

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 March 2024

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

Decision (including any steps ordered)

1. Following its response to a subject access request, the complainant submitted a freedom of information request to the Cabinet Office seeking full copies of any documents, for a three year period, which included his name. The Cabinet Office refused the request on the basis of section 14(1) (vexatious) because of the burden in processing it. The complainant disputed this and also argued that the Cabinet Office should have provided him with advice and assistance to allow him to submit a refined version of this request.
2. The Commissioner's decision is that the Cabinet Office is entitled to refuse to comply with the request on the basis of section 14(1) of FOIA. The Commissioner has also concluded that the Cabinet Office was not under a section 16 duty to offer advice and assistance in response to this request.
3. The Commissioner does not require further steps.

Request and response

4. Under the Data Protection Act 2018 the complainant submitted the following subject access request (SAR), which followed on a number of previous similar SARs, to the Cabinet Office:

"There appears to be a file '[complainant's name] Case Closures' but only one letter where there must have been more correspondence.

15th April 2021 a letter 'Dear Colleagues' 'Please see attached current [complainant's name] ICO complaints'. The fact that this has been shared amongst several people suggests there must be other correspondence relating to my ICO complaints.

It is clear there is correspondence about me with Alex Chisholm [Cabinet Office Permanent Secretary].

4th February 2021 Media Monitoring includes reference to a defamation case I'm involved in which has nothing to do with FOI requests or the Cabinet Office. The title is 'Derisory'. There must be briefing relating to this."

5. The Cabinet Office responded to the SAR on 18 November 2022 and provided information in response to this.
6. The complainant contacted the Cabinet Office on 5 December 2022 and asked it to review its decision and highlighted examples of information that he considered to be missing from the 18 November disclosure.
7. The Cabinet Office completed an internal review of its SAR response and on 30 March 2023 informed the complainant that:

"We have provided you with all your personal data in the scope of your request. In accordance with the UK General Data Protection Regulation there is no obligation to provide full documents in which your personal data is contained...

...You can however request the full documents by making a separate request under the Freedom of Information (FOI) Act".

8. The complainant submitted the following FOI request to the Cabinet Office on 24 April 2023:

Please supply the full documents of any document which refer to [complainant's name] for the period January 2020 to March 2023 including:

- 1/the file '[complainant's name] Case Closures', together with all the correspondence relating to it whether memos, email, telephone records
 - 2/the 15th April 2021 letter 'Dear Colleagues Please see attached current [complainant's name] ICO complaints' together with all the correspondence relating to it whether memos, email, telephone records
 - 3/ all correspondence whether memos, email, telephone records to or from Alex Chisholm in which [complainant's name] is mentioned
 - 4/ all correspondence whether memos, email telephone records with regard to any High Court or employment tribunal in which [complainant's name] is mentioned"
9. The Cabinet Office responded on 24 May 2023 and refused the request on the basis of section 14(2) (repeated requests) of FOIA. It argued that this request was substantially similar to two requests which he had submitted on 15 November 2022 to which he had already received a reply.
 10. The complainant contacted the Cabinet Office on 4 June 2023 and asked it to conduct an internal review of this decision.
 11. The Cabinet Office informed him of the outcome of the internal review on 8 August 2023. The Cabinet Office accepted that its application of section 14(2) was incorrect. However, it argued that processing the FOI request of 24 April 2023 would place such a burden on it that it considered the request to be vexatious. It therefore refused to comply with the request on the basis of section 14(1) of FOIA. The Cabinet Office also argued that this request was an attempt to reopen matters that have been the subject of complaint, investigation and litigation which had already concluded. As a result, the Cabinet Office argued that this provided a further reason to conclude that this request was vexatious, beyond simply being burdensome to process.
 12. The complainant contacted the Cabinet Office on 9 August 2023 and asked it to provide advice and assistance on what duration of time might be feasible for this FOI request.
 13. The Cabinet Office responded 12 September 2023 as follows:

"As set out in our previous response, your request would need significant refinement and clarification to make it less burdensome. Our response was not based on time frames alone (again, this is set out in our letter to you). We cannot guarantee that any refinement to your request would no longer engage s14 (vexatious). As you are aware, you have the right of complaint to the ICO if you remain dissatisfied."

