

Freedom of Information Act 2000

Decision notice

Date: 5 April 2017

Public Authority: Cabinet Office
Address: Room 405
70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information from the Cabinet Office in relation to a Subject Access Request (SAR) he had submitted under the provisions of the Data Protection Act 1998 (DPA). The Cabinet Office refused the request under section 14(1) of the Freedom of Information Act 2000 (the Act) as it considered the request to be vexatious.
2. The Commissioner's decision is that the Cabinet Office is entitled to refuse the request under section 14(1) of the Act. No steps are required.

Request and response

3. The request made under the Act in this case came about after the complainant submitted a SAR to the Cabinet Office.
4. On 22 September 2015 the complainant wrote to the Cabinet Office and submitted a SAR in the following terms:

"This is a subject access request under the Data Protection Act.

Please send me a copy of all information you (the Cabinet Office) hold about me.

...

In order to help you locate information about me, you should bear in mind that you are most likely to hold information about me in relation to (a) my FOI requests to you and (b) my contacts with the press office

(however, it is of course possible that other teams hold information about me of which I am unaware).

Please note there is no need to send me further copies of material which you have previously sent to me in response to FOI requests."

5. Under the DPA the Cabinet Office is permitted 40 calendar days to respond to a SAR, which meant that its response was due by 1 November 2015.
6. On 2 November 2015 the Cabinet Office wrote to the complainant and stated that there would be a three week delay. On 24 November 2015 the complainant wrote to the Cabinet Office and stated that the additional three weeks had passed and he still had not received the response to his SAR.
7. The Cabinet Office responded on 25 November 2015 and stated the reason for the delay was that it had identified a large volume of potentially relevant information, and it was taking longer than expected to sift through it all to identify the complainant's personal data.
8. In response to this, the complainant submitted a request under the Act on 25 November 2015:

"In order to expedite matters, and save you time and effort, the following seems like a good idea:

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."

9. The Cabinet Office issued separate responses to the complainant's SAR and his request under the Act. The response to the SAR was issued on 18 February 2016. The response to the complainant's request under the

Act was provided on 25 July 2016, after the Commissioner had issued a decision notice ordering a response.¹

10. The Cabinet Office refused the complainant's request under section 14(1) of the Act as it was vexatious. This refusal was upheld in the Cabinet Office's internal review of 7 September 2016.

Scope of the case

11. The complainant contacted the Commissioner on 7 October 2016 to complain about the way his request for information had been handled.
12. The Commissioner considers the scope of the case to be whether the Cabinet Office is entitled to refuse the request under section 14(1).

Reasons for decision

Section 14(1) – vexatious requests

13. Section 1(1) of the Act states that:

“(1) 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.”

14. Section 14(1) of the Act states that:

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

15. The Cabinet Office's refusal under section 14(1) is based entirely on the argument that compliance with the request would be too burdensome, and that the burden was largely relating to activities that could not be claimed under section 12(1).

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1624380/fs50625886.pdf>

16. The Commissioner's guidance on vexatious requests covers those which would impose a grossly oppressive burden but are not covered by the section 12 cost limits. For a request to be seen as vexatious based purely on the burden it would impose it needs to be shown that:

- The requester has asked for a substantial volume of information **and**
- The authority has real concerns about potentially exempt information **and**
- Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

Substantial volume of information

17. The Cabinet Office stated that the scope of the complainant's request included records that went back nine years, and that there were in excess of 2,000 pages of information. The Cabinet Office explained to the Commissioner that it would have refused this request under section 12(1) of the Act had it not already collated the relevant information in order to process the complainant's SAR. However, as it had done so, this was not a possibility.

18. The Cabinet Office stated further that there were documents relating to over 15 requests from the complainant. A number of these requests had been for sensitive information and had required a substantial amount of deliberation, both internally and with the Commissioner. As a way of demonstrating how much information had been collated to answer the complainant's SAR the Cabinet Office referred the Commissioner to its SAR response of 18 February 2016. This included 15 pages of personal data in the form of extracts from emails, letters, and other documents that the Cabinet Office had obtained over nine years.

