

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 7 March 2019

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested information regarding projects commissioned under the Consultancy One framework. The Cabinet Office has asserted that the requested information is not held.
2. The Commissioner's decision is that, on the balance of probabilities, the Cabinet Office does hold the requested information and has failed to fully consider and respond to the request in accordance with section 1(1) of the Act.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the request that does not deny that the information is held (ie the Cabinet Office need to comply with section 1(1)(a) by confirming that the information is held) **and** then either disclose the information as described in the confidential annex, or issue a refusal notice citing a reason to withhold the information.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 14 January 2018, the complainant wrote to the Cabinet Office and requested information in the following terms:

*"I am writing to request, under the Freedom of Information Act, information relating to the ConsultancyOne framework agreement. I would like to receive a list of all those projects commissioned to date under the ConsultancyOne framework agreement (i.e. RM1502: <https://ccs-agreements.cabinetoffice.gov.uk/contracts/rm1502><sup>1</sup>).*

*The following information is required:*

- 1. Government department or commissioning body*
- 2. Title of project*
- 3. Date commissioned (month and year is sufficient)*
- 4. Total value of the project (also known as total contract fee), i.e. the total financial value of each project. If this is not available, I will be happy to receive the sum of all invoices submitted to date for each project.*
- 5. Contractor appointed.*

*In responding to this request, I am happy for your to redact (a) any projects which relate to national security; (b) any projects that have been commissioned for less than 3 months. I am also happy to receive (4) total value of the project in £20K fee ranges, eg less than £20k, £20K to £40k etc".*

6. On 12 March 2018, the Cabinet Office provided its response and confirmed that the requested information was held in part by the Cabinet Office, including the Crown Commercial Service.
7. The Cabinet Office explained that individual call-off contracts<sup>2</sup> are not reported to the department and it is the responsibility of individual

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<sup>1</sup> Link is no longer active

<sup>2</sup> A call-off contract is an individual contract falling within a framework agreement which sets the terms and conditions of the contracts within its scope.

customer public authorities to publish information concerning all call-off contracts on Contracts Finder<sup>3</sup>.

8. The Cabinet Office stated that spending on particular projects is exempt under section 43 and cited decision notice FS50640132.
9. On 17 March 2018, the complainant wrote to the Cabinet Office and requested an internal review. The complainant disputed the Cabinet Office's reliance on section 43 and stated that it did not comply with government commitments to publication of contract award information. The complainant provided a link to government guidance on tender and contract publication<sup>4</sup> and cited paragraphs 7.3(a) and 8.3 as stating that disclosure of total contract price does not prejudice commercial interests of any person. The complainant stated that the ConsultancyOne framework includes clauses regarding the Act and highlights that the Cabinet Office may be obliged to provide information relating to activities under the agreement.
10. The complainant also disputed the relevance of the cited DN. The complainant stated that the decision notice concluded that the cabinet office did not need to provide monthly invoicing sums whereas his current request was for the total contract sum and the Cabinet Office had previously confirmed that this information is held.
11. On 23 April 2018, the Cabinet Office provided the complainant with the outcome of its internal review. The Cabinet Office stated that following review of the request, it had ascertained that the requested information is not held.
12. The Cabinet Office stated that additional information was provided in line with section 16<sup>5</sup> of the Act but this did not mean that it held the specified information within the Cabinet Office or any of its arm's length bodies. The Cabinet Office explained that management information is collected on the basis of monthly invoices, not specific projects.

## Background

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<sup>3</sup> <https://www.gov.uk/contracts-finder>

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/666728/Guidance\\_Publication\\_of\\_New\\_Central\\_Government\\_Tender\\_documents\\_and\\_Contracts\\_2017\\_\\_1\\_\\_1\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/666728/Guidance_Publication_of_New_Central_Government_Tender_documents_and_Contracts_2017__1__1_.pdf).

<sup>5</sup> The duty to provide advice and assistance

13. On 28 September 2017, the Commissioner issued decision notice FS50640132 regarding the following request:

*"...relating to the ConsultancyONE framework agreement, I would like to receive a list of all those projects commissioned to date under the ConsultancyONE framework agreement (i.e. RM1502: [Http://ccs-agreements.cabinetoffice.gov.uk/contracts/rm1502](http://ccs-agreements.cabinetoffice.gov.uk/contracts/rm1502)).*

*The following information is required:*

- 1. Government department*
  - 2. Title of project*
  - 3. Contract fee*
  - 4. Date commissioned*
  - 5. Lot under which the project was commissioned*
  - 6. Contractor appointed."*
14. The Commissioner ordered disclosure of the requested information with the exception of "column M" which set out the monthly invoice fees on a per project and per client basis.
15. The Cabinet Office complied with the decision notice and provided the information required. The complainant disputed that all information had been disclosed as he had requested the contract value and not the monthly invoice amount.
16. The complainant subsequently made a fresh request for this information which is the subject of this decision notice.

