

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2024

Public Authority: Cabinet Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested copies of impact assessments that the UK government made available to the United Nations (UN) in respect of a specific report. The Cabinet Office withheld the information requested under section 27 (international relations). During the course of the Commissioner's investigation the Cabinet Office confirmed that the information requested was publicly available. Following this disclosure the complainant suggested that additional information may be held by the Cabinet Office. The Commissioner's decision is that the Cabinet Office has complied with its obligations under section 1 of the FOIA. The Commissioner does not require any steps to be taken.

Request and response

2. On 16 August 2022, the complainant wrote to Cabinet Office and requested information in the following terms:

"Information: This FoI request was submitted to DWP on 19th July 2022 (FOI2022 56475) who informed us don't hold the information requested and we should instead request it from yourselves as you do hold it.

Background: Quoting the United Nations report ref CRPD/C/15/R.2/Rev.1

page 20, E, 113, (c): 'The impact assessments conducted by the State party prior to the

implementation of several measures of its welfare reform expressly foresaw an adverse impact on persons with disabilities'

FoI request: Please kindly provide a copy of the impact assessments you made available to the United Nations in respect of the above. They may be referring to the Welfare Reform Act 2010".

3. The Cabinet Office responded on 9 September 2022 and stated that the information requested was exempt under section 27 of the FOIA.
4. On 9 September 2022 the complainant requested an internal review of the Cabinet Office's refusal to disclose the information requested.
5. The Cabinet Office provided the outcome of its internal review on 13 October 2022. It maintained its position that section 27 applied to the request. However, it provided a link to publicly available Welfare Impact Assessments referenced in the government's response to the UN inquiry.

Scope of the case

6. The complainant contacted the Commissioner on 13 October 2022 to complain about the way their request for information had been handled.
7. During the course of the Commissioner's investigation, the Cabinet Office advised that, following a search of its records, it identified one document falling within the scope of the request. The document in question was published by the Department for Work and Pensions (DWP) on 6 March 2014.
8. Following the Cabinet Office's response the Commissioner wrote to the complainant to see whether they would be prepared to accept an informal resolution to their complaint as the information requested was publicly available. The complainant asked the Commissioner to issue a decision notice. They also asked the Commissioner to consider whether additional information was held by the Cabinet Office.
9. As the Cabinet Office withdrew reliance on section 27 during the Commissioner's investigation, the Commissioner has not considered this exemption in this notice. The scope of the analysis below is therefore to determine whether the Cabinet Office holds any additional information relevant to the request, other than that which it has disclosed.

Reasons for decision

Section 1 – Information held

10. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to them.
11. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).

The Cabinet Office's position

12. As mentioned earlier in this notice, following the Commissioner's investigation the Cabinet Office stated that it had identified only one document relevant to the request, which was publicly available on the DWP website.
13. The Cabinet Office advised the Commissioner that "policy responsibility for the UN Convention on the Rights of Persons with Disabilities (including the aforementioned UN report) was transferred from the DWP to the Cabinet Office" in 2019. All records relating to the policy area were transferred to the Cabinet Office in November 2019. It also led to the creation of the Disability Unit within the Cabinet Office.
14. The request in this case relates to submissions made by the UK to the UN in the course of the UN Committee on the Rights of Persons with Disabilities' Inquiry. The UN Committee Report¹ was published in October 2014, prior to policy responsibility for this work transferring to the Cabinet Office in 2019.
15. The Cabinet Office confirmed that a thorough search of all the records which were transferred to it from the DWP has been undertaken. These searches identified only one document falling within the scope of the request. This document comprises an equality analysis concerning the closure of the Independent Living Fund, which was shared with the UN Committee during its inquiry. No other information relevant to the request was identified during the searches undertaken. Although this document was shared on a confidential basis with the UN Committee it was also published by the DWP on its website in March 2014.

¹ <https://digitallibrary.un.org/record/1311200?ln=en>

16. The Cabinet Office advised the Commissioner that as the complainant also referred to the Welfare Reform Act 2010 in their request, searches were also undertaken to identify any impact assessments regarding the Welfare Reform Act 2010 that had been sent to the UN. No information was identified. However, in its internal review response, the Cabinet Office provided the complainant with a link to publicly available impact assessments of the Welfare Reform Act 2012².

The Commissioner's findings

17. The Commissioner has considered the complainant's concerns and understands why they may consider that the Cabinet Office holds further information relevant to their request, particularly as the Cabinet Office has now confirmed that the only information held was in fact publicly available at the time the request was submitted.
18. However, the Commissioner is satisfied that the Cabinet Office has carried out a reasonable and proportionate search of the areas which would have been likely to hold any relevant information. The Commissioner notes that the request relates to a period of time prior to the Cabinet Office assuming the associated policy responsibility for the specific area of work.
19. Based on the Cabinet Office's representations and the searches carried out, the Commissioner's view is that, on the balance of probabilities, the Cabinet Office does not hold any additional information falling within the scope of the request.

Other matters

Incorrect exemption

20. The Commissioner has concerns regarding the handling of this request. The Cabinet Office initially applied section 27 of the FOIA to the requested information, despite it being publicly available on the DWP website. Clearly it would have been preferable for the Cabinet Office to have established at that time that the information was publicly available and advised the complainant of that. He expects the Cabinet Office to take the necessary steps to ensure that it is not disadvantaging requesters by misapplying exemptions in the future.
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² <https://www.gov.uk/government/collections/welfare-reform-act-2012-impact-assessment>

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: 0203 936 8963

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

Ben Tomes
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