

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 May 2021

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

Decision (including any steps ordered)

1. The complainant requested information from the Cabinet Office about a 'blog' published by the government, which rebutted the contents of an article published in the Sunday Times. The Cabinet Office initially refused the request under section 12 of the FOIA (exceeds appropriate cost); it subsequently stated that the requested information was not held. During the course of the investigation, it became apparent that the Cabinet Office had interpreted the scope of the request differently from the complainant. The Commissioner has therefore considered whether an objective reading of the request was carried out by the Cabinet Office.
2. The Commissioner's decision is that there is only one objective reading of the request and that the Cabinet Office did not interpret the request in line with this objective reading.
3. The Commissioner requires the Cabinet Office to take the following step to ensure compliance with the legislation.
 - Issue a fresh response to the request based on the correct objective reading.
4. The Cabinet Office must take this step 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

5. On 24 April 2020, the complainant wrote to the Cabinet Office to request information of the following description:

"Please provide a copy of all messages to and from members of the departmental press team, of rank senior media relations officers and above, and ministers of the department concerning:

- Drafting comment in response to the Sunday Times Insight story of 19th April: "Coronavirus: 38 days when Britain sleepwalked into disaster".*
- Drafting the rebuttal article: [link provided to blog, dated 19 April 2020]*
- Any subsequent discussion of the article. If this part of the request risks exceeding the cost limit, please just provide a copy of all emails sent or received by these parties that contains the following link: [link provided]"*

6. On 8 June 2020, the Cabinet Office responded and refused the request, citing section 12 of the FOIA. Specifically, it stated that *"relevant information could be contained in very many files. Searching all those that might contain relevant information to determine whether the Cabinet Office holds any information relevant to your request will exceed the appropriate limit laid down in the regulations"*. It said the complainant may wish to consider refining his request.
7. An internal review was requested on 9 June 2020. The Cabinet Office provided the outcome of its internal review on 26 June 2020. Without providing any further explanation, it upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 17 July 2020 to complain about the way his request for information had been handled.
9. The Commissioner wrote a letter of investigation to the Cabinet Office in November 2020, asking for any evidence in support of its view that complying with the request would exceed the costs limit.
10. On 16 January 2021, the Cabinet Office responded to the Commissioner and stated that it had now determined that the requested information was not held. It apologised that this had not been determined when the

internal review was carried out. It advised the complainant of its revised position, on the same date.

11. On 24 February 2021 the complainant confirmed that he wished the Commissioner to investigate the Cabinet Office's revised position. He also commented that the Cabinet Office appeared to have misinterpreted his request "*as just being between press officers and ministers*". He explained that he considered that, as well as covering communications from senior press officials to ministers or vice versa, his request would also cover communications between the senior press officials, and between the ministers.
12. On 26 February 2021, the Commissioner wrote again to the Cabinet Office. She explained that the complainant considered his request would cover correspondence between senior press officials, and between ministers, as well as correspondence from one group to the other.
13. On 26 March 2021, the Cabinet Office responded and stated that, in its view, the request did not cover communications between only press officers, or between only ministers, but rather, covered only any communications between the two groups.
14. The Commissioner noted that the objective meaning of the request remained in dispute. In such cases, where the objective meaning is in dispute and the request has not been clarified, the Commissioner, as set out in detail in this notice, will consider both the complainant's and the public authority's interpretations, and whether each of these is the objective reading of the request.
15. This decision notice covers whether the Cabinet Office's interpretation of the request is the objective reading.

Reasons for decision

Section 1 of the FOIA – general right of access to information

16. Section 1(1) of the FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

17. In addition, section 8(1) of the FOIA states that:

"In this Act any reference to a "request for information" is a reference to such a request which –

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested."

18. Section 84 of the FOIA defines *"information"* in this context as being information *"recorded in any form."*
19. Public authorities must interpret information requests objectively. They must avoid reading into the request any meanings that are not clear from the wording. If the request clearly specifies exactly what information or documents the requester wants, then there will only be one objective reading to the request.
20. As previously stated, in cases where the objective meaning of the request is in dispute and the request has not been clarified, the Commissioner will consider both the complainant's and the public authority's interpretations, and whether each of these is the objective reading of the request.
21. If the complainant's intended interpretation is an objective reading of the request, then the Commissioner will issue a decision notice which orders the public authority to issue a fresh response based on the complainant's interpretation of the request. If the complainant's interpretation is not an objective reading, and the public authority's is, then the Commissioner will issue a decision notice which finds that the request has been interpreted correctly by the public authority.

The complainant's interpretation

22. In this case, the complainant believed that the wording of his request made it clear that he wanted sight of any communications involving individuals from the senior press team and ministers, whether made within the press team, between ministers only, or between the two groups of individuals.

The Cabinet Office's interpretation

23. The Cabinet Office has interpreted the request differently. Despite being invited to consider the complainant's interpretation, it reiterated its position in its letter to the Commissioner dated 26 March 2021. It stated:

"The Cabinet Office did not, and still does not, interpret the request as asking for communications to and from (i.e. between) senior press officers... We construed the request as asking for communications where press office officials are one party to the communications (sender or recipient) and one or more ministers are the other party (sender or recipient)."

24. The Commissioner has considered both of the interpretations.

The Commissioner's decision

25. The Commissioner considers that the request clearly described the recorded information that was sought by the complainant. It is her view that there is only one objective reading, which is the interpretation set out by the complainant.
26. The Commissioner considers that the objective reading of the request is that its scope covers any "*intra*" departmental communications that are held (that is, any recorded communications between senior members of the press team, and also any between ministers) as well as any "*inter*" departmental communications between the press team and the ministers. The use of the phrase "*to and from*" in the request does not, in the Commissioner's view, mean that the scope of the request is limited only to any *inter* departmental communications which are held.
27. As set out at paragraph three above, the Cabinet Office is now required to issue a fresh response to the request, based on the objective reading.

Other matters

28. The Commissioner notes that the Cabinet Office initially relied on section 12 of the FOIA, but subsequently revised its position and stated that the information was not held. She considers that this initial handling of the request showed disregard by the Cabinet Office for its obligations under the FOIA. Irrespective of the interpretation of the request, it is clear to the Commissioner that, had the request been properly considered at the time, it would be extremely unlikely that it would have been found to exceed the appropriate costs limit (which in this case would be 24 hours) to locate and retrieve relevant information relating to the specific blog post, if held. In the Commissioner's view, the Cabinet Office's initial handling of the request, and its internal review procedure, fell far short of her expectations of best practice.

Right of appeal

29. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

Phillip Angell
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