

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 January 2024

Public Authority: Foreign, Commonwealth and Development Office

Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant requested information from the Foreign, Commonwealth and Development Office (FCDO) relating to visits made by Boris Johnson to Ukraine, both as Prime Minister and ex-Prime Minister. The FCDO refused to comply with the request citing section 12(1) (cost limit) of FOIA.
2. The Commissioner's decision is that the FCDO was entitled to rely on section 12(1) of FOIA to refuse to comply with the request. The Commissioner also finds that the FCDO complied with its obligations under section 16 to offer advice and assistance.
3. The Commissioner does not require the FCDO to take any steps.

Request and response

4. On 16 June 2023, the complainant made the following request for information to the FCDO:

"1. Any records, briefings, communications related to visits made by Boris Johnson to Ukraine 2022-2023, as Prime Minister and ex-Prime Minister.

2. Any records of formal or informal meetings between Boris Johnson with Ukrainian President Zelinskyy, in person or via electronic communications, video conferencing, telephone calls, including any messaging services, and audio-visual media records. 2022-2023, as Prime Minister and ex-Prime Minister.”
5. The FCDO responded on 6 July 2023. It stated that it held information within the scope of the request, but that the cost of complying with the request would exceed the cost threshold of £600. The FCDO explained that the complainant may wish to narrow the scope of their request to bring it within the appropriate limit. It did not explain how the request could be narrowed.
6. The FCDO upheld its initial application of section 12 of FOIA via internal review on 6 October 2023.

Scope of the case

7. The complainant contacted the Commissioner on 9 October 2023 to complain about the way their request for information had been handled. The complainant disagrees with the FCDO’s application of section 12 of FOIA.
8. The Commissioner considers the scope of this case to be to determine if the FCDO has correctly cited section 12(1) of FOIA in response to the request. The Commissioner has also considered whether the FCDO met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

9. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
10. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies, and the armed forces and at £450 for all other public authorities. The appropriate limit for the FCDO is £600.

11. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours for the FCDO.
12. Regulation 4(3) of the Fees Regulations states 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.
13. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. The Commissioner considers that any estimate must be sensible, realistic and supported by evidence. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
14. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
15. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

Would the cost of compliance exceed the appropriate limit?

16. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked the FCDO to provide a detailed estimate of the time or cost taken to provide the information falling within the scope of this request.
17. The FCDO provided its submissions on 19 December 2023. Within its submissions, the FCDO explained that the information requested related to meetings and communications between the Prime Minister at the time and heads of foreign government. It would thus require input from a wide range of departments in the FCDO.

18. The FCDO explained that it had applied appropriate search terms when attempting to locate the information. The search terms selected were as follows:

“Prime Minister” AND “Ukraine” OR “Kyiv” AND “visit” OR “visited” OR “visits”

“Prime Minister” AND “Zelenskyy” AND “call” OR “speak” OR “spoke” OR “met OR “meet” OR “met”

We also used alternative/former spellings where appropriate (e.g., “Kiev” as well as “Kyiv” and four other potential spellings for “Zelensky”).”

19. These search terms alone produced 2,064 results. The FCDO then sampled 200 results to ascertain whether the documents were relevant to the request. It explained that this took two and a half hours (150 minutes) to complete, equating to approximately 0.75 minutes per document. Multiplying this estimation by all 2,064 results found would thus take 25.8 hours.
20. The FCDO advised the Commissioner that this sampling exercise did not include retrieving or extracting any relevant information, and that the time for this element of the exercise would likely rise to approximately two minutes per result. Considering an estimate that 10% of the documents would be relevant, this processing would add another 257 minutes (4.3 hours) to the time required.
21. The FCDO also explained in its submissions that the initial sampling exercise only covered information held in the email account of one member of the Ukraine team and one Teams site. To conduct a full search for the information requested would require searches within other individual email accounts and other sites used by the Ukraine team to store information, such as OneDrive.
22. The FCDO stated that a wide range of other departments in the FCDO would have been involved in, and had input into, the visits, meetings and communications under consideration. This means that the 25.8 hours of work referred to in paragraph 21 was likely to be a significant underestimate of the total cost of complying with the request.

The Commissioner's Decision

23. Based on the detailed estimates provided in the FCDO's submissions, the Commissioner is satisfied that the FCDO estimated reasonably that responding to the request would exceed the appropriate limit.
24. The FCDO has used a reasonable search strategy to identify all relevant information it is likely to hold and has demonstrated why analysing just a small proportion of its records would exceed the cost limit. The Commissioner would expect that the total amount of time taken to comply with this request to be far greater, as this work would have to be repeated across the department to identify all information falling within the scope of the request.
25. The FCDO was therefore entitled to apply section 12(1) of FOIA to the complainant's request.

Section 16(1) – The duty to provide advice and assistance

26. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request.
27. When a public authority relies on section 12 to refuse a request, it should explain, to the requester, how they might refine their request so that it falls within the cost limit.
28. The FCDO advised the complainant that, to bring their information request within the appropriate limit, they could refine the request to a much more specific aspect of a visit. A narrowed time-period should also be considered, as the request covered approximately an 18-month period.
29. The FCDO also informed the complainant that it would not be involved in Mr Johnson's visits or communications with President Zelenskyy after his resignation as Prime Minister.
30. The Commissioner is therefore satisfied that the FCDO provided the complainant with adequate advice and assistance. The FCDO therefore met its obligations under section 16(1) of FOIA.

Right of appeal

31. 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

32. 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.
33. 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

Roger Cawthorne
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