

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 October 2024

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information concerning the Cabinet Office's intranet, specifically, an intranet sitemap, screenshot of the intranet homepage and annual intranet costs for the past five years.
2. In their original response to the request the Cabinet Office confirmed that they held the intranet sitemap requested but that this was exempt from disclosure under section 31 (law enforcement) of FOIA and that the balance of the public interest favoured maintaining the exemption. The original response did not address the complainant's request for the screenshot and costs information.
3. Following an internal review, the Cabinet Office provided the complainant with the intranet costs information requested and stated that at the time of the request, they did not hold a screenshot of the intranet homepage. The review also overturned the original response in that the Cabinet Office advised that they did not hold a sitemap of the intranet (and were therefore no longer withholding the same under section 31).
4. During the course of the Commissioner's investigation the Cabinet Office maintained their position that they did not hold a sitemap of the intranet but revised their position in respect of the screenshot and provided the complainant with a copy of a screenshot of the intranet homepage.
5. The Commissioner has found, on the balance of probabilities, that the Cabinet Office do not hold a sitemap of their intranet.

Request and response

6. On 29 August 2023, the complainant wrote to the Cabinet Office and requested information in the following terms:

'I am writing to you under the provisions of the Freedom of Information Act 2000 (FOIA) to request specific details concerning the department's intranet.

As a proactive citizen and lawyer, I believe that an informed understanding of our governmental departments aids in the advancement of collaborative efforts and shared knowledge. With this sentiment in mind, I kindly request the following information:

Intranet Sitemap Disclosure: Please provide a detailed sitemap of the department's intranet. This would offer an overarching view of the structure and flow of information, providing insights into the organisation and accessibility of the department's internal resources.

Annual Intranet Costs for the Past Five Years: Could you kindly disclose the annual expenditure associated with the department's intranet over the last five years? This would give a clearer understanding of the department's financial commitment to internal digital infrastructure and transparency.

Screenshot of the Intranet Homepage: Please provide a recent screenshot of the homepage of the department's intranet. This visual representation can offer a direct perspective on the department's commitment to internal communications and user experience.

I understand that the FOIA embodies the principle that public bodies should be open to public scrutiny. By furnishing the aforementioned details, you would not only be upholding the law but also reinforcing the department's commitment to transparency, clarity and community engagement.

I acknowledge that there might be aspects of the intranet that are confidential, sensitive, or beyond the scope of FOIA. Rest assured, my intent is to understand the broad contours and not delve into areas of sensitivity. I anticipate that any such exclusions would be clearly indicated and justified in law, in line with the Act's provisions.

Please consider this request as a genuine attempt to engage with, and better understand, the workings of ministerial departments. I am confident that this request aligns with the spirit of the Freedom of Information Act 2000, which aspires for greater transparency and informed citizenry.

Thank you for your understanding and cooperation’.

7. The Cabinet Office acknowledged receipt of the request on 29 August 2023.
8. On 26 September 2023, the Cabinet Office wrote to the complainant and confirmed that they did hold information relevant to his request but that this was exempt under section 31 of FOIA (law enforcement). The Cabinet Office advised that they were extending the time for their substantive response under section 10(3) in order to consider the balance of the public interest test. They stated that they hoped to let the complainant have the substantive response by 24 October 2023.
9. The Cabinet Office sent a further update letter to the complainant on 24 October 2023, further extending the time taken to consider the public interest test, and advising that they hoped to provide him with the response by 21 November 2023.
10. The Cabinet Office provided the complainant with their substantive response on 21 November 2023. The Cabinet Office confirmed that the intranet sitemap was exempt from disclosure under section 31(1)(a) and 31(2)(i)(j) of FOIA. They advised that, ‘the relevant parts of section 31 exempt information if its disclosure would prejudice the prevention or detection of crime, [prejudice the purposes of] secure the health, safety and welfare of persons at work, and protect persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work’.
11. The Cabinet Office explained that:

‘The sitemap would give away the structure of specialist teams and key Cabinet Office areas of work. Disclosure of the sitemap might make it easier for hostile actors to target specific areas of Cabinet Office IT or work. This information contains details which would assist criminals to plan and execute criminal acts. Disclosure would thus make the prevention of certain crimes more difficult’.
12. With regard to the public interest test, the Cabinet Office acknowledged there is a ‘*general public interest*’ in disclosure of information and they recognised ‘that openness in government may increase public trust in and engagement with the government’. They also recognised that there is a public interest, ‘in assuring the public that effective arrangements are in place for the prevention and detection of crime’.
13. The Cabinet Office advised the complainant that they had weighed these public interests against, ‘a strong public interest in the prevention and detection of crime’. The Cabinet Office stated that it is contrary to this public interest to disclose information which would facilitate the commission of crime or hinder its detection. Taking into account all the

circumstances of the case, the Cabinet Office stated that they had concluded that the balance of the public interest favoured withholding 'this information' (i.e. the intranet sitemap).

