

Freedom of Information Act 2000

Decision notice

Date: 9 June 2016

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

Decision (including any steps ordered)

1. The complainant made a request under the provisions of the Freedom of Information Act 2000 (the Act) for information that would be withheld in relation to a subject access request (SAR) he made under the provisions of the Data Protection Act 1998.
2. The Commissioner's decision is that the Cabinet Office has breached section 10(1) as it did not substantively respond to the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response to the complainant which meets with its obligations under the Act.
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 25 November 2015, the complainant wrote to the Cabinet Office and requested information in the following terms:

"I hereby make an FOI request for the full text of all documents that have been identified as containing potentially relevant material in response to my SAR.

This therefore means that you will not have to sift these documents in order to extract the personal data. Since they have presumably already been collated, you can simply send them to me now without having to devote further work to them on extracting personal data.

If you feel that would not actually save your time and effort, please get in touch to discuss the matter and I will consider withdrawing the FOI request if there is a better strategy to follow which would help us all out."

6. The Cabinet Office acknowledged the request on 26 November 2015.
7. The Cabinet Office wrote to the complainant on 16 February 2016 and confirmed that it held information relevant to the complainant's request. However, it also clearly stated that this response was made outside of the provisions of the Act. In this response, the Cabinet Office stated what exemptions might apply to any eventual response it issued in accordance with the Act.
8. The complainant acknowledged this correspondence on 18 February 2016 and confirmed that he still wished to receive a response under the provisions of the Act. The complainant then chased the Cabinet Office for a response on 15 March 2016.
9. To date, the Commissioner has not seen any evidence that the Cabinet Office has issued a response which meets with its obligations under the Act. He contacted the Cabinet Office to enquire whether a response had been issued and it chose not to respond.

Scope of the case

10. The complainant contacted the Commissioner on 19 April 2016 to complain about the way his request for information had been handled.
11. The Commissioner considers the scope of the case to be whether the Cabinet Office has complied with section 10(1) of the Act.

Reasons for decision

12. 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."

13. The Commissioner's view is that the Cabinet Office's response of 16 February 2016 meets its obligations under section 1(1)(a), as it confirmed that relevant information was held.
14. The response states that the information held in relation to the complainant's request would be withheld under section 40(1) because it would be the complainant's personal data. However, it also states that the response to the SAR – which is named in the request – is taking longer than 40 days to complete, because the Cabinet Office needs further time to extract the complainant's personal data from the information it identified through its searches as being potentially relevant to the complainant's SAR.
15. The complainant's request under the Act asks for all of the "full text of all documents that have been identified as containing potentially relevant material in response to my SAR". This shows that not all of the information identified by the Cabinet Office as being potentially relevant to the complainant's SAR would be his own personal data, otherwise it would not need to be sifted through and removed.
16. Whilst the Cabinet Office has confirmed that some information is held in relation to the request under the Act, in the Commissioner's view it has erroneously stated that all of it would be the complainant's personal data. However, the Commissioner is conscious that the Cabinet Office did not formally apply section 40(1) to refuse disclosure of the information requested.
17. 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. The Cabinet Office confirmed receipt of the request on 26 November 2015, and the twentieth working day following this was 23 December 2015. As the Cabinet Office has missed this deadline – in that it did not disclose the requested information or issue a valid refusal notice - it is in breach of section 10(1).
18. As the Cabinet Office has still not substantively addressed the request, the Commissioner requires it to respond to the complainant and disclose the information. However, to the extent that it is exempt from disclosure, the Cabinet Office should notify the complainant as per the requirements of section 17 of the Act (refusal of request).

Right of appeal

19. 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>

20. 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.
21. 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

**Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**