

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 5 December 2023

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information from the Cabinet Office relating to domestic travel by the Prime Minister and the Prime Minister's and minister's carbon footprints.
2. The Commissioner's decision is that the Cabinet Office is not entitled to rely on regulation 12(4)(b) (manifestly unreasonable) to refuse to comply with the request.
3. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request which does not rely on regulation 12(4)(b) of the EIR.
4. The Cabinet Office 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 2 November 2021, the complainant wrote to the Cabinet Office and requested information in the following terms:

"In the light of the climate crisis and the UK government's current leadership of the COP26 I would be grateful if you could provide me with the following information.

- 1) How many domestic flights has the Prime Minister made in each of the following years 2019*, 2020 2021?
- 2) How many of these flights were on (a) commercial flights; (b) private jet (c) military flights?
- 3) How many domestic journeys has the PM made by rail in each of 2019, 2020 and 2021?
- 4) How many domestic flights have been made by other ministers during each of 2019, 2020 and 2021?
- 5) How many of these flights were on (a) commercial flights; (b) private jet (c) military flights?
- 6) How many domestic journeys have ministers made by rail during each of 2019, 2020 and 2021?
- 7) Does the government monitor the carbon footprint of prime ministerial and ministerial travel?
- 8) If yes please can you provide the calculated footprints for (a) the PM and (b) the cabinet as a whole for each of the years 2019, 2020 and 2021
- 9) Is there a government policy regarding management of the environmental and climate impacts of ministerial and prime ministerial travel? If yes, please can I see a copy?

*To clarify, I am interested in travel undertaken on behalf of the government and I am not requesting inclusion of details of trips made for other purposes such as holidays, election campaigning or travel between constituencies and Parliament attributable to their roles as MPs. I appreciate that the PM was only in the role from approximately the middle of 2019 onwards."

6. The Cabinet Office responded on 1 December 2023 and refused to provide the requested information citing section 12 (cost limit) of FOIA as its basis for doing so.
7. On 27 January 2022 the complainant wrote to the Cabinet Office to request an internal review. At the same time however, the complainant refined their request by reducing the scope of parts 1 – 6 of their request in the following terms:

“I would propose to limit the information requested (questions 1 – 6) to just Prime Ministerial travel and not include other cabinet ministers. I would also be prepared to reduce the time span to 2021.”
8. The Cabinet Office provided the complainant with the outcome of its internal review on 22 June 2023 in which it maintained its application of section 12 to the original request. In response to the refined request, the Cabinet Office stated that even though parts 1 – 6 of the request were now limited to 2021, the cost of complying with the refined request would still exceed the cost limit.

Scope of the case

9. In their internal review request and complaint to the Commissioner, the complainant stated that they accept that part of their original request may be excessively time consuming. Furthermore, as the complainant has submitted a refined request for information to the Cabinet Office, it appears to the Commissioner that the complainant is not disputing the Cabinet Office’s application of section 12 to the original request.
10. Therefore, this Decision Notice will only address the Cabinet Office’s handling of the refined request which was made on 27 January 2022 and asked for the following information:
 - 1) How many domestic flights has the Prime Minister made in 2021?
 - 2) How many of these flights were on (a) commercial flights; (b) private jet (c) military flights?
 - 3) How many domestic journeys has the PM made by rail in 2021?
 - 7) Does the government monitor the carbon footprint of prime ministerial and ministerial travel?

- 8) If yes please can you provide the calculated footprints for (a) the PM and (b) the cabinet as a whole for each of the years 2019, 2020 and 2021
- 9) Is there a government policy regarding management of the environmental and climate impacts of ministerial and prime ministerial travel? If yes, please can I see a copy?
11. The Commissioner will firstly consider whether the Cabinet Office was correct to handle the request under FOIA rather than the EIR. If he determines that the Cabinet Office was correct to handle the request under FOIA, the Commissioner will then consider whether the Cabinet Office is entitled to rely on section 12 of FOIA to refuse to provide the requested information.
12. However, if the Commissioner determines that the Cabinet Office should have handled the request under the EIR, he will consider whether the Cabinet Office is entitled to rely on regulation 12(4)(b) of the EIR to refuse to provide the requested information as regulation 12(4)(b) can apply where a request would impose a significant burden on a public authority in terms of cost and time.

Reasons for decision

Is the requested information environmental?

13. The Cabinet Office considers that it was correct to handle the request under FOIA rather than the EIR. In its submissions to the Commissioner, the Cabinet Office stated that before it could determine whether the requested information is environmental, it would need to carry out searches for that information and then review the requested information. However, the Cabinet Office considers that as it has applied section 12 to the request, it would not be required to do this.
14. The Commissioner considers that the requested information is environmental as defined in regulation 2(1) of the EIR. Regulation 2(1)(c) defines environmental information as being any information on:

“(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements.”
15. The Commissioner considers information on ministerial travel including the method of travel, its carbon footprint and on government policy

regarding management of the environmental and climate impacts of ministerial travel to be on activities that are likely to affect the elements and factors specified in regulation 2(1)(a) and (b). His finding is, therefore, that the information requested by the complainant is environmental.

16. As the requested information is environmental, the Commissioner's decision is that the Cabinet Office should have handled the request under the EIR. Therefore, the Commissioner has gone on to consider whether the Cabinet Office is entitled to rely on regulation 12(4)(b) of the EIR to refuse to provide the requested information.