14. The complainant requested an internal review on 29 November 2023. He observed that:

'Despite the extended time taken to respond, I note with disappointment that the final response received on 21st November 2023 addresses only one of the several specific queries outlined in my original request. Specifically, the responses to my requests concerning the 'Annual Intranet Costs for the Past Five Years' were notably absent. Moreover, the 'Screenshot of the Intranet Homepage' was also not provided.

The partial response is concerning and appears to contravene the principles of the Freedom of Information Act 2000, which emphasises transparency and full disclosure, subject to legitimate exemptions. The lack of comprehensive response undermines the spirit of the Act and hinders my efforts as a citizen to understand and engage with the workings of the Cabinet Office'.

15. The complainant requested that the internal review provide the following:
1. A thorough re-examination of my original FOI request, ensuring that each point is addressed comprehensively.
 2. An explanation for the omission of responses to specific parts of my original request.
 3. A re-evaluation of the decision-making process that led to the partial response, ensuring it aligns with the requirements and spirit of the Freedom of Information Act 2000.
16. The Cabinet Office acknowledged the request for an internal review on 1 December 2023 and informed the complainant that they would endeavour to complete the review and respond to him within 20 working days. Having not had a response by 21 January 2024, the complainant wrote to the Cabinet Office to enquire as to the status of the review.
17. The Cabinet Office replied to the complainant on 22 January 2024 and apologised for not having been able to provide the review within the time frame advised by the Commissioner. They assured the complainant that the review was still being conducted and that a response would be issued to him once it was concluded.
18. The Cabinet Office subsequently provided the complainant with their internal review on 1 March 2024.

19. The review overturned the Cabinet Office's original decision, advising the complainant that:

'The sitemap is not held by the Cabinet Office and would have to be generated as new information. As described by the ICO, we are not required to create new information as part of answering requests'.

The Cabinet Office provided the complainant with a link to the Commissioner's guidance on determining whether a public authority holds information¹.

20. Therefore, the Cabinet Office stated that they were no longer relying on section 31 to withhold the sitemap since they did not hold that information.
21. The Cabinet Office apologised for having omitted to previously respond to the complainant's request for intranet annual spend and a screenshot of the intranet home page. The Cabinet Office confirmed that the total cost of the intranet over five years was £75,000, and this was broken down into £15,000 per year. They also advised that at the time of the request they did not hold a screenshot of the intranet home page.

Scope of the case

22. The complainant originally contacted the Commissioner on 25 February 2024 to complain about the failure of the Cabinet Office to provide the internal review.

23. Following the Cabinet Office's provision of the internal review, the complainant contacted the Commissioner on 17 March 2024 and advised:

'Regrettably, I find myself still dissatisfied with their response, particularly regarding question three, which pertains to the screenshot of the intranet'.

24. He contended that the Cabinet Office's response, 'seems deliberately designed to obstruct the principle of accessibility as outlined in the Act. This approach, as evidenced by other authorities, has been attempted and subsequently failed when challenged through the ICO'.

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information>

25. In subsequent submissions to the Commissioner the Cabinet Office advised that it was apparent that Cabinet Office Digital did take a screenshot of the intranet homepage during the processing of the complainant's request and were content for its disclosure. However, at the point that the response to the complainant's request was cleared to be sent, the interpretation of the request changed so that, 'screenshot of the intranet homepage' was read to mean a pre-existing screenshot of the intranet homepage, i.e. held at the time of the request. Upon reflection, the Cabinet Office considered that that was an unreasonably literal interpretation of the phrase.
26. Therefore, on 14 August 2024, the Cabinet Office disclosed to the complainant the screenshot which was taken at the time of the request and, further to this, provided a contemporaneous screenshot of the intranet homepage.
27. Some small parts of the information contained in the screenshots were redacted as they contained information the Cabinet Office considered exempt under sections 31(1)(a)(the prevention or detection of crime) and 40(2)(third party personal data). The Commissioner notes that in his request the complainant helpfully acknowledged that there might be aspects of the intranet that were confidential or sensitive and that he had no intention to delve into such areas of sensitivity. Consequently, these small redactions have not been included within the Commissioner's investigation in this case.
28. In submissions to the Commissioner the Cabinet Office advised that in the alternative to their position that they do not hold a detailed sitemap of their intranet, they considered that to provide an HTML sitemap which was accurate at the time of the request, would exceed the appropriate cost limit under section 12(1) of FOIA. Furthermore, in the alternative to section 12(1), the Cabinet Office advised that they would refuse under section 14(1) on the grounds that it is a burdensome request within the meaning of vexatiousness.
29. As the Cabinet Office have provided the complainant with a screenshot of their intranet homepage, and the annual expenditure associated with the intranet over the last five years (neither of which the complainant has challenged), the Commissioner considers that the remaining scope of his investigation is to determine whether the Cabinet Office hold a detailed sitemap of their intranet.

