

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **11 September 2023**

Public Authority: **Cabinet Office**

Address: **70 Whitehall
London
SW1A 2AS**

Decision (including any steps ordered)

1. The complainant has requested information from the Cabinet Office in relation to a specific company and awards of legal costs within each financial year starting from 2017/18. The Cabinet Office cited section 12(2) of FOIA
2. The Commissioner's decision is that the Cabinet Office was entitled to rely on section 12(2) to refuse the request, and that it complied with its obligations under section 16(1) of FOIA to offer advice and assistance.
3. The Commissioner does not require the Cabinet Office to take any steps as a result of this decision notice.

Request and response

4. On 19 December 2022, the complainant wrote to the Cabinet Office and requested information in the following terms:

"I am writing to request, under the Freedom of Information Act, the following information:

The total sum (a) paid to and (b) received from the Good Law Project by the Cabinet Office in respect of awards of legal costs, in each financial year since 2017/18."

5. The Cabinet Office responded on 20 January 2023. It refused to provide the requested information, citing section 12(2) of FOIA to withhold the requested information.
6. The Cabinet Office did not carry out an internal review, however the Commissioner has accepted the case for investigation.

Scope of the case

7. The complainant contacted the Commissioner on 23 June 2023, to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of the investigation is to determine whether confirming or denying if the requested information is held would exceed the appropriate limit.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

9. Section 1 of FOIA states 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.”
10. However, under section 12(2) a public authority is not required to comply with section 1(1) if the cost of establishing whether or not it holds the requested information would exceed the appropriate cost limit. The appropriate limit for the Cabinet Office is set at £600 (24 hours work at £25 per hour).
11. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of “Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004”, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”.

12. The task for the Commissioner here is to determine whether the cost estimate by the Cabinet Office was reasonable. If it was, then section 12(2) was engaged and the Cabinet Office was not obliged to confirm or deny whether the requested information was held.
13. The Cabinet Office has explained that the requested information is likely to be held by the Government Legal Department on behalf of the Cabinet Office. It advised that even if it were achievable within the cost limit, the Cabinet Office would then need to search its own information to determine where it might have paid or received costs.
14. The Cabinet Office advised that using search criteria to find cases within the Government Legal Department's case management system, based on specific phrases or acronyms, is always highly dependent on case holders using such a phrase to identify a case. It went on to explain that during the search for the requested information, it was discovered that a data cleansing exercise would need to be carried out, which is estimated would exceed the appropriate limit.
15. The Cabinet Office explained that the Government Legal Department located four cases which they thought may have been potentially in scope. These cases were checked for client monies and none were found for these cases.
16. The Cabinet Office advised that its Legal Advisers provided a list of cases where they believed that costs/damages had been made.
17. Upon review of these cases the Cabinet Office explained it found that four of the cases were within scope of the request, but three were not, which it advises demonstrates that cases are not easily attributable by names/identifiers on the case management system.
18. It further found that no costs/damages payments were identified as being processed by the Government Legal Department and that it ascertained that identified payments were directly processed by the client department, but the field 'Direct Payments' were not populated by the case holders on the system and, therefore, the Government Legal Department does not hold data for those, neither on their own or on behalf of the Cabinet Office.
19. The Cabinet Office explained that using the seven potential files identified as a sample, it estimates that it would take 3.4 hours per case to check and collate the potential information, if it is held. For those seven cases alone, that would be a total of 23.8 hours. The Cabinet Office advised that this is just a sample of cases and does not represent the entirety of the work needed to comply with the request.

20. The Cabinet Office explained that it does not have a complete list of all the cases in which the Good Law Project were involved as a party to any relevant litigation in scope of the request. It added that it would not be a simple exercise to positively identify all cases either, as some cases involved the Good Law Project but they did not appear as a party in the case name/reference on the system. The Cabinet Office explained that it would be therefore almost impossible to search for and locate all relevant information, particularly over the five-year period of the request.
21. The Cabinet Office has explained that no single part of it would conveniently hold information potentially in scope of the request. It stated that it would not be reasonable in terms of costs to go out to all the teams within the department to ask if the information is held. It also noted that the request covers a five year period and that teams have changed in terms of structures, officials and objectives.
22. The Commissioner has considered the Cabinet Office's arguments and is satisfied that to either confirm or deny holding the information, it would exceed the appropriate limit of £600. Therefore, the Commissioner's decision is that the Cabinet Office was correct to apply section 12(2) of FOIA to the request.

Section 16 – advice and assistance

23. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making or wishing to make requests for information.
24. In this case, the Cabinet Office advised the complainant in the refusal notice, that they may want to submit a fresh request with a shorter time period. As such, the Commissioner accepts that the Cabinet Office provided advice and assistance to the complainant.

Right of appeal

25. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

26. 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.
27. 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

Michael Lea
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