

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 November 2018

Public Authority: The Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office for a report generated as a result of a lessons learned exercise into the 'Exemplar Programme', a project concerning the transformation of digital services. The Cabinet Office identified a PowerPoint presentation as falling within the scope of this request and initially withheld it on the basis of section 35(1)(a) (formulation and development of government policy). In a previous decision notice the Commissioner concluded that the information was exempt on the basis of section 35(1)(a) but that in all the circumstances of the case the public interest in disclosing the PowerPoint presentation outweighed the public interest in maintaining the exemption. The Cabinet Office subsequently disclosed the presentation to the complainant. However, the complainant contacted the Commissioner and argued that the Cabinet Office was likely to hold further information falling within the scope of his request and this had not been provided to him. The Commissioner has concluded that on the balance of probabilities the Cabinet Office does not hold any further information falling within the scope of this request beyond the PowerPoint presentation which has previously been disclosed to the complainant.

Request and response

2. The complainant submitted the following request to the Cabinet Office on 27 July 2017:

'I recently read the NAO report on Digital transformation within government, at this link: <https://www.nao.org.uk/wp-content/uploads/2017/03/Digital-transformation-ingovernment.pdf>. Paragraph 11 refers to a lessons learned exercise [about the Exemplar Programme] conducted in 2015. Is it possible to submit an FOI request to receive a copy of the detailed outputs from this lessons learned exercise please?'

3. The Cabinet Office responded to the request on 21 August 2017 and confirmed that it held information falling within the scope of the request but it considered this to be exempt from disclosure on the basis of the exemptions contained at sections 35(1)(a) (formulation and development of government policy) and 35(1)(b) (Ministerial communications) of FOIA.
4. The complainant contacted the Cabinet Office on the same day in order to ask for an internal review of this decision.
5. The Cabinet Office failed to complete an internal review into its handling of this request which led the complainant to contact the Commissioner. During the course of the Commissioner's subsequent investigation, the Cabinet Office provided her with the withheld information which it had identified as falling within the scope of her request, namely a PowerPoint presentation on the lessons learned from the Exemplar Programme. The Cabinet Office argued that this was exempt from disclosure on the basis of section 35(1)(a) of FOIA. The Commissioner issued a decision notice on 15 May 2018 which concluded that although the presentation was exempt from disclosure on the basis of section 35(1)(a) the public interest favoured disclosure of this information. The decision notice therefore ordered the Cabinet Office to disclose the PowerPoint presentation to the complainant with 35 calendar days.¹
6. The Cabinet Office complied with the notice, albeit not within the timescale required by the decision notice, by providing the complainant

¹ FS50713221 <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259038/fs50713221.pdf>

with a copy of the PowerPoint presentation on 18 July 2018. In providing this information the Cabinet Office noted that *'Please note this material was prepared for GDS [Government Digital Service] internal use only. Figures quoted and statements made in the presentation have not been audited or confirmed with departments and should not be quoted as official figures or statements of government policy.'*

7. The complainant contacted the Cabinet Office on the same day to query whether this was all of the information that it held falling within the scope of his:

'Thank you for your delayed reply.'

Can you confirm that this is all the information that you have associated with lessons learned on digital transformation please? It appears to be a summary presentation rather than the underpinning evidence, which was the basis of my request.

Slide 22 refers to 76 lessons learned, but these are sometimes compressed into a few words. For example, "Get the right people and skills to deliver the project" is a statement of the obvious which I assume is supported by additional context to enable others to make any use of it?

My original request asked for 'a copy of the detailed outputs from this lessons learned exercise' so that we can understand the lessons individually. There is typically an underpinning spreadsheet with comments on each lesson, impact statements etc.'

8. The Cabinet Office responded on the same day by explaining that:

'I am afraid this is all the information that was located by GDS colleagues. As mentioned this document was not really intended for publication or wider use and I would speculate it may be for this reason that there may be less comprehensive material than you might expect or wish.'

Scope of the case

9. The complainant contacted the Commissioner on 18 July 2018 regarding the Cabinet Office's response to his request. He explained that in his view it was likely that the Cabinet Office held further information, beyond the PowerPoint presentation, which fell within the scope of his request and that this information should be provided to him.

10. The scope of the Commissioner's investigation into the complainant's subsequent complaint about this request has therefore been to determine whether the Cabinet Office holds any further information falling within the scope of this request beyond the PowerPoint presentation previously disclosed to him.

Reasons for decision

11. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held – or whether all of the information falling within the scope the request has been located - the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information, or as in this case further information, which falls within the scope of the request.
13. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches, or as in the circumstances of this complaint, other explanations offered as to why the information is not held.

The complainant's position

14. In his submissions to the Commissioner the complainant explained that his request was carefully worded as follows *'Is it possible to submit an FOI request to receive a copy of the detailed outputs from this lessons learned exercise please?'* He explained that the request was not necessarily aimed at getting a copy of the PowerPoint presentation, rather it was the detailed outputs from the lessons learned exercise highlighted in an official government document.
15. The complainant explained that his request should be seen in the following context:
16. He noted the report was referenced in a public document by the NAO. As such, he suggested that it would be reasonable to assume that it had a certain amount of credence and credibility. The complainant noted that the NAO report stated that *'GDS supported exemplars of digital transformation. In 2012, it identified 25 services across government for end-to-end service redesign. It aimed to show how new approaches could make it easier for people to access services online and help remove unnecessary costs. By March 2015, 15 of the exemplars were providing live online services and a further five were available to the*

public in trial form. Other services have since become available'. And that the NAO report then stated that despite these being 'exemplars of digital transformation' these 'Major transformation programmes have had only mixed success'. The complainant suggested that it was unclear what the GDS definition of 'exemplar' means, but this suggests that the initial view of success was not borne through in terms of delivery.

17. The complainant argued that the PowerPoint presentation summarises the lessons learned from 25 Digital Transformation Programmes, comprising billions of taxpayer investment. The complainant noted that the Cabinet Office suggested that this report was prepared by someone on a temporary contract working in an unofficial capacity. However, the complainant argued that in order to pull this report together, they must have had access to lot of material and someone working in an unofficial capacity would struggle to gain access to this sort of data. He therefore questioned whether someone, who is paid by the Crown to deliver a defined piece of work for a government client, could be working in an unofficial capacity.
18. The complainant suggested that the GDS had washed their hands of a report which was mentioned in an NAO report, effectively stating that the information that it was based on does not exist in any shape or form. The complainant argued that they are effectively stating that despite having spent billions, they have no further information on lessons learned from 25 exemplar digital transformation programmes. However, the complainant emphasised that this information is of critical importance to the future delivery of similar programmes. The complainant argued that he considered it likely that that the Cabinet Office would hold further data that underpinned the report given that this represents an analysis of multi-billion investments and that such data clearly fell within the scope of his request.

The Cabinet Office's position

19. The Cabinet Office explained to the Commissioner that the complainant was incorrect in his assumption that the Cabinet Office held additional information beyond the PowerPoint presentation, specifically that there is additional information that formed the base data that underpinned the findings that are set out in the presentation. The Cabinet Office noted that, as it set out its initial response to the Commissioner about the complainant's original complaint, the PowerPoint presentation was prepared in an unofficial capacity by an individual working on a temporary contract with GDS, with the intention of informing the GDS management team. The Cabinet Office explained that the figures in the presentation were not produced internally by GDS, and therefore were never quality assured, signed off by senior management or audited within GDS in any way, nor were they agreed with departments. The Cabinet Office therefore argued that those figures do not exist within

GDS outside of the PowerPoint presentation which has of course now been provided to the complainant.

20. The Cabinet Office explained that under these circumstances, it was not necessary for it, nor GDS, to conduct any searches for information that does not exist within these departments, as it was never produced by either department and has never been held by the Cabinet Office or GDS beyond the form presented in the PowerPoint presentation. The Cabinet Office therefore argued in its view it has already provided the complainant with all of the information within scope of his request.

The Commissioner's position

21. The Commissioner is satisfied that the PowerPoint presentation which has been provided to the complainant represents the report or output of the lessons learned exercise about the Exemplar Programme conducted in 2015 which is referred to in the NAO report. The Commissioner accepts that in most cases it would be reasonable to expect a public authority to hold some background or underlying data to such a report, not least given as the complainant suggests the high profile nature of the projects it covers and the value of these projects. Moreover, the Commissioner acknowledges the complainant's point that if the outcome of the lessons learned exercise is being referred to in an NAO report this arguably provides it with some credibility and thus it is not unreasonable to assume that its report represents an official output of the Cabinet Office.
22. However, the Commissioner considers it necessary to carefully consider the provenance of the lessons learned report. It is her understanding that this was produced by a temporary contractor working for GDS and effectively in an unofficial manner; in essence although the report was produced by that individual and sent to GDS it would appear to have been unsolicited. In light of this, the Commissioner considers the Cabinet Office's position that it does not hold any further information, beyond the PowerPoint presentation, about the '*detailed outputs of the lesson learned exercise*' to be a reasonable one. Whilst she accepts the complainant's point that the individual who produced the report may well have had access to raw data held by the Cabinet Office to inform the content of the report, again given how the report was produced this does not mean that in order to fulfil the request the Cabinet Office can identify that data. In light of these circumstances the Commissioner is also satisfied that it was not necessary for the Cabinet Office to conduct wider searches to attempt to locate any information falling within the scope of the request. On the balance of probabilities the Commissioner is satisfied that the Cabinet Office has already provided the complainant with all of the information that it holds which falls within the scope of this request.

Right of appeal

23. 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: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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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