

Freedom of Information Act 2000

Decision notice

Date: 16 May 2016

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

Decision (including any steps ordered)

1. The complainant requested information relating to the Crown Commercial Service's (CCS) 'contract finder' website search facility. The Cabinet Office – the public authority who is responsible for requests made under the Freedom of Information Act 2000 (the Act) to the CCS – confirmed that information was held and that it engaged section 43(2) of the Act. This response also stated that it needed further time to consider the balance of the public interest.
2. To date, the Cabinet Office has failed to provide the complainant the outcome of the public interest test. By failing to do so the Cabinet Office breached section 17(3) of the Act. The Cabinet Office has also breached section 17(1) because it took longer than 20 working days to issue its initial refusal notice to the complainant longer following receipt of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with the outcome of the public interest test for his information request. If the Cabinet Office decides to withhold any information then the complainant should be provided with a refusal notice giving a full explanation as to why the information will not be disclosed, including details of any public interest test considerations.
4. 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.

Request and response

5. On 11 December 2015, the complainant wrote to the CCS and requested information in the following terms:

"Please supply, under the requirements of the Freedom of Information Act, the following information regarding the Contract Finder web search service at:

<https://www.contractsfinder.service.gov.uk/Search>

- 1. The reason for the imposition of a 6 word search limit on the new beta Contract Finder search service, and subsequent downgrading, when the previous version was much higher or unlimited.*
 - 2. Advise if the current 6 word search limit to be removed and the limit returned to it's previous number.*
 - 3. If so, advise when will this happen.*
 - 4. If it is not planned to happen, please give the reasons for this.*
 - 5. The name and contact details of the government department which employs Crown Commercial and are responsible for their activities."*
6. The CCS confirmed receipt on 11 December 2015 and stated that the request was being transferred to the relevant department for a response.
7. The complainant sent an email on 13 January 2016 to enquire when his response was due. This did not prompt a response from the Cabinet Office so the complainant appealed to the Commissioner.
8. Following contact from the Commissioner, the Cabinet Office issued a response to the complainant on 19 February 2016. This response stated that relevant information was held but exempt under section 43(2) of the Act as it was commercially sensitive. However, the Cabinet Office stated that it would require further time to consider the balance of the public interest.
9. To date, the Cabinet Office has not informed the complainant of the balance of the public interest.

Scope of the case

10. The complainant contacted the Commissioner on 22 January 2016 regarding the Cabinet Office's failure to respond to his request. Following the Cabinet Office' response of 19 February 2016, the complainant contacted the Commissioner on 21 March 2016 to complain that the balance of the public interest test had not been communicated to him.
11. The Commissioner considers the scope of the case to be whether the Cabinet Office has issued a response to the complainant which meets with its obligations under the provisions of the Act.

Reasons for decision

Section 8 – request for information

12. Section 8(1) provides a definition for a request for information under the provisions of the Act:

“(1) In this Act any reference to a “request for information” is a reference to such a request which –

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested.”

13. In its correspondence to the Commissioner, the Cabinet Office argued that none of the items within the complainant's request were valid under the Act as they did not comply with section 8(1)(c).
14. The Commissioner disagrees. He will address each item of the request in turn:
 - 1) This asks for the reason why a website search facility was altered. If the CCS or the Cabinet Office has gone to the trouble of changing a website search facility then it follows that the reason for this might be recorded. The Commissioner considers that this item of the request describes the recorded information requested.
 - 2) If the changes to the search facility were focussed around the number of words that can be entered as search terms then it follows that there might have been a discussion about this, and

whether it was to be temporary or permanent. The Commissioner considers that this item of the request describes the recorded information requested.

- 3) This follows on from item 2. If the relevant information is held it would be a date confirming when any planned change is to be implemented – if at all. The Commissioner considers that this item of the request describes the recorded information requested.
 - 4) This also follows on from item 2. If the relevant information is held there might be reasoning over why the current limit is to remain permanent. The Commissioner considers that this item of the request describes the recorded information requested.
 - 5) This request asks for the name and contact details of the government department responsible for the CCS. The Commissioner would expect the Cabinet Office to hold this information and that this item of the request describes the information requested.
15. In the Commissioner's view, every item of the request is straightforward and easily describes the information requested. He cannot conceive how the Cabinet Office does not consider this to be the case, and the Cabinet Office has not provided any submissions beyond its statement that this is the case.
16. Further, if the Cabinet Office considered that the request was not sufficiently clear to enable it to locate or identify the information without further details, then the section 16 duty to provide advice and assistance will be triggered, and the Cabinet Office should have asked the complainant to provide further clarification in accordance with section 1(3) of the Act.

Section 17(1) – time for response

17. Section 1(1) of the Act provides 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.”*
18. Section 10(1) of the Act provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
19. Section 17(1) of the Act states (Commissioner's emphasis):

*(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, **within the time for complying with section 1(1)**, give the applicant a notice which—*

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.

20. The effect of section 17(1) is that if a public authority wishes to refuse a request – even if it is taking further time to consider the balance of the public interest – then it must inform the requester of this within 20 working days.
21. The complainant's request was acknowledged by the CCS on 11 December 2015, the response was issued on 19 February 2016. This is 47 working days after receipt of the complainant's request, so the Cabinet Office breached section 17(1) of the Act.

Section 17(3) – time for outcome of public interest test

22. Under section 17(3) a public authority can, where it is citing a qualified exemption, have a "reasonable" extension of time to consider the balance of the public interest. The Commissioner considers it reasonable for public authorities to take an additional 20 working days. For any further extension to a substantive response being issued, it would need to be demonstrated that there are exceptional circumstances causing the delay.
23. The Commissioner has contacted the Cabinet Office on numerous occasions asking it to provide a response. Whilst the Cabinet Office has acknowledged the delay and that it still needs to issue a response, it has not given any indication when this will be, or any reason for the continuing delay.
24. At the time of writing the Cabinet Office has had in excess of 40 working days to consider the balance of the public interest test. In addition, it has not provided any explanation for this delay, other than it now considered the requests were not valid as per section 8(1)(c) of the Act. Therefore, in the circumstances of this case, the Commissioner considers that the delay is not reasonable under the provisions of the Act.

25. The Commissioner requires the Cabinet Office to issue a substantive response to the complainant's request. If the Cabinet Office decides to withhold any information then the complainant should be provided with a refusal notice giving a full explanation as to why the information will not be disclosed, including details of any public interest test considerations.

Right of appeal

26. 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>

27. 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.
28. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF