

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 January 2025

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

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office seeking information about the decision by Permanent Secretaries to impose minimum hours on office attendance. The Cabinet Office refused the request on the basis of section 12(1) (cost limit) of FOIA.
2. The Commissioner's decision is that the Cabinet Office is entitled to refuse this request on the basis of section 12(1) of FOIA. However, it breached section 17(5) of FOIA by failing to issue its refusal notice within 20 working days and also breached section 16(1) as it did not provide the complainant with adequate advice and assistance to allow her to submit a refined request.
3. The Commissioner does not require further steps.

Request and response

4. The complainant submitted the following request to the Cabinet Office on 23 November 2023:

"Permanent Secretaries have agreed to collectively impose minimum hours in the office on their staff. Please can you send me the minutes of the meeting in which that was agreed."

5. The Cabinet Office responded on 22 December 2023. It explained that the information requested was held by the Cabinet Office but not in the format requested.
6. The complainant contacted the Cabinet Office on 26 December 2023 and asked it to conduct an internal review of her request. She explained that in view of its response she assumed that it held correspondence regarding this issue, albeit not meeting minutes. She therefore asked the Cabinet Office to 'please send me the relevant correspondence/emails/messages.'
7. The Cabinet Office responded on 26 June 2024. It upheld its initial decision that it did not hold information falling within the scope of the original request as it did not hold information in the form requested, namely minutes of specific meetings. However, in relation to the complainant's clarified request in which she explained that she was also interested in information on this topic held in the form of 'correspondence, emails and messages', the Cabinet Office confirmed that it held such information but it was unable to provide this. This was because the request exceeded the appropriate cost limit due to the time required to locate and retrieve correspondence and to extract relevant information from numerous emails within multiple inboxes across the Cabinet Office. The clarified request was therefore refused on the basis of section 12(1) of FOIA. By way of advice and assistance, the Cabinet Office suggested that the complainant could refine her request by specifying a business unit within the Cabinet Office which could be searched for information.

Scope of the case

8. The complainant contacted the Commissioner on 13 July 2024 in order to complain about the Cabinet Office's handling of her request. She raised the following grounds of complaint:
 - a) She was dissatisfied that the Cabinet Office's initial response of 22 December 2023 simply explained that it did not hold the requested information. Instead in her view the Cabinet Office should have explained what information it did hold on this subject, and if appropriate, cite section 12(1) of FOIA at that stage.
 - b) In any event, she disputed the Cabinet Office's position that complying with her clarified request would exceed the cost limit.
 - c) She was unhappy with the level of advice and assistance provided by the Cabinet Office in its response of 26 June 2024 and argued that this did not assist her in submitting a refined request.

- d) She was dissatisfied with the time it took the Cabinet Office to complete the internal review, despite her repeatedly chasing up progress on this.

Reasons for decision

Complaint a

9. As noted above, the complainant is dissatisfied that the Cabinet Office's initial response of 22 December 2023 simply explained that it did not hold the requested information. In her view the Cabinet Office should have explained what information it did hold on this subject, and if appropriate, cite section 12(1) of FOIA at that stage.
10. Section 1(1)(a) of FOIA requires a public authority to confirm or deny whether it holds requested information.
11. Section 16(1) of FOIA states that:

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."
12. In terms of section 1(1)(a), the Commissioner is satisfied that the Cabinet Office correctly confirmed that it did not hold the requested information, namely the minutes of meeting(s) in which this decision was reached.
13. Furthermore, the Commissioner accepts that the Cabinet Office's response, whilst not overly detailed, did provide sufficient indication to the complainant that it held information on this topic, albeit not in the form of meeting minutes as initially requested.
14. Indeed on the basis of the Cabinet Office's response the complainant assumed that it must hold correspondence on this topic in a different form and therefore requested 'the relevant correspondence/emails/messages.' To the extent that there was a section 16 duty on the Cabinet Office in terms of clarifying the nature of the information it did hold, the Commissioner is satisfied that it meet this.
15. In addition, the Commissioner does not accept that the Cabinet Office should have interpreted the initial request to be seeking information in a format beyond meeting minutes. As result, there was no obligation on the Cabinet Office to respond by citing section 12(1) of FOIA on the

basis that whilst information in such a format was not held, information in a different format was but the provision of this would exceed the cost limit.

Complaint b

16. Section 12(1) of FOIA states that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

17. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for central government departments such as Cabinet Office. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12 effectively imposes a time limit of 24 hours.
18. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) of the Fees Regulations states that an authority can only take into account the costs it reasonably expects to incur in:
- determining whether it holds the information;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
19. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, the Commissioner considers that any estimate must be 'sensible, realistic and supported by cogent evidence'.¹
20. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether, despite this being the case, there is a public interest in the disclosure of the information.

