

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 20 December 2018

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

Decision (including any steps ordered)

1. The complainant has requested information relating to disability access at No.10 Downing Street. He had received information on this subject in response to an earlier request and the Cabinet Office explained that this earlier disclosure was also within the scope of the information described in this request. It argued that it held no further information beyond this within the scope of the request and upheld this position at internal review.
2. The Commissioner's decision is that the Cabinet Office does hold more information within the scope of the request. In failing to provide a proper response to the complainant it contravened the requirements of section 1 and section 10 of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with a response to his request of 19 July 2018 in accordance with the requirements of section 1 of the FOIA. If it seeks to rely on exemptions as its basis for not doing so in whole or in part, it must explain this to the complainant in a refusal notice in accordance with the requirements of the FOIA.
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 19 July 2018, the complainant requested information of the following description:

"any reports or documents on the subject of disability access (including those relating to the steps leading to the front door) at No 10 Downing Street that have been prepared over the last two years."

6. This was a refined request following three previous requests for similar information during which time the Cabinet Office had provided an excerpt from a draft memo in a letter of 19 January 2018. This extract stated:

"Benefits from replacement would include ... and improved accessibility (replacement of the lift cars offers the potential to increase car size ...)."

7. On 16 August 2018 the Cabinet Office responded to the request and stated that it holds some information falling within the scope of the request but that it had already disclosed this to the complainant in response to an earlier request. As such it argued that it was exempt under section 21 (information accessible by other means). It acknowledged that it had failed to comply with its duty to provide advice and assistance set out at section 16 in correspondence with the complainant.

Scope of the case

8. The complainant contacted the Commissioner on 17 August 2018 to complain about the way his request for information had been handled.
9. Specifically, he did not dispute the Cabinet Office's use of section 21. He did, however, argue that the Cabinet Office holds more information within the scope of his request and that it should disclose this.
10. The Commissioner has considered whether the Cabinet Office holds more information within the scope of the request.

Reasons for decision

Section 1 – general right of access

11. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it

holds that information and, if so, to have that information communicated to him. Both rights are subject to exemptions.

12. In this case, the complainant clearly believes the Cabinet Office holds more information within the scope of the request than the excerpt of a memo which has been disclosed to him. The Cabinet Office's position is that it holds no information within the scope of the request other than what it has disclosed to the complainant.
13. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely or unlikely that the public authority holds further information relevant to the complainant's request.
14. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is, or is not, held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

The complainant's position

15. The complainant argued that correspondence with Historic England and the Cabinet Office itself would indicate that other recorded information exists.
16. He also explained that he had correspondence with both Historic England and the No 10 press office about the issue of access improvements at No 10.
17. He has set out that a No 10 spokeswoman told him:

“Downing Street is committed to accessibility and we have undertaken a programme of works over recent years to make sure this historic building is accessible to all who visit.”
18. Historic England told him that the Cabinet Office was “rolling out a programme of improvements to the grade I listed complex to proactively address disabled access.”
19. A spokeswoman for Historic England told him: “Historic England advised on the recent installation of the award-winning lift [inside] Downing

Street and regularly discusses listed building alterations with Cabinet Office.”

20. Another spokeswoman for Historic England added later: “There have not yet been any formal discussions with Cabinet Office about alterations specifically to the front steps of Number 10. The accessibility audit is still being worked through and we will continue to advise as necessary.”
21. The complainant also provided the following link showing coverage of the matter and comments from relevant parties.

<http://www.disabilitynewsservice.com/10-downing-street-wins-access-award-despite-steps-to-iconic-front-door/>

Cabinet Office's position

22. The Cabinet Office explained the searches it undertook in order to locate the information described in the request. It said that the team responsible for “identifying, authorising and commissioning all works at the Downing Street complex - conducted electronic and paper searches of their records for: any recorded information relating to discussions on the subject of disability access, including the possible removal of the steps leading to the front door of No. 10, or any other access arrangements that would in future allow wheelchair-users to enter No. 10 without having to use a temporary or portable ramp. They confirmed that no recorded information was held on those subjects.”
23. It then asked the same team if it had recorded information held as a result of the discussions with Historic England referred to above. The team said “their searches show no reports or documents on the subject of disabled access (including those referring to the steps leading to the front door), either with Historic England or other parties.”

The Commissioner's decision

24. As noted above, the Commissioner considers cases such as this to the civil standard, that is, on the balance of probabilities. The Commissioner is satisfied that the Cabinet Office conducted appropriate searches and asked the relevant team as the most likely to hold such information.
25. In the Commissioner's view, the Cabinet Office was somewhat parsimonious in its earlier disclosure to the complainant. The Commissioner has reached this conclusion having read the information provided to her by the Cabinet Office in response to her queries.
26. The Commissioner accepts that disability access at No. 10 Downing Street is not the subject of the memo an extract of which was disclosed to the complainant. However, disability access into and inside No. 10

Downing Street is *a subject* [the Commissioner's emphasis] covered in the memo in question. The Cabinet Office itself appears to acknowledge that it is within the scope of the request by applying section 21 to it above. The Commissioner has set out in a Confidential Annex to this notice, the other information which in her view, falls within the scope of the request. It is not a considerable amount.

27. At the risk of adding to the complainant's frustration, the Commissioner would emphasise that, the Cabinet Office is not automatically obliged to disclose further information that it holds within the scope of its request. It should, in order to comply with its obligations under section 1 either provide it to the complainant or explain in a refusal notice why it is exempted from its obligation to do so.
28. Strictly speaking, it is not obliged even to confirm or deny that it holds further information if it can rely on an exemption as its basis for excluding itself from this duty. However, in the circumstances of this case, the Commissioner does not consider that to be practical given that it has already acknowledged the existence of the memo in previous correspondence with the complainant.
29. Further detail about the Commissioner's decision is set out in the Confidential Annex to this notice.
30. In conclusion, the Commissioner has concluded that the Cabinet Office holds further information within the scope of the request and should either disclose it or explain why it is not obliged to disclose it (in whole or in part) under FOIA.
31. In failing to provide the complainant with a proper response to his request, it contravened the requirements of section 1 and section 10 of the FOIA.¹

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:
-

¹ Sections 1 and 10 of the FOIA can be found at a website delivered by the National Archives <http://www.legislation.gov.uk/ukpga/2000/36/part/I>

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: 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

**Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**