

Freedom of Information Act 2000 (FOIA)

Decision notice

Date 19 September 2024

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

Decision (including any steps ordered)

1. The complainant has requested from the Cabinet Office copies of documents, notes and memos made by Sir Alan Cottrell between 1968-1980. The Cabinet Office refused to comply with the request citing section 12(2) (Cost of compliance exceeds appropriate limit) of FOIA.
2. The Commissioner's decision is that the Cabinet Office was entitled to rely on this provision to refuse to confirm or deny whether it holds any information in the scope of the request and it has complied with its duty to provide advice and assistance in line with the requirements of section 16 of FOIA.
3. The Commissioner also found that the Cabinet Office complied with the requirements of section 10.
4. Consequently the Commissioner does not require further steps.

Request and response

5. On 31 December 2023 the complainant made the following request for information under FOIA:

'I Kindly seek information relation to: Documents, notes and memos made by Sir Alan Cottrell between 1968-1980. Copies of documents

with the former reference of J 1104 & INT 10 I kindly request the information to be provide in electronic form, where possible. Where not possible, I kindly request the information to be provided on paper.'

6. The Cabinet Office responded on 30 January 2024 when it refused to comply with the request citing section 12(2) of FOIA (Cost of compliance exceeds appropriate limit).
7. On the same date, 30 January 2024, the complainant requested an internal review of the response.
8. The Cabinet Office provided an internal review on 20 February 2024 in which it maintained its original position.

Scope of the case

9. The complainant contacted the Commissioner on 21 February 2024 to complain about the way his request for information had been handled.
10. Specifically, he disagreed with the refusal notice to provide the requested information and also about the time taken by the Cabinet Office to respond to the request. The complainant contended that the response provided on the last day of the 20 working days period cannot be considered as being prompt.
11. The Commissioner considers the scope of this case is to determine if the public authority is entitled to rely on section 12(2) of FOIA. He has also considered whether the Cabinet Office complied with section 10 of FOIA.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

12. Section 12 of 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 cost limit.
13. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for public authorities such as the Cabinet Office.
14. 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 of FOIA effectively imposes a time limit of 24 hours for the public authority to deal with the request.

15. Where a public authority is relying on section 12(1) to refuse a request it must still confirm whether or not it holds the information. However, a public authority may rely on section 12(2) if the cost of determining whether the information is held would, on its own, exceed the appropriate limit.
16. If section 12(2) applies, the public authority does not need to confirm or deny that it holds the information.
17. 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.
18. 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. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/0004* the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent 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.
19. Section 12 of FOIA is an absolute exemption and 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.
20. 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.

The Complainant's position

21. In his request for an internal review of the Cabinet Office's response, also repeated in the complaint to the Commissioner, the complainant said:

"The refusal notice was given on the last day within the allocated time and cannot be considered to have been issued promptly and it appears to not have been considered separately from the 20 working day time frame. The refusal notice is therefore regarded as a stall tactic and a complaint is hereby brought forth. Furthermore, you should have, as per legislation, viewed the request of documents and notes spanning over a decade as one request and the specific request of "Copies of documents with the former reference of J 1104 & INT 10" as another. Ergo, the refusal notice does not align with legislation and furthers the reasonableness of this complaint brought forth."

The Cabinet Office's position

22. In its original response the Cabinet Office explained to the complainant the reasons for determining whether any information within the scope of the request was held would exceed the cost limit. It said:

"The reason your request exceeds the cost limits is that the scope of the first part of your request is very broad. You asked for documents, notes and memos made by Sir Alan Cottrell covering a 13 year period and the request does not specify any subject area(s) which could help us narrow the search. Therefore, in order to comply with your request as it stands, the Cabinet Office would be required to search records held covering the 13 year period specified to determine whether we hold any information relevant to your request which will exceed the appropriate cost limit laid down in the regulations."

23. The Cabinet Office also advised the complainant on how to refine the request so to bring the cost of determining whether the Cabinet Office holds relevant information, locating, retrieving and extracting it, below the appropriate limit.
24. When challenged by the complainant in his request for an internal review that the Cabinet Office should have treated two parts of his request for information as two separate requests, the Cabinet Office explained that public authorities are not required to interpret the applicant's intentions where these are not made clear in the request.
25. In response to the Commissioner's investigation, the Cabinet Office provided details of the sampling exercise that it conducted to estimate the cost of obtaining the information within the scope of the request. This would include 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.
26. The Cabinet Office confirmed to the Commissioner that the method chosen for the exercise was the quickest one to gather information.

27. The Cabinet Office estimated that there are on average 1333 files per each year of which around 75% are usually transferred to the National Archives under the Public Records Act. The Cabinet Office explained that the percentage transferred tends to increase the older the files get. For example it would be expected that the percentage of files transferred in 1968 would be higher than those transferred in 1980.
28. The Cabinet Office further explained that if it were to assume that 75% of records were transferred for each of 13 years to which this FOI request refers, then that means that the Cabinet Office holds approximately 4329 records that would need to be searched.
29. The Cabinet Office added that, as it is its belief that the Commissioner had previously accepted approximately 1 hour per file to search, the time invested in the search for the requested information would exceed 4000 hours.
30. Further, at the Commissioner's request, the Cabinet Office provided details of the sampling exercise it conducted to determine the above estimate.
31. It explained that *"The request is for documents, notes and memos made by Sir Alan Cottrell between 1968-1980 as well as copies of documents with the former reference of J 1104 & INT 10. Information on TNA's online catalogue, Discovery, shows that the document with former reference J 1104 ANNEX 1 is CAB 163/177 and the documents with former reference INT 10 include CAB 190/10, CAB 190/14, CAB 190/119 and CAB 190/121. All the CAB files are retained by the CO and the description of the first three shows that they relate to The Horizon Radar Systems."*
32. However, the Cabinet Office said that this covers a period of 13 years and because the complainant did not specify the area of interest in the requested information, the Cabinet Office would be required to search through all those records, many of which are in paper format.
33. The Cabinet Office contended that, given the role held by Sir Alan Cottrell, first as a Deputy Chief Scientific Officer from 1968 and then Chief Scientific Officer from 1971 and 1974, the area of interest within the scope of the request would be likely science related. However, this would be merely an assumption which FOIA does not require public authorities to do and the cost of such a search would exceed the appropriate level set down in the regulations.
34. Finally, the Cabinet Office said that as per the Commissioner's guidance: *"ICO guidance is that if it is estimated that complying with one part of a request would exceed the cost limit then there is no need to comply with the remaining parts of the request. Therefore a section 12(2) response was issued with advice for refining the request."*

35. The Cabinet Office is therefore satisfied that the cost of determining whether it holds information within the scope of the request would exceed the £600 cost threshold laid down.

Would the cost of compliance exceed the appropriate limit?

The Commissioner's findings

36. When dealing with a complaint under FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources or how it chooses to hold its information.
37. Therefore, as set out in the Fees Regulations, the Commissioner has considered whether the estimated cost of responding to the request would exceed the appropriate limit of 24 hours.
38. As previously stated in paragraph 18 the Commissioner needs only to consider whether any estimate is "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12 matter therefore is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
39. As highlighted by the Cabinet Office at paragraph 34 if one part of a request triggers section 12, then this provision will apply to the entirety of the request and there is no requirement for the Commissioner to consider whether other parts of a request could be answered within the cost limit.
40. The Commissioner has carefully reviewed the evidence available to him in this case including both the arguments of the complainant and those of the Cabinet Office. He has particularly considered the explanation for the estimation of costs given by the Cabinet Office as the basis for refusal of the request.
41. The Commissioner is persuaded that the details of the Cabinet Office's calculations, based on the second part of the request with more specific information such as key words, is a reasonable sampling exercise to estimate the cost of determining whether it holds information in the scope of the request. He noted that this was based on the part of the request which provided some more specific information, such as the key words, which allowed for a more focused search to establish if and what records are held by the Cabinet Office. However, he also accepts that because the first part of the request does not specify what information the complainant is particularly interested in and that part of the request covers a period of 13 years and would require an extensive search involving, in large part manual checking of the files, to establish what information, if any, the Cabinet Office holds falling within the first part of

the request. This is on the basis of the Commissioner's understanding that such files are organised by subject matter, but the first part of the request does not specify a subject matter merely an author, ie Sir Alan Cottrell. In other words, the Cabinet Office would have to review the content of over 4000 files in order to identify if they contained documents, notes or memos authored by Sir Alan Cottrell.

42. He is not convinced however, by the Cabinet Office suggestion that a file would take on average 1 hour to search for the information within the scope of the request.
43. He is not satisfied for the Cabinet Office to simply state that it believes that the Commissioner has previously accepted this position. Without the Cabinet Office specifying the source, the Commissioner can only presume that the Cabinet Office may have relied on the Commissioner's guidance¹ to form its belief.
44. However, the Commissioner's guidance on this particular aspect refers to a specific example with specific circumstances where estimating 1 hour per file on average was appropriate. Therefore, even if the Cabinet Office were to rely on the Commissioner's guidance, it provided no evidence to demonstrate that this would be applicable in this case.
45. At the same time, the Commissioner is satisfied that even if the Cabinet Office's estimate was reduced by half, based on the explanation of the sampling exercise, and given the nature of the first part of the request, the work involved in identifying whether it holds information in the scope of the request would still exceed the 24-hour limit.
46. Complying with the request would therefore exceed the cost limit and so the Commissioner is persuaded that the Cabinet Office was entitled to rely on section 12(2) of FOIA to refuse to confirm or deny whether it holds any information falling within the scope of the request. Consequently, it did not breach its legal obligations when dealing with this particular request.

Section 10 – Time for compliance with request

47. The complainant argued that:

"The refusal notice was given on the last day within the allocated time and cannot be considered to have been issued promptly and it appears

¹ [Requests where the cost of compliance exceeds the appropriate limit \(section 12\) | ICO](#)

to not have been considered separately from the 20 working day time frame. The refusal notice is therefore regarded as a stall tactic (...)"

48. The Commissioner appreciates the concern raised by the complainant and is mindful that his guidance² considers an interpretation of a prompt response, to which the complainant also refers. However, to determine whether the breach has taken place, he has to consider specific circumstances of the case.
49. Given that the Cabinet Office would need time to consider the request and likely to conduct some preliminary searches and estimation of time and resources required to comply with the request, the Commissioner does not consider that the public authority breached section 10 of FOIA.

Procedural matters

Section 16 – Duty to provide advice and assistance

50. 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.
51. 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 practice³ in providing advice and assistance, it will have complied with section 16(1).
52. A public authority is not required to go to excessive ways to reframe the request, but it should be able to explain simple ways of reducing the scope – such as reducing the time parameters or identifying elements of a multi-part request that could be answered within the cost limit.
53. In its response to the original request for information the Cabinet Office advised the complainant:

"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. One way to refine your request would be to specify the subject or topic

² [Time limits for compliance under the Freedom of Information Act \(Section 10\) | ICO](#)

³ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

area(s) of the documents, notes and memos made by Sir Alan Cotterell that you are interested in."

54. The Commissioner is therefore satisfied that the Cabinet Office has met its obligations under section 16 of FOIA in regard to the request.

Right of appeal

55. 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

56. 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.
57. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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