Scope of the case

14. The complainant contacted the Commissioner on 13 September 2023. He was dissatisfied with the Cabinet Office's refusal of his request on the basis of section 14(1) of FOIA and the lack of advice and assistance it provided to assist him in making a refined request.

Reasons for decision

Section 14 – vexatious

15. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
16. In the Commissioner's view, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
17. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is, in part, the Cabinet Office's rationale for relying on section 14(1) in this case.
18. The Commissioner believes that there is a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where:
- The requester has asked for a substantial volume of information **and**
 - the authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the Commissioner **and**

- any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.¹

The Cabinet Office's position

19. The Cabinet Office explained that it had interpreted the request as a request for all information it held containing the complainant's name within the date range of the request, including the four listed items.
20. The Cabinet Office explained that taking the first paragraph of the request it explained that it had conducted a sampling search for information containing the complainant's name and date range specified in the request. For the purposes of the sample the Cabinet Office explained that it had limited its searches to the FOI team mailbox and the email account of one individual. The Cabinet Office explained that 1200 emails were returned. It noted that these were not exhaustive searches but were sufficient for the purposes of the sample exercise.
21. The Cabinet Office explained that in order to process the request it would have to review each document to determine if it contained other exempt material and apply redactions as appropriate. The Cabinet Office argued that it was very reasonable to assume that exemptions under FOIA would apply, particularly section 40(2) (third party personal data) in relation to the names of officials, section 42 (legal professional privilege) in relation to some the information concerning FOI litigation concerning the complainant's appeals to decision notices, and potentially section 36 (effective conduct of public affairs) relating to the processing of FOI requests. The Cabinet Office explained that as a conservative estimate it considered that it would take between 3 to 6 minutes per document depending on the length, number of attachments and the number of redactions. For the 1200 emails located, this gave an estimated time to process the request of 60-120 hours.
22. In addition, the Cabinet Office noted that each of these 1200 emails would contain at least one instance of the complainant's name and these would also have to be redacted on the basis of section 40(1) (first party personal data) of FOIA.

¹ This approach is set out in the Commissioner's guidance on section 14(1) of FOIA <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/how-do-we-deal-with-a-single-burdensome-request/#section-12>

23. The Cabinet Office explained that these were just sample searches and estimates and that further information would be held by the department. (The implication being that as a result the time taken to process the request would exceed that estimated above.)
24. In view of the above, the Cabinet Office concluded that complying with the request would impose a grossly oppressive burden on it. The Cabinet Office acknowledged that there is a high threshold for refusing a request on such grounds. However, it emphasised that the request seeks a substantial volume of information, ie "any documents which refer to [complainant's name] for the period January 2000 and March 2023". The Cabinet Office also explained that it had real concerns about the potentially exempt material which it could not easily isolate because it will be scattered throughout the information in scope. The Cabinet Office explained that there are potentially thousands of emails in scope given the nine FOI requests it had handled from the complainant over the period, together with those that have been the subject of internal reviews, ICO complaints and litigation as part of appeals to decision notices.
25. As noted above, the Cabinet Office also argued that this request could be seen as an attempt to reopen matters that have been the subject of complaint, investigation and litigation which has already concluded. Therefore, in its view this provided a further reason to conclude that this request was vexatious, beyond simply being burdensome to process.

The complainant's position

26. The complainant noted that he had submitted this request based on advice provided to him by the Cabinet Office following its response to his SAR.
27. He explained that he was asking for specific correspondence relating to the file "[complainant's name] Case Closures, the letter of 15 April 2021 and communications about him to Alex Chisholm.
28. The complainant also explained that he did not understand why it would be necessary to redact instances of his name on the basis of section 40(1) of FOIA.
29. The complainant disputed the Cabinet Office's position that this was an attempt to re-open matters that had already been the subject of previous complaints and litigation.

The Commissioner's position

30. In the Commissioner's view it is important to carefully consider the wording of this request and the scope of the information falling within it.

The Commissioner notes that the Cabinet Office interpreted the request as a request for **all** information it held containing the complainant's name within the date range of the request, **including** the four listed items.