### **Scope of the case**

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17. The complainant wrote to the Commissioner on 30 April 2018 to complain about the way his request for information had been handled.
18. The Commissioner wrote to the Cabinet Office to request clarification of its position regarding this request. Following an information notice, the Cabinet Office confirmed that it considered the requested information was not held.
19. The Commissioner therefore considers the focus of her investigation is to determine whether the Cabinet office holds information falling within the scope of the request.

## Reasons for decision

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### Section 1(1) – General right of access to information

20. Section 1(1) of the Act 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 relevant to the request, and if so, to have that information communicated to them. This is subject to any procedural sections or exemptions that may apply. A public authority is not obliged under the Act to create new information in order to answer a request.
21. Where there is a dispute between the information located by a public authority and the information a complainant believes should be held, the Commissioner, following the lead of a number of First-Tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.
22. In the circumstances of this case, the Commissioner will determine whether, on the balance of probabilities, the Cabinet Office holds recorded information that falls within the scope of the request.

### The Cabinet Office's position

23. On 20 August 2018, the Commissioner wrote to the Cabinet Office to request clarification of its position and, in particular, requested confirmation of what was held with regard to each element of the request (Government department, title of project, date commissioned etc). Following multiple requests for a response, the Commissioner issued an information notice on 29 October 2018. Following a further chaser email, the Cabinet Office responded to the Commissioner on 4 December 2018.
24. The Cabinet Office's response was as follows:

*"In his request, [the complainant] asked for information relating to expenditure on individual projects commissioned under the ConsultancyOne framework agreement. The ConsultancyOne framework (which ran from May 2013 to February 2017) provided strategic advice across a broad range of disciplines and functions to support, guide and provide innovative solutions to public sector customers. As the Cabinet Office pointed out in its initial response to [the complainant], expenditure on individual projects was not reported via the departmental supplier management information collected by the Crown Commercial Service (which only collected, and published, overall spend by customer and supplier). Our reply was pointed out that it was the responsibility of individual customers to publish information concerning*

*their own expenditure on call-off contracts via Contracts Finder and that, consequently, the information on individual project spend requested by [the complainant] was not held by the Cabinet Office or the Crown Commercial Service.*

*The Cabinet Office's original response, unfortunately confused the above position by also referring to information being withheld under section 43 of the FOI Act. The review of the case at the internal review stage confirmed that there was no additional information held that did not fall within the first not held position (as set out above) and that the reliance upon the exemption under section 43 was not necessary. While the Cabinet Office's internal review reply confirmed that no information was held, it did not properly explain our withdrawal of our reliance upon section 43. We apologise for any confusion that this omission caused as to the Cabinet Office's position as to whether any information was or was not held.*

*We have verified with the Crown Commercial Service that no information on individual project spend is held under the ConsultancyOne framework contract and that in order to obtain such information, [the complainant] would need to contact individual customer public authorities."*

25. On 11 December 2018, the Commissioner returned to the Cabinet Office and confirmed that it had not answered the specific questions put to it, namely, what was held with regard to each element of the request. The Commissioner set out that the Cabinet Office had focussed on the project value element of the request and had not provided submissions on the entirety of the request. The Commissioner requested a response to her specific questions and details of how the Cabinet Office had ascertained that it did not hold any information falling within the scope of the request.
26. On 19 December 2018, the Cabinet Office responded in the following terms:

*"As our letter quite clearly points out, the Cabinet Office and Crown Commercial Service **did not collect – and therefore does not hold – ANY project-level information for contracts that were commissioned through the ConsultancyOne framework agreement; ALL it holds is overall spend figures by customer and supplier, which is already in the public domain.** The Cabinet Office is of the opinion that it is reasonably implicit in our response that if we did not collect expenditure data for individual projects, which was entirely the responsibility of individual customer public authorities (including the publishing of any information via Contracts Finder), there would be no reason for it to hold any other project-level information.*

*As to the process of how the Cabinet Office ascertain that the information is scope was not held, given that we have already explained that we **do not collect this information**- we do not request it and the customer public authorities do not send it to us – we are unsure what additional assurance the ICO is realistically expecting from the Cabinet Office in order to further confirm it does not hold information that is not within its remit to reasonably possess.” [Original emphasis]*

27. On 11 January 2019, the Commissioner wrote to the Cabinet Office and provided it with a copy of decision notice FS0640132 and the information provided to the Commissioner as part of this investigation. The Commissioner requested submissions regarding why the Cabinet Office’s position had changed since it had complied with the decision notice.

28. On 22 January 2019, the Cabinet Office responded in the following terms:

*“The previous ConsultancyOne framework, which was in place when [the complainant] made his previous request, was let in May 2013 and was extended until February 2017, when it was replaced by the current ConsultancyOne framework. The data fields reported to the Cabinet Office under the new framework are different than that of the previous framework, with data on individual projects commissioned by the customers no longer being reported (the data now focusing on the customer, contractor – including sub-contractors – and expenditure related information) ... The project-level data is still available publicly on Contracts Finder, but is the responsibility of the individual customers to publish in line with them meeting their transparency obligations. Data on individual projects (as opposed to spend against contractors) is not required to successfully run and maintain the ConsultancyOne framework agreement and is therefore no longer collected by the Cabinet Office.”*

29. On 22 January 2019, the Commissioner again returned to the Cabinet Office and set out that the request clearly states that it is seeking information regarding the ConsultancyOne framework RM1502 and not the current framework which appears to be called the “Management Consultancy Framework” RM3745<sup>6</sup>. The Commissioner requested the Cabinet Office’s further comments in an attempt to informally resolve the case.

