

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 5 June 2019

Public Authority: Cabinet Office
Address: 79 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested copies of public messages added to Ukgovernmentdigital.slack.com during a specified four hour period. The Cabinet Office initially refused the request under section 14(1) of the FOIA, then claimed that it did not hold the requested information. The complainant then revised his request, but the Cabinet Office did not respond to the revised request.
2. The Commissioner's decision is that the Cabinet Office ought to have responded to the revised request submitted by the complainant.
3. The Commissioner requires that the Cabinet Office consider the revised request and issue a fresh response not citing section 14(1) of the FOIA. Given that the Commissioner has inspected the requested information, the Cabinet Office may not claim that it does not hold the requested information.
4. The public authority must take this step 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. The complainant originally submitted the following request to the Cabinet Office on 3 August 2017:

"This request relates to the following recent Information Commissioner's decision concerning a cloud storage thingy used by civil servants:

<https://ico.org.uk/media/action-weve-tak...>

It was estimated that every day Ukgovernmentdigital.slack.com has 130 new public messages added to it.

Please provide copies of all the public messages that I am entitled to under the FOIA which were added to Ukgovernmentdigital.slack.com yesterday between 9am and 1pm."

6. The Cabinet Office refused the request under section 14(1) of the FOIA.
7. Subsequently the Commissioner issued a decision notice¹ on 15 October 2018 which found that the Cabinet Office was not entitled to rely on section 14(1) and required that a fresh response be issued.
8. The Cabinet Office issued its fresh response to the complainant on 20 November 2018. At this stage the Cabinet Office denied that it held the requested information.
9. The complainant requested an internal review on 21 November 2018. At this stage he advised the Cabinet Office that:

"...it is not critical that the public messages I seek be limited to the specified time period. If you can't sift them from the information contained in the 110 pages of raw data seen by the Commissioner, I would be satisfied with all of the information contained in the relevant raw data."

10. The complainant did not receive a response to this correspondence.

Scope of the case

11. The complainant contacted the Commissioner on 14 February 2019 to complain that the Cabinet Office had failed to provide him with the outcome of the internal review. The complainant was of the view that the Cabinet Office did hold the requested information.
 12. The Commissioner accepted this complaint without an internal review since the Cabinet Office has had five months to reconsider its position.
-

¹ Case ref: FS50709306

13. The Commissioner wrote to the Cabinet Office on 1 May 2019, requesting further details of the Cabinet Office's claim that it did not hold the requested information. The Commissioner reminded the Cabinet Office that it had provided her with what it purported to be the requested information during the investigation of the previous complaint which led to the decision notice. Therefore it appeared to the Commissioner that the Cabinet Office did in fact hold the requested information.
14. The Commissioner did not receive any acknowledgement, or a substantive response to her correspondence. She has considered issuing an information notice, but considers that the Cabinet Office has had adequate opportunity to respond to her enquiries. She is also mindful of the delay experienced by the complainant in this case.

Reasons for decision

Section 1(1)(a): information not held **Section 10(1): time for compliance**

15. Section 1(1)(a) of the FOIA provides that a public authority is required in most cases to confirm or deny that it holds the requested information. The authority is required to comply with section 1 no later than 20 working days after the day the request is received. Both provisions are subject to the exemptions and exclusions set out at Part II of the FOIA.
16. In this case the Cabinet Office advised the complainant that it could separate out messages relating to the specified date, but said it was unable to separate out messages relating to the specified time period. Therefore the Cabinet Office concluded that it did not hold the requested information. However it did not address the information it had previously provided to the Commissioner as set out at paragraph 13 above.
17. In the absence of any response to her enquiries, the Commissioner does not understand how the Cabinet Office has concluded that the requested information is not held. The Commissioner has reminded the Cabinet Office on several occasions that it is for the public authority to demonstrate that it has complied with the FOIA. The Cabinet Office has made no attempt to do so in this case.
18. Furthermore, the Commissioner observes that the complainant revised his request in his correspondence dated 21 November 2018. He explicitly stated that he would like to receive the raw data, ie all of the messages provided to the Commissioner by the Cabinet Office. Even if

the Cabinet Office had been entitled to claim that it did not hold the requested information relating to the original time period specified, it is clear that the Cabinet Office did hold the messages it had provided to the Commissioner.

19. The Cabinet Office could have addressed this in its internal review, although it was technically a fresh request under the FOIA since it expanded the scope of the original request. In either case, the Cabinet Office ought to have responded to the revised request. The Commissioner therefore finds that the Cabinet Office failed to comply with section 1(1)(a) and section 10(1) in respect of the revised request.
20. The Commissioner has considered whether she ought to require the Cabinet Office to disclose the requested information to the complainant. She notes that in the previous case the Cabinet Office argued that it would need to review the requested information in order to consider whether any exemptions applied. The Commissioner is of the opinion that it would be wrong to order the disclosure of information without allowing the Cabinet Office the opportunity to review its content.

Other matters

21. Although it does not form part of the Commissioner's decision, the Commissioner wishes to record her concern at the way the Cabinet Office has approached this complaint.
22. Firstly, the Commissioner is disappointed that the Cabinet Office failed to conduct an internal review. In the Commissioner's opinion the value of an internal review is that it allows a public authority to check that its response to a request is correct, both in terms of technical compliance and in terms of the decision made. It is therefore extremely disappointing that the Cabinet Office failed to follow the recommendations as set out in the code of practice issued under section 45 of the FOIA and published by the Cabinet Office itself.²

2

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

23. The Commissioner is further disappointed at the brevity of the explanation provided by the Cabinet Office to the complainant in the refusal notice. Given that the original request was made in August 2017, the complainant waited over 18 months for a substantive response to his request. The Commissioner considers it unacceptable for a public authority with the experience of the Cabinet Office to handle a valid request for information in such an inadequate manner.

Right of appeal

24. 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 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

25. 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.
26. 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
Sarah O’Cathain
Senior Case Officer

Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF