

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 February 2024

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information relating to correspondence between Candiru, Booz Allen Hamilton, Stratfo/RANE, NSO Group, Dark Matter, Archimedes Group, Black Cube and Bericho Technologies between the years 2015 to present. The Cabinet Office refused the request on the basis of section 12(2) of FOIA arguing that it would exceed the appropriate cost limit to determine whether it held any information falling within the scope of the request.
2. The Commissioner's decision is that the Cabinet Office was entitled to refuse to comply with the request in accordance with section 12(2) of FOIA. The Commissioner also finds that the Cabinet Office complied with its obligations under section 16 to offer advice and assistance.
3. The Commissioner does not require the Cabinet Office to take any steps.

Request and response

4. On 19 November 2021, the complainant wrote to the Cabinet Office and requested information in the following terms:

“...please disclose details of any correspondence between or work undertaken with the following companies between the years 2015 to present, or dating back as far as is permitted within the cost limit. I’d like dates and cost of any work undertaken too, and details that don’t fall under exemptions due to national security.

Candiru

Booz Allen

Stratfor/RANE

NSO Group

Dark Matter

Archimedes Group (Archimedes)

Black Cube

Bericho Technologies.”

5. The Cabinet Office responded on 15 December 2021. It stated that it was refusing the request under section 12 of FOIA.
6. Following an internal review the Cabinet Office wrote to the complainant on 11 May 2022 upholding its original position.

Scope of the case

7. The complainant contacted the Commissioner on 11 May 2022 to complain about the way their request for information had been handled.
8. During the Commissioner’s investigation the Cabinet Office explained that it should have clarified that it was refusing the request on the basis of section 12(2) of FOIA.
9. The Commissioner considers that the scope of this case is to determine if the Cabinet Office has correctly cited section 12(2) of FOIA in response to the request. The Commissioner has also considered whether the Cabinet Office met its obligations to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12(2) – cost of compliance

10. 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.”

11. 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).

12. 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”.

13. 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. In the Commissioner’s view, section 12(2) will only be relevant where the public authority is entirely unaware of whether it holds any recorded information within the scope of the request.

14. The Commissioner asked the Cabinet Office to provide a more detailed estimate of the time and cost of determining whether the requested information falling within the scope of this request was held.

The Cabinet Office’s position

15. In its submission to the Commissioner, the Cabinet Office explained that to determine whether the information was held it would need to conduct extensive searches across a number of areas within the public authority.

16. It explained that it would have to search the Crown Commercial Service (CCS) as it would likely manage the contractual and commercial relationships, if relevant, with the companies named by the complainant. It stated that it could reasonably expect CCS to hold information about correspondence with named companies who wish to engage with the Cabinet Office on a commercial basis and/or discussions and agreement about contractual arrangements with such companies. It added that CCS currently employ approximately 700 staff¹.
17. The Cabinet Office also stated that it would have to search the Cabinet Office Public Correspondence Team who manage formal correspondence requests made to the public authority and who would also likely be in receipt of correspondence from bodies such as those named by the complainant in their request.
18. In addition, the Cabinet Office stated that it would also need to search Cabinet Office Finance officials in order to ascertain if information relating to budgets or payments for work with the names companies is held.
19. The Cabinet Office acknowledged that the complainant's request was for "any correspondence" with the named 7 companies, "work undertaken with the following companies" and "dates and cost of any work undertaken too" and that the complainant asked for this information over a period of 6 years.
20. The Cabinet Office argued that the term "any correspondence" is extremely broad but as a starting point it would consider that it would include any email correspondence with a named company, including promotional mass emails from a company to distribution lists or emails between a named official and an individual at a particular company. It also explained that it would also include formal written correspondence such as letters. As a result, the Cabinet Office stated that it considers identifying whether or not information is held for "any correspondence" alone would easily exceed the cost limit as set out in section 12(2).
21. The Cabinet Office stated that even if it assumed lower staffing levels, for example 500 members of staff in the Crown Commercial Function of the Cabinet Office, over each of those 6 years it would need to request searches across this function for correspondence by every member of staff with the named organisation to cover the 6 year period.

¹ [About us - Cabinet Office - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Additionally it would require the searching of team inboxes or filing systems for other forms of correspondence.