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<sup>6</sup> <https://ccs-agreements.cabinetoffice.gov.uk/contracts/rm3745>



30. To date, no response has been received and the Commissioner considers that she must, therefore, proceed to decision notice.

### **The Commissioner's position**

31. The Commissioner is extremely concerned at the Cabinet Office's inability to maintain its position regarding whether information is held and its interpretation of the request.
32. The Commissioner considers that it is clear that the complainant is requesting information regarding the ConsultancyOne framework which ran from May 2013 to February 2017. The Cabinet Office's submission dated 4 December 2018 confirms this is how the request was interpreted. It is not apparent why the Cabinet Office now considers the request relates to the current incarnation of the framework agreement.
33. The Cabinet Office has previously confirmed to the Commissioner that it holds information falling within the scope of the following elements, and disclosed this information following decision notice FS507640132;
- Government department/commissioning body
  - Title of project (for a number of the listed projects)
  - Date commissioned
  - Contractor appointed
34. As the Cabinet Office has not stated that the information previously disclosed has since been deleted, and the Commissioner considers that this information clearly falls within the scope of the current request, the Commissioner considers that, on the balance of probabilities, this information is held by the Cabinet Office.
35. The Commissioner has reviewed the previously provided information and decision notice FS50640132. Column M is described at paragraph 51 of the notice, and by the consulted suppliers, as the *"monthly fees which have been invoiced to each client on a per project basis"*. As the framework had ended by the time of the request, the Commissioner considers that the data in column M could be used to ascertain the *"Total value of the project"* or the *"sum of all invoices submitted to date for each project"* for at least some of the projects. That is to say for projects where the spending is linked to a project named in column L of the spreadsheet provided to the Commissioner in respect of case FS50640132.
36. The Commissioner has set out worked examples in the confidential annex attached to this notice to demonstrate this point. As this annex



contains withheld information, it will be provided to the Cabinet Office only. For the avoidance of any doubt, the information contained in the spreadsheet does **not** comprise the totality of information which the Commissioner considers the Cabinet Office to hold; rather, the information in the spreadsheet simply represents three such examples.

37. The Commissioner considers that it is well established that information which requires collation from various sources does not constitute the creation of new information. The Commissioner has issued guidance<sup>7</sup> regarding this issue and she strongly recommends that the Cabinet Office reviews this guidance and ensures that it responds to future requests in accordance with this well-established position.
38. For the reasons set out above, the Commissioner's decision is that, on the balance of probabilities, the Cabinet Office holds information falling within the scope of the request. The Commissioner requires the Cabinet Office to issue a fresh response to the request that does not deny the information is held (ie comply with section 1(1)(a) by confirming that the information is held) **and** then either disclose the information or issue a refusal notice citing the reason to withhold the information.

## **Section 10: Time for compliance**

39. Section 10(1) of the Act states:

*"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."*

40. The complainant made his request on 14 January 2018 and the Cabinet office responded on 12 March 2018, 41 working days following the date of receipt.
41. The Cabinet Office has, therefore, breached section 10(1) of the Act.

## **Other matters**

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42. The Commissioner has previously issued a decision notice in which the Cabinet Office maintained a position that it did not hold information as it would have to collate it from multiple sources; the Commissioner
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<sup>7</sup> <https://ico.org.uk/media/for-organisations/documents/1621/the-right-to-recorded-information-and-requests-for-documents.pdf>

disagreed with the Cabinet Office's position and concluded that the collation of information in that case would not constitute the creation of new information<sup>8</sup>. She is increasingly concerned at the Cabinet Office's lack of understanding of the basic principles when determining whether information is held for the purposes of the Act.

43. The Commissioner expects the Cabinet Office to take appropriate steps to improve the handling of requests and set an example of best practice in light of the Cabinet Office's obligation to provide Governmental Freedom of Information policy and guidance in the form of the section 45 Code of Practice.
44. The Commissioner is also disappointed at the quality of the Cabinet Office's submissions and the significant amount of time the Cabinet Office took to respond to her initial enquiry. The Commissioner does not expect to have to issue an information notice in order to obtain confirmation of a public authority's position and she expects the Cabinet Office to improve its engagement with the Commissioner's officers.
45. The Commissioner would also like to remind the Cabinet Office that, particularly where specific questions are asked, the Cabinet Office should provide detailed and focussed explanation in response to the Commissioner's enquiries. It is not sufficient to provide information that is "*reasonably implicit*". Public authorities should provide the Commissioner with detailed submissions which clearly set out the public authority's position and its reasons for this position.
46. In light of the length of time since the request was made, should the complainant be dissatisfied with the Cabinet Office's fresh response, she will accept a complaint without an internal review of the Cabinet Office's subsequent position.

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<sup>8</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2260371/fs50736559.pdf>

## Right of appeal

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47. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

48. 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.
49. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**