

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 May 2022

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

Decision (including any steps ordered)

1. The complainant requested information about suppliers that had used the so-called "high priority lane" to bid for contracts to supply personal protective equipment. The Cabinet Office relied on section 12 of FOIA (costs) to refuse part of the request and section 43 of FOIA (commercial interests) to withhold some of the information.
2. The Commissioner's decision is that the Cabinet Office has correctly applied section 43 and that the balance of the public interest favours maintaining the exemption. The Cabinet Office was also entitled to rely on section 12 to refuse the remainder of the request. However, the Cabinet Office failed to provide meaningful advice and assistance and therefore failed to comply with its section 16 duty. The Cabinet Office also breached section 17 of FOIA as it failed to issue its refusal notice within 20 working days.
3. The Commissioner does not require further steps.

Request and response

4. On 16 February 2021 the complainant requested information from the Cabinet Office. The request was identical to the lengthy request, she made to the Department of Health and Social Care ("the DHSC"), that

was the subject of decision notice IC-138390-B5K2 and so it is not reproduced here.¹

5. On 9 April 2021, the Cabinet Office relied on section 43 of FOIA to withhold the requested information. Following an internal review, it changed its stance to that which was eventually adopted by the DHSC in decision notice IC-138390-B5K2.

Scope of the case

6. The complainant contacted the Commissioner on 21 May 2022 to complain about the way her request for information had been handled.
7. On receipt of the Cabinet Office's submission, the Commissioner contacted the complainant on 12 May 2022. He noted the recently issued decision notice IC-138390-B5K2 and explained that he saw no reason to take a different approach in the present case. Furthermore, he noted that the complainant was entitled to appeal decision notice IC-138390-B5K2 if she disagreed with his approach. The information that she would be entitled to receive, if she were successful in such an appeal, would be the exact same information that she had requested from the Cabinet Office. The Commissioner therefore considered that serving a decision notice on the Cabinet Office would serve no useful purpose and invited the complainant to withdraw her complaint.
8. The complainant did not wish to withdraw her complaint and asked the Commissioner for a decision notice. She did not specify what she hoped to achieve from such a decision notice or why she considered that the Commissioner ought to take a different view to decision notice IC-138390-B5K2. Nor did she offer to narrow the scope of the matters involved.
9. The Commissioner will consider the Cabinet Office's cited exemptions and comment on its procedural handling of the request.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4020094/ic-138390-b5k2.pdf>

Reasons for decision

Section 43 – commercial interests

10. The Commissioner does not consider that there was any difference of substance between the DHSC's submission in decision notice IC-138390-B5K2 and the Cabinet Office's submissions in the present case. He considers it likely that the two public authorities co-ordinated their responses – which would be entirely understandable when considering identical requests.
11. The Commissioner is satisfied that section 43 has been applied correctly by the Cabinet Office. He relies, for this view, upon the same analysis as is set out in decision notice IC-138390-B5K2 (paras 36-51).

Section 12 – cost of compliance

12. The Commissioner does not consider that there was any difference of substance between the DHSC's submission in decision notice IC-138390-B5K2 and the Cabinet Office's submissions in the present case. He considers it likely that the two public authorities co-ordinated their responses – which would be entirely understandable when considering identical requests.
13. The Commissioner is satisfied that section 12 has been applied correctly by the Cabinet Office. He relies, for this view, upon the same analysis as is set out in decision notice IC-138390-B5K2 (paras 55-65).

Section 16 – advice and assistance

14. The Commissioner does not consider that there was any difference of substance between advice and assistance offered by the DHSC in decision notice IC-138390-B5K2 and that offered by the Cabinet Office in the present case. Again, it appears likely that the two public authorities co-ordinated their responses.
15. The Commissioner does not consider that the Cabinet Office complied with its section 16 duty. He relies, for this view, upon the same analysis as is set out in decision notice IC-138390-B5K2 (paras 66-70).
16. The Commissioner briefly considered whether to order the Cabinet Office to take steps to remedy its breach. He decided not to do so. In decision notice IC-138390-B5K2, he ordered the DHSC to either provide the complainant with meaningful advice and assistance or state that no such advice was possible. As he considers it highly likely that the Cabinet Office would only repeat the DHSC's stance, he considers that ordering a remedial step would be a disproportionate use of the Cabinet Office's

resources.

Section 17 – refusal notice

17. The Commissioner notes that the Cabinet Office failed to issue its refusal notice within 20 working days and it therefore breached section 17 of FOIA.

Other matters

18. The FOIA Code of Practice, issued under section 45 of the Act, states that internal reviews should not usually take more than 40 working days to complete.² In this case, the Commissioner notes that the Cabinet Office took seven months to complete its internal review – which he regards as extremely poor practice.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

19. 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

20. 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.
21. 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

Roger Cawthorne
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