22. The Cabinet Office confirmed that there is no central database for ad hoc email correspondence with named companies or individuals and, for it to confirm with absolute certainty whether or not information is held, it would be required to ask individuals across the Crown Commercial function to search their personal inboxes for any relevant correspondence, in addition to team mailboxes and filing systems. It also stated that it would reasonably expect such searches to also include archived email inboxes of former members of staff or teams where it has been considered appropriate and necessary to preserve these for the official record.
23. The Cabinet Office explained to the Commissioner that given the passage of time, and the likely need to search current and archived individual and team inboxes, it is very difficult to provide an accurate estimate of how long such searches would take. It stated that assuming it would take 5 minutes to search through each current or archived personal mailbox for the 6 year period, based on a lower estimate of 500 members of staff this would take approximately 41 hours.
24. The Cabinet Office argued that the calculation does not include requesting other teams and officials within the Cabinet Office identified as potentially holding information in scope of this request to search their own filing systems and inboxes for any information they might hold. It also wanted to make it clear that the calculation does not include the searches required for the other elements of the request (namely, details of "work undertaken with the following companies" and "dates and cost of any work undertaken too") which would also require searches across relevant teams within the Cabinet Office.

The complainant's position

25. In his internal review and within his complaint to the Commissioner, the complainant argued that he made the same request to the Ministry of Defence (MOD) which was able to confirm whether the information was held.
26. The complainant argued that the MOD is known to work far more extensively than the Cabinet Office with private legal firms and therefore there would have been many more records for it to check and yet the MOD issued a response.
27. The Cabinet Office has responded to the complainant's point stating the following:

"...I do not consider this an appropriate comparison. The requester's original request to the MOD was refused by the MOD using Section 12 of the FOI Act. The requester then submitted a refined request for "contract information only, and the scope from 2017 to present." This is a much narrower request than that received by the Cabinet Office which I note again requested: "any correspondence between or work undertaken with the following companies between the years 2015 to present, or dating back as far as is permitted within the cost limit. I'd like dates and cost of any work undertaken too, and details that don't fall under exemptions due to national security"...This is clearly a much more detailed and wide ranging request than a request for confirmation of whether or not a public authority holds a contract with a particular company. I also note the requester did not seek to narrow his request based on the advice and guidance provided by the Cabinet Office."

28. The complainant also drew to the Commissioner's attention that he made a request to the Cabinet Office on 1 December 2021 for the following information:

"I'm writing to you under the Freedom of Information Act (2000) to request that you please disclose information on whether or not your department have ever undertaken work with Stratfor, or the company that bought them last year RANE.

If possible days and cost of work, or any details not subject to national security reasons, but if not a confirmation of work.

Alternatively, details of any trials, or communications with either of the above if no contracted work took place.

I'd like this information going back as far as records allow, if possible up to 2010."

29. The Commissioner notes that this is not the same request as the one this notice addresses. The complainant's request in 2021 refers to confirmation on whether the Cabinet Office has undertaken work with Stratfor/Rane and the complainant's request this notice addresses includes "all correspondence" with the company (as well as others).
30. In regards to the information provided to the Commissioner, he recognises from the explanation provided, that it would be reasonable for the Cabinet Office to conduct searches across a number of areas within the public authority in order to determine whether information is held within scope of the complainant's request. The request is extremely broad in nature.
31. Therefore, in view of the submissions provided to him during the course of his investigation, the Commissioner is satisfied that undertaking such

searches would significantly more than 24 hours to establish whether information falling within the request is held. The Cabinet Office is therefore entitled to refuse the request on the basis of section 12(2) of FOIA.

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

32. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
33. In its response to the complainant, the Cabinet Office stated:

“The reason that your request exceeds the cost limit is that relevant information could be contained in very many files. Searching all those that might contain relevant information to determine whether the Cabinet Office holds any information relevant to your request will exceed the appropriate limit laid down in the regulations. If you wish, you may refine your request in order to bring the cost of determining whether the Cabinet Office holds relevant information, locating, retrieving and extracting it, below the appropriate limit. The period covered by your request is very long and one way to refine it would be to narrow the period it covers but even a shorter period would require us to search many files and would not be sufficient, on its own, to make it possible for us to comply with your request within the appropriate limit. Bearing in mind that our records are classified by broad subject areas, I consider that we will not be able to carry out a search for information unless you can relate the information you seek to a definite context such as a particular policy or region or a notable event or initiative.”
34. The Commissioner is satisfied that the Cabinet Office offered advice and assistance to the complainant as to how they could refine their request and have met their section 16(1) of FOIA obligations.

Right of appeal

35. 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

36. 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.
37. 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

Robyn Seery
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