¹ Paragraph 12 of EA/2007/0004.

The complainant's position

21. The complainant did not accept that it would exceed the cost limit to locate information falling within the scope of her request. She has suggested that only a small number of individuals' inboxes will need to be searched over a small period of time.

The Cabinet Office's position

22. The Cabinet Office noted that there is no date range provided in the request so it took the start date as 1 March 2022 and the end date to be the date of the FOI request (23 November 2023). In the context of the original FOI request for the minutes of a meeting the Cabinet Office explained that it considered the start date to be reasonable for two reasons: firstly, its searches did not produce any results related to "minimum office attendance" prior to March 2022, and secondly, in the wider context, it was only in January 2022 that Cabinet Office Ministers called for Permanent Secretaries to have their departments lead the way in the return to the office after the pandemic.² The Cabinet Office explained that if the complainant had suggested an earlier start date then it is likely that more information could potentially be in scope. In its view the end date was reasonable given that correspondence on the matter could be ongoing.
23. The Cabinet Office explained that there is no single meeting at which Permanent Secretaries agreed to collectively impose minimum hours of office attendance for their staff; the decision was made over a series of engagements. There is a rhythm of weekly engagement between departmental Permanent Secretaries, and a discussion on office attendance could have been on the agenda at any of the 84 meetings during the search period. In addition the Cabinet Office explained that there were two further internal meetings and one external meeting where Permanent Secretaries discussed office attendance.
24. The Cabinet Office explained that for the broadened request for all correspondence on the topic, it conducted searches of a shared inbox likely to hold information, searches of a shared drive likely to hold information, and searches of a mailbox of an individual likely to hold information. The search terms used were "office attendance"; "office attendance" "minutes"; "60%" "minimum"; and, "40%" "minimum". In total the Cabinet Office conducted seven separate searches of these

² <https://www.gov.uk/government/news/civil-servants-to-lead-the-way-in-returning-to-offices>

locations using these terms. In total these seven searches located 1,167 emails.

25. The Cabinet Office explained that it assumed that it would take on average 1 minute and 30 seconds to read each email to confirm it was in the scope of the request as this would not necessarily be clear from the subject line of the email. This resulted in a total of 29 hours to review all of the emails.
26. In support of this estimate, the Cabinet Office explained that an official had conducted a sampling exercise of 10 search results and it took them 15 minutes to read through the material to determine if it contained information in the scope of the request. The Cabinet Office noted that some of the emails contained lengthy attachments which it considered to be typical.
27. The Cabinet Office also stressed that the estimate/sampling exercise represents a review by one policy official. It explained that in practice, a review to identify information in scope usually involves other officials in the policy area, and at least one official from the FOI team. So 1.5 minutes per item is reasonable, in its view. With additional reviews from additional officials, the Cabinet Office argued that the estimate would clearly be much higher.
28. Furthermore, in addition to searching these emails, the Cabinet Office explained that regular meeting readouts from the Permanent Secretaries' meetings would also need checking to identify any information relevant to the request. For the period March 2022 to November 2023 this equated to 84 agendas (21 months x 4 meetings per month), plus the three additional meetings referred to above at paragraph 23.
29. The Cabinet Office estimated that it would take 1 minute to check each meeting read out, which equated to 1 hour and 27 minutes.
30. Added to the estimate for reviewing the emails, this gave a total estimated time of complying with the request of 30 hours 27 minutes.

The Commissioner's position

31. Having considered the Cabinet Office's submissions, the Commissioner is satisfied that it has advanced sufficient evidence to support its position that complying with the request would exceed the appropriate cost limit.
32. The Commissioner acknowledges the complainant's point that, in her view, the relevant information will only be located in a limited number of places. However, the Commissioner notes that in its submissions to him the Cabinet Office is not suggesting that extensive searches need to be

conducted for information falling within the scope of the request. Rather searches for emails would be limited to two email inboxes and a shared drive, with searches for meeting readouts being limited to those of Permanent Secretaries' weekly meetings.