31. Based on the wording of the request the Commissioner considers this to be a reasonable and objective interpretation of the request. The request, as worded, is not limited to simply the four items listed in the scope of the request but such information would simply form part of the information caught by the request. The other information being caught by the request being any other information which contained the complainant's name and fell within the date range of the request.
32. The Commissioner appreciates that the complainant may have only wished to access information specified in the four points listed in the request. However by wording the request as "Please supply the full documents of **any document** which refer to [complainant's name] for the period January 2020 to March 2023 including" (Commissioner's emphasis) this broadens the scope of the request. The Commissioner notes that the Cabinet Office's internal review did provide a clear explanation of how it had interpreted the request.
33. Turning to the three criteria set out above, the Commissioner is satisfied that these are met. Based on the sample exercise alone it is clear that there is a considerable amount of information falling within the scope of the request. Moreover, for the reasons set out by the Cabinet Office, 1200 emails does not represent the total volume of information. Given the nature of the material likely to be caught by the request, focusing on FOI cases, the Commissioner considers it plausible that the exemptions cited by the Cabinet Office are ones that are likely to apply to some of the information. The Commissioner also accepts, having seen similar internal correspondence regarding the handling of various FOI requests in the past, that isolating potentially exempt information is likely to prove difficult. The Commissioner also considers the estimate advanced by the Cabinet Office, in respect of the average time to consider each piece of information, at least at the lower point of 3 minutes per document, is not an unreasonable one.
34. With regard to the value and purpose of the request, the Commissioner appreciates that the complainant wishes to better understand how the Cabinet Office has handled matters on which he has exchanged correspondence with it over the period in question, beyond the insight which the responses to his SARs have given him. The Commissioner accepts that there is general public interest in government departments being open and transparent about their interactions with individuals and how it takes and makes decisions about them. On this basis, the Commissioner accepts that this request does have a genuine purpose

and merit. However, the Commissioner recognises the significant burden that would be placed on the Cabinet Office in answering his request and in his view this outweighs any such interests. The Cabinet Office is therefore entitled to adopt the position that the request is vexatious and it can therefore rely on section 14(1) to refuse the request.

35. The Commissioner wishes to emphasise that he has reached this decision simply on the basis that complying with the request would be burdensome. In light of this finding the Commissioner has not considered the Cabinet Office's secondary argument that the request is vexatious as it represents an attempt to reopen matters that have already been concluded.

Section 16 – advice and assistance

36. Section 16 of FOIA states that:

“(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.”

The complainant's position

37. The complainant has argued that the Cabinet Office has refused to engage with him and provide any advice and assistance that would allow him to submit a refined request that could be processed by it without proving to be burdensome.

The Cabinet Office's position

38. The Cabinet Office's position is represented by the position set out at paragraph 13 above.

The Commissioner's position

39. The section 45 Code of Practice includes specific guidance that when a public authority refuses a request on the basis of section 12 (cost limit) of FOIA it should provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within

the costs limit.² The Code does not include a similar provision for when public authorities refuse a request on the basis of section 14(1) given the burden in processing the request.

40. However, the Commissioner's guidance on section 16 explains that:

"when dealing with a request deemed vexatious on grounds of burden or cost alone, you should as best practice consider what reasonable advice and assistance you can provide to the requester to help them make a refined, less burdensome request.

The consequences for the applicant of finding a request is vexatious because of burden or cost alone are similar to those where a request has been refused for exceeding the appropriate limit under s12.

It follows that, when handling a vexatious request on grounds of burden or cost alone, it would be reasonable for you to provide the applicant with advice and assistance in a similar way you would do for a request exceeding the appropriate limit.

However, as with requests exceeding the appropriate limit, we accept that your ability to provide advice and assistance will be limited if there are no obvious ways of reframing the request."³

41. In this case the Commissioner recognises that the Cabinet Office did not apply section 14(1) simply on the basis that processing the request was burdensome. It also argued that it was vexatious because it represented an attempt to reopen matters already settled.

42. Therefore, following the approach of his guidance, the Commissioner would not have expected the Cabinet Office to provide advice and assistance in order to conform with best practice; and nor, for the avoidance of doubt, was it under an obligation to do so by virtue of section 16 of FOIA.

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https://assets.publishing.service.gov.uk/media/5bacc7eb40f0b62dbe5321ba/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf Paragraph 2.10

³ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-16-advice-and-assistance/#vexatious>

Right of appeal

43. 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

44. 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.
45. 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

Jonathan Slee
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