Reasons for decision

Section 1 – General right of access

30. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information provided to them, unless it is otherwise exempt by virtue of one of the exemptions/provisions of the Act.
31. In cases where there is some dispute about the amount of information stated to be held by a public authority and the amount of information that complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities to determine the matter. That is to say, the Commissioner will determine, on the balance of probabilities, whether it is likely or unlikely that the public authority holds information relevant to the complainant's request.
32. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether the information is held and any other reasons or explanations by the public authority as to why they do not hold the requested information. To be clear, the Commissioner is not required to categorically prove whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

The position of the Cabinet Office

33. In submissions to the Commissioner, the Cabinet Office stated that it is important to be clear about what is meant by an 'intranet sitemap'. They referred to the definition contained in the Online Cambridge Dictionary, which defines a 'sitemap' as, 'a plan of the different pages on a website that can be used by users to find their way around the website or by programs that automatically browse the internet'.
34. The Cabinet Office stated that 'it is apparent from this definition that there being a plan and navigability are crucial elements of a functional sitemap. Such a sitemap is often called an 'HTML sitemap''.
35. Highlighting that the sitemap requested by the complainant was said to offer, 'an overarching view of the structure and flow of information', the Cabinet Office stated that the above definition accorded with the complainant's understanding of what a sitemap should be. The Cabinet

Office contended that this is a vital aspect of the request and that the complainant, 'appears to consider that the sitemap should provide the viewer with the ability to see the structure of the intranet. The request should therefore be interpreted as a request for an HTML sitemap'.

36. In contrast, the Cabinet Office stated, 'an XML² structure is that which lists the essential pages, in this case, of the intranet (URLs) that enables a search engine to 'crawl' the site. That is to say, it is devised for use by software applications rather than a natural user. This is what characterises the Cabinet Office intranet. We consider that this is not what the requester is seeking'.
37. In light of their position that they do not hold an intranet sitemap, the Commissioner asked the Cabinet Office to explain why they originally told the complainant that they did hold this information but that it was exempt from disclosure under section 31 of FOIA.
38. The Cabinet Office explained that on 5 September 2023, an official in Cabinet Office Digital stated to colleagues (including the FOI Team) that they were not sure if the Cabinet Office would share, 'the intranet sitemap'. Another official in Cabinet Office Digital stated to colleagues on 19 September 2023 that due to the sensitivity of 'the sitemap', the Cabinet Office would not share it as to do so could pose a risk.
39. The Cabinet Office explained that on the strength of the above, they confirmed to the complainant on 26 September 2023 that they held the information within the scope of the request and that it was exempt from disclosure under section 31 of FOIA.
40. The Commissioner asked the Cabinet Office at what point during the request response process, did the Cabinet Office determine that in fact they do not hold a sitemap for the intranet.
41. The Cabinet Office advised that during the conduct of the internal review the FOI Team asked a further official in Cabinet Office Digital for sight of 'the sitemap'. That official responded that a HTML sitemap did not exist for the intranet and noted that such a sitemap was somewhat anachronistic. The official stated that it would be necessary to use software in order to generate a sitemap. 'In doing so (and having regard to the wording of the request) he was referring to a HTML sitemap that would be navigable by a natural user'.

² Extensible Markup Language – a markup language and file format for storing, transmitting and reconstructing arbitrary data.

42. The Cabinet Office advised the Commissioner that they do not have a HTML sitemap of the intranet. The Cabinet Office explained that:

'What the Cabinet Office possesses are numerous XML files which contain lists of URLs which constitute the intranet. It is estimated that the number of unique URLs contained in the XML files is approximately 8,000.

The Cabinet Office also has an intranet content audit dated 23 March 2023 which consists of 1,460 entries. This consisted of the most frequently visited pages and those pages which contained information which was of value to users. Other pages were considered to be less relevant and less visited'.