19. The Commissioner considers that the Cabinet Office has satisfied this condition. The complainant is a prominent journalist and the Commissioner has working knowledge of his requests to the Cabinet Office. The Commissioner's own records show a large number of cases covering information that is sensitive in nature and sizeable in volume.

Concerns about potentially exempt information

20. As mentioned, the complainant has made a number of requests for sensitive information, and the Cabinet Office argued that it had concerns that the scope of the complainant's request contained information that would be caught by the following exemptions:

- Section 21 – information accessible by other means

- Section 31 – law enforcement
 - Section 35 – formulation of government policy
 - Section 36 – effective conduct of public affairs
 - Section 37 – communications with Her Majesty etc. and honours
 - Section 40 – personal data
 - Section 42 – legal professional privilege
 - Section 43 – commercial interests
21. The complainant has previously complained to the Commissioner about the Cabinet Office's handling of a number of his earlier FOI requests and the Commissioner retains records about some of these previous appeals. The Commissioner's records show that the Cabinet Office had previously relied on sections 35, 36, 37, and 40 (as well as the equivalent regulation 13 of the Environmental Information Regulations 2004) when refusing previous FOI requests made by the complainant. She also has a case concerning section 23 information – which is information supplied by bodies dealing with security matters. For all of these exemptions, the Commissioner is satisfied that the Cabinet Office would hold this information and it would come within the scope of the complainant's request which is the focus of this decision notice.
22. The Commissioner has also considered the Cabinet Office's citing of sections 31, 42, and 43. Firstly, the Commissioner notes that her records of the complainant's requests are not complete. She usually only retains information for two years following the closure of a case, so there will be cases with the other exemptions which are held by the Cabinet Office but not the Commissioner. Secondly, the Commissioner would only have a record of any requests where the complainant decided to appeal against the Cabinet Office's handling of a request. Thirdly, the section 42 exemption would also refer to the Cabinet Office's own internal legal guidance it has sought on the application of exemptions. Once this information is requested by the complainant it would be caught by the exemption. Fourthly, given the complainant's previous requests have been for sensitive information it is not beyond reasonable doubt that some of the information from other requests would engage these sections.
23. The Commissioner is satisfied that the Cabinet Office has legitimate concerns that there is exempt information within the scope of the request. The Cabinet Office has identified a number of such exemptions, and the Commissioner has identified another. These clearly show that the Cabinet Office would be required to consider whether these exemptions apply. Given the number of exemptions that potentially

apply and the volume of relevant information this task is likely to require a considerable amount of resources.

Potentially exempt information cannot easily be isolated

24. The Cabinet Office stated that the various documents which contained potentially exempt information would need to be referred to the originating teams for consideration, and given the volume of information in scope this would be a sizeable task.
25. Whilst some of the information would be easily identifiable – such as a bundles of previously exempt information identified within the complainant's request – some of it would not be. The information contained internal discussions over where exemptions applied, as well as similar discussions with the Commissioner over the course of an investigation. This correspondence would need to be checked in order to identify references to potentially exempt information. Further, the correspondence would contain explanations about the withheld information which in itself would be potentially exempt from disclosure, and this would need to be identified with a manual search.
26. The Commissioner is satisfied that this condition has been met by the Cabinet Office. The scope of the request will contain a number of different pieces of correspondence and documents discussing the complainant's previous requests. Due to the volume of information within the scope of the request there is likely to be a sufficient amount of information that cannot easily be isolated.

Commissioner's decision

27. The Commissioner notes that the complainant's request stated it wished to "save [the Cabinet Office] time and effort", and she can understand how the request might have worked in such a way. However, it has become clear that the relevant personal data for the complainant's SAR was quite small in comparison to the information that it was contained in. The complainant's request under the Act covered all of this information, and due to the volume in consideration and the various exemptions that would likely apply the request is burdensome to the point of being vexatious.
28. The Commissioner's decision is that the request is vexatious as per section 14(1) of the Act. No steps are required.

Right of appeal

29. 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>

30. 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.
31. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF