cleared data within the publication timescales, and amend the data at a later date if necessary".

24. In light of the Commissioner's conclusion on the engagement of section 22, he has not gone on to consider the balance of public interest test.
25. The Commissioner notes that the Cabinet Office published the requested information in February 2016.⁴ He therefore requires no steps to be taken. At the same time as advising the Commissioner that the information had now been published, the Cabinet Office also explained that January 2016's data would be published shortly and that February 2016's data should be published by the end of March 2016. This would accord with the government's published commitment.

Other matters

26. The Commissioner notes that there was a notable delay in responding to the complainant's request for an internal review in respect of her request.
27. Part VI of the section 45 Code of Practice makes it desirable practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information and that the procedure should encourage a prompt determination of the complaint.
28. The Commissioner thinks that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances, it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

⁴ <https://www.gov.uk/government/publications/cabinet-office-spend-data>

29. In this case, the request for an internal review was made on 18 June 2015 and the response was issued on 4 September 2015 following a letter from the Commissioner on 25 August 2015. The Commissioner notes that in this case, the time taken to respond was 56 working days.
30. It appears that the Cabinet Office has offered no mitigation in terms of the delay. The Commissioner therefore finds that this delay is unreasonable and asks the Cabinet Office to ensure that future requests for internal reviews are handled appropriately and in accordance with his guidance.

Right of appeal

31. 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: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. 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.
33. 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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