43. Taken together, the Cabinet Office contended that these files and entries do not constitute a HTML sitemap of the kind that the complainant was anticipating in submitting his request. 'They consist of lists of URLs which were held at the date of the request. As we explained above, we do not consider that this is what the requester is seeking the disclosure of'.

44. In further support of their position that they do not hold the information requested by the complainant, the Cabinet Office stated that, 'the contents of the XML files the Cabinet Office does effectively hold may, in accordance with the terminology of the Commissioner's guidance, constitute 'the building blocks' for constructing the 'held' information'. The Cabinet Office noted the Commissioner's guidance that:

'Creating lists and schedules is usually a relatively simple – if time consuming – task. However, there are some circumstances where you cannot compile information without exercising a degree of skill or judgement'³.

45. However, the Cabinet Office advised that they are satisfied that the process of taking the contents of the XML files and transforming it into a HTML sitemap 'would involve the exercise of a degree of skill and judgement that would amount to the creation of information rather than the compilation of information that is already held'.

46. In their submissions to the Commissioner the Cabinet Office explained that:

³ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/#create>

'The task of establishing a HTML sitemap would involve an analysis of the URLs composing the XML files and placing them in a logical order so that it constitutes a structure. A person would need to be able to identify content areas based upon the URLs and, in many cases, have reference to the content of the intranet pages. We consider that decisions made by a person about where URLs should sit inside an organised structure would therefore necessitate the use of judgement based upon the information that was available'.

47. The Cabinet Office further noted the view of the Commissioner in his aforementioned guidance:

'When deciding whether or not you hold information which has to be derived from raw data, you should consider whether anyone with similar skills or experience would reach the same result if presented with the same set of raw data

For example, if someone asked you to present a dataset in a graph with a logarithmic scale, you may need to find someone with more advanced mathematical skills to derive the information. However, it should not matter who you ask to carry out the exercise, as anyone with similar knowledge of mathematics should arrive at the same result if presented with the same raw data'.

48. The Cabinet Office advised the Commissioner that they were satisfied that the compilation of a HTML sitemap from raw XML data would need to be accomplished by a person who possessed the skill and judgement to arrange a HTML sitemap by manual process or who was able to write an algorithm to enable the HTML sitemap to be constructed automatically. That too, in the view of the Cabinet Office, would involve the exercise of skill and judgement.
49. For the reasons set out above, the Cabinet Office considered that the information requested by the complainant (a sitemap of the department's intranet) was not held by the Cabinet Office.

Commissioner's assessment

50. The Commissioner would agree and accept the definition of a sitemap used by the Cabinet Office in its interpretation of the complainant's request. The Commissioner agrees that there being a plan and navigability are crucial elements of a functional sitemap (often called an HTML sitemap).
51. The Cabinet Office have been clear that they do not have a HTML sitemap of their intranet. What they hold are numerous XML files containing a list of URLs (estimated at approximately 8,000) which constitute the intranet and a relatively recent intranet content audit consisting of 1,460 entries. The Commissioner agrees with the Cabinet

Office that taken together, this held information does not constitute the HTML sitemap of the kind that the complainant was seeking and anticipating being held when making his request.

52. The Commissioner also accepts the Cabinet Office's contention that the process of taking the contents of the XML files and transforming it into a HTML sitemap would involve the exercise of a degree of skill and judgement that would amount to the creation of information rather than the compilation of information that is already held.
53. The Commissioner is therefore satisfied, on the balance of probabilities, that the Cabinet Office do not hold a detailed sitemap of their intranet.
54. Although the Commissioner understands the circumstances which led to the Cabinet Office changing its position, they nevertheless breached section 10(1) of the Act by not confirming to the complainant within 20 working days of his request that this information is not held. The Cabinet Office also breached section 10(1) for not responding to the other parts of the request within 20 working days.

Other matters

55. Internal reviews are not subject to statutory timescales. However, the Commissioner's guidance⁴ to public authorities is clear and well established, in that he expects most internal reviews to be provided within 20 working days, with a maximum of 40 working days in certain circumstances, unless there are legitimate reasons why a longer extension is necessary. In this case the Cabinet Office took three months to provide the review. The Commissioner considers that the time taken to provide the internal review was excessive, especially given the Cabinet Office's position that they do not hold the intranet sitemap requested, and given the amount of time originally taken to substantively respond to the request.
56. The Commissioner is of the view that the outcome of the internal review would have been of further assistance to the complainant had it provided more explanation as to why the requested sitemap is not held.

⁴ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>

Right of appeal

57. 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

58. 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.

59. 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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