Regulation 12(4)(b) – manifestly unreasonable

17. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. In this case, the Cabinet Office cited section 12 of the FOIA and hence the Commissioner has considered regulation 12(4)(b) on the grounds that to comply with the complainant's information request would impose a significant and disproportionate burden on its resources, in terms of time and cost.
18. Under FOIA, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') specify an upper limit for the amount of work required beyond which a public authority is not obliged to comply with a request. This is set at £600 for central government departments such as the Cabinet Office.
19. The Fees Regulations state that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it;
 - and extracting the information from a document containing it.
20. The EIR differ from FOIA in that under the EIR there is no upper cost limit set for the amount of work required by a public authority to respond to a request.
21. While the Fees Regulations relate specifically to FOIA, the Commissioner considers that they provide a useful point of reference where the reason for considering regulation 12(4)(b) of the EIR is the time and costs that compliance with a request would expend as is the case here. However,

the Fees Regulations are not the determining factor in assessing whether the exception applies.

The Cabinet Office's position

22. In its submissions to the Commissioner, the Cabinet Office stated that it does not consider that the cost of determining, locating, retrieving and extracting the information requested in part 1 - 3 of the request would exceed the appropriate limit as parts 1 - 3 of the request ask for a discrete set of information for a defined period. However, it does consider that the cost of determining, locating, retrieving and extracting the information requested in part 7 - 9 of the request would exceed the appropriate limit.
23. The Cabinet Office stated that it does not hold the policy on greenhouse gases associated with consumption or carbon footprints. This policy is held by the Department for the Environment, Food and Rural Affairs. It therefore considers that it is highly unlikely that it holds any information relating to the monitoring of carbon footprints. However, the Cabinet Office noted that as it holds a wide range of information, it would have to carry out extensive searches of all of its records to be sure that it does not hold the information requested in parts 7 - 9 of the request. The Cabinet Office explained that it would have to search all of its records as there is no one place where the requested information would be located and where a search could be focussed.
24. The Cabinet Office explained that in order to determine whether it held the information requested in part 8 of the request, it would firstly need to identify every member of the Cabinet from 1 January 2019 to 20 November 2021. As this time period spans the terms of two Prime Ministers and two administrations this would be a significant number of individuals. It stated that once it had identified all the ministers who had served in the Cabinet between 1 January 2019 to 20 November 2021, it would then need to conduct a search of all of its records using both the name of each minister and the term 'carbon footprint' as search terms. The Cabinet Office considers that there is not a more effective method of searching its records for the requested information.
25. The Cabinet Office stated that if its searches were to locate records which may contain information falling within the scope of part 8 of the request, it would then need to review those records to identify any information falling with the scope of part 8 of the request and extract that information. It considers that this would take a considerable amount of time. Furthermore, the Cabinet Office considers that its searches may not capture all information held.

26. The Cabinet Office considers that it is unable to formulate a precise calculation of the costs of complying with the request. However, it is satisfied that the cost of complying with the request would exceed the appropriate limit.

The Commissioner's position

27. The Commissioner notes that the Cabinet Office has stated that in order to determine whether it held the information requested in part 8 of the request, it would need to conduct a search of all of its records using both the name of each Cabinet member from between 1 January 2019 and 20 November 2021 and the term 'carbon footprint'. He also notes that the Cabinet Office considers that it would then need to review any records located by these searches to determine whether they contain the information requested in part 8 of the request. However, the Commissioner considers that as part 8 of the request asks for the calculated carbon footprints of the Prime Minister and Cabinet members for 2019, 2020 and 2021, the Cabinet Office would need to search records from the whole of 2019, 2020 and 2021 rather just records dating from between 1 January 2019 and 20 November 2021.
28. Furthermore, the Cabinet Office has not provided the Commissioner with an estimate of the number of records it would need to review or an estimate of how long it would take to review any records located. Whilst he acknowledges that the Cabinet Office considers that it is unable to provide an estimate, the Commissioner does not accept this position. The Commissioner considers that the Cabinet Office could provide an estimate of the number of records that would need to be reviewed by conducting a sampling exercise. For example, the Cabinet Office could conduct searches of its records using the names of a sample of the Cabinet members from 2019, 2020 and 2021 and the term 'carbon footprint' to search its records for the information requested in part 8 of the request. This would provide an indication of the total number of records that would need to be reviewed.
29. As the Cabinet Office has not provided the Commissioner with an estimate of the number of records it would need to review in order to determine whether the information requested in part 8 of the request was held, or an estimate of time that it would take to review those records, the Commissioner considers that the Cabinet Office has failed to demonstrate that the cost of complying with part 8 of the request would be excessive and hence that the request would be manifestly unreasonable.
30. Furthermore, the Commissioner considers that the Cabinet Office has failed to demonstrate that the cost of complying with parts 7 and 9 of the request would be excessive as other than stating that it would need

to search its records as the requested information would not be held in one location, the Cabinet Office has not offered an explanation to support this position.

31. Therefore, the Commissioner considers that the Cabinet Office has failed to demonstrate that the request is manifestly unreasonable. His decision is therefore that the request was not manifestly unreasonable and so the Cabinet Office was not entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with it. At paragraph 3 above the Cabinet Office is now required to issue a fresh response that does not rely upon regulation 12(4)(b) of the EIR.

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:

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

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

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