

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 April 2020

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 0AA

Decision (including any steps ordered)

1. The complainant requested the identities of members of an accreditation committee. The Cabinet Office initially withheld all of the information but later disclosed most of it. It relied on section 40(2) to withhold the remaining information.
2. The Commissioner's decision is that the Cabinet Office failed to issue its refusal notice within 20 working days and therefore breached section 17(1) of the FOIA. The Commissioner has also made some comments on the Cabinet Office's engagement with her office under "Other Matters."
3. The Commissioner does not require further steps.

Request and response

4. On 11 April 2019, the complainant wrote to the Cabinet Office to make a subject access request (SAR). In the same email, he requested information in the following terms:

"Under the Freedom of Information Act, please could you also provide a list of the individuals (names and affiliations) who comprised the ADC's Accreditation Committee as at 1st August 2017."
5. The Cabinet Office acknowledged receipt of the complainant's SAR on 11 April 2019 but did not issue a substantive response to the request for information under the FOIA until 30 August 2019. The Cabinet Office refused to provide any information citing section 40(2) of the FOIA as its reason for doing so.

6. The complainant sought an internal review on 3 September 2019.
7. The Cabinet Office issued a fresh response on 6 March 2020. It now released most of the information it had previously withheld. However, it continued to withhold the names of the external members of the panel (although it did disclose the names of the organisations that they worked for) and the name of a relatively junior member of staff. It relied on section 40(2) of the FOIA to do so.

Scope of the case

8. The complainant first contacted the Commissioner on 17 June 2019 to complain about the way his request for information had been handled. At that point, the Cabinet Office had yet to respond to the request and the Commissioner was required to issue decision notice FS50846805 to force the Cabinet Office to comply with its duties under section 1(1) of the FOIA.¹
9. Following the Cabinet Office's belated refusal notice, the complainant sought an internal review. On 30 October 2019, the complainant came back to the Commissioner to note that the Cabinet Office had failed to complete its internal review, despite having had 40 working days in which to do so.
10. Given the delays which had already occurred in the case, the Commissioner considered that it would be unfair to expect the complainant to wait any longer for the Cabinet Office to fulfil its obligations. She therefore exercised her discretion and accepted the case for review without waiting for the outcome of the internal review.
11. Commencing her investigation on 28 November 2019, the Commissioner asked the Cabinet Office to revisit the request and, where it still wished to rely on section 40(2) of the FOIA, provide its submission as to why the exemption applied, within 20 working days.
12. The Cabinet Office failed to respond to this letter and the Commissioner had to serve an information notice on the Cabinet Office. The Cabinet Office again failed to respond by the required deadline.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615471/fs50846805.pdf>

13. When informed that the Commissioner was about to move to instruct contempt proceedings, the Cabinet Office finally issued a fresh response to the request on 6 March 2020 disclosing most of the information it had previously withheld.
14. The complainant was content with the information that the Cabinet Office eventually disclosed, but asked the Commissioner for a further decision notice recording the procedural delays in handling his request. Given the Cabinet Office's repeated delays, the Commissioner considers that a decision notice is appropriate in this case.
15. As the Commissioner has already dealt with the Cabinet Office's failure to comply with its section 1(1) duty, within legal deadlines, in decision notice FS50846805, she does not need to revisit that matter.
16. The Commissioner considers that the scope of her investigation is to consider whether the Cabinet Office's refusal notice was correctly issued.

Reasons for decision

Section 17 – Refusal Notice

17. Section 17(1) of the FOIA states that when a public authority wishes to withhold information or to neither confirm nor deny holding information it 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.*

18. The Cabinet Office did not issue its refusal notice until 30 August 2019 and only after the Commissioner had issued a decision notice. The Commissioner therefore finds that the Cabinet Office failed to issue its refusal notice within 20 working days and thus breached section 17(1) of the FOIA.

Other matters

19. The Commissioner wishes to place on record that the complainant has had to wait almost 11 months for the Cabinet Office to provide some of the 14 names he originally sought. A situation the Commissioner considers to be unacceptable. At no point has the Cabinet Office attempted to offer any explanation for this delay or any reasoning as to why the names were particularly sensitive.
20. The Commissioner also wishes to place on record the repeated and unreasonable delays in the Cabinet Office meeting statutory and informal deadlines. These have included:
 - Initial response – 30 weeks after deadline
 - Compliance with first decision notice – 1 week after deadline
 - Internal review/fresh response – 18 weeks after deadline
 - Response to investigation letter – 9 weeks after deadline
 - Compliance with Information Notice – 3 weeks after deadline

Right of appeal

21. 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

22. 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.
23. 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

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