33. With regard to the timeframe set by the Cabinet Office for these searches, the Commissioner accepts this to be a reasonable one for the Cabinet Office to have set taking into account the factors set out in paragraph 22.
34. Furthermore, the Commissioner considers the search terms that the Cabinet Office has used to locate relevant emails to be logical and focused ones that would be likely to capture information relevant to the request but at the same time are not so broad that they would be likely to catch irrelevant emails. In view of this the Commissioner is satisfied that in order to process the request the Cabinet Office would have to review the 1,167 emails located in order to determine if these fell within the scope of the request. That is to say, whether they contained communications between Permanent Secretaries about the minimum hours staff are expected to attend their offices.
35. In terms of whether 1 minute 30 seconds to review each is a reasonable estimate, the Commissioner accepts that this is supported by a sampling exercise. The Commissioner also accepts that in practice more than one official may be involved in reviewing such emails which would, if that were the case, increase the time needed to review each email. In light of these factors, particularly the sampling exercise which has been undertaken, the Commissioner accepts that 1 minute 30 seconds is a reasonable estimate and one that is supported by cogent evidence.
36. The Commissioner is also satisfied that in order to locate information in scope it is appropriate to review the records of weekly meetings between Permanent Secretaries. The Commissioner notes that the Cabinet Office has not conducted a sampling exercise to support the estimate of 60 seconds to review each meeting, but in principle he accepts this to be reasonable one. In any event, the Commissioner is satisfied that the appropriate cost limit of 24 hours would already be reached as reviewing the emails located by the search would take 29 hours.
37. In view of the above the Commissioner is satisfied that the Cabinet Office can rely on section 12(1) of FOIA to refuse to comply with the complainant's clarified request.

Complaint c

38. In line with section 16(1) of FOIA when refusing a request on the basis of cost, public authorities should provide advice and assistance as far as it is reasonable to expect them to do so. The aim of this is to help the applicant make a fresh request which can be dealt with within the appropriate limit.

39. The statutory duty at section 16 of FOIA should be read in conjunction with section 45 code of practice which states that when section 12 is applied public authorities:

"...should consider what advice and assistance can be provided to help the applicant reframe or refocus their request with a view to bringing it within the cost limit. This may include suggesting that the subject or timespan of the request is narrowed."³

40. The Commissioner's guidance explains that:

"If you have satisfied the requirements of the section 45 code of practice, then you will have complied with section 16.

However, this should not prevent you from going beyond the provisions of the code. The Commissioner considers it good practice to adopt a constructive approach, aimed at putting the applicant in a position whereby they understand the costs involved in dealing with their request. They can then use that knowledge to make a fresh request which targets the information of most interest to them and which you can deal with within the appropriate limit. In the longer term, this constructive approach could improve the clarity of requests you receive. It could also reduce the number of requests you are refusing on the grounds of cost."⁴

41. In this case the advice and assistance the Cabinet Office provided to the complainant was as follows:

"If you wish, you may refine your request so that the cost of determining whether the Cabinet Office holds relevant information, locating, retrieving and extracting it would not exceed the appropriate

3

https://assets.publishing.service.gov.uk/media/5bacc7eb40f0b62dbe5321ba/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf Paragraph 6.9

⁴ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-12-requests-where-the-cost-of-compliance-exceeds-the-appropriate-limit/>

limit. You may wish to specify a business unit within the Cabinet Office for your search. Please be aware that if the Cabinet Office does hold any information relevant to a refined request, it may be subject to one or more of the exemptions in the Freedom of Information Act."

42. In response to this the complainant contacted the Cabinet Office and explained that:

"I will provide an amended request as suggested in your response. To do this, please supply the name of the team who collated and considered departmental responses to the proposal of the mandated return to work."

43. The Cabinet Office treated this as a new request for information and provided the following response:

"We are writing to advise you that following a search of our paper and electronic records, we have established that the information you requested is held by the Cabinet Office - in that the Government People Group worked with departments to provide support and guidance to aid their implementation of the office attendance expectation."

44. In terms of whether the Cabinet Office fulfilled its duties contained in section 16(1), the Commissioner accepts that the advice to limit the request to a specific business area in the department was a logical one. However, the Commissioner considers such advice to be rather limited and pre-supposes that the complainant already knew which business area(s) would be likely to hold relevant information. That was clearly not the case, hence the complainant's further request seeking clarity as to the identity of the business unit in question.
45. Therefore, in the Commissioner's view it would have been reasonable to expect the Cabinet Office not only to suggest that the request be limited to a business area, but also to explain which business area it would be most appropriate to refine the request to, namely the Government People Group. Such advice and assistance would have meant that the complainant did not need to make her follow up request seeking clarity on this point. In the Commissioner's opinion the limited nature of the advice and assistance – particularly given the obvious way in which this could have been expanded – meant that the Cabinet Office did not fully meet its obligations under section 16(1) of FOIA and therefore it breached this section of the legislation.

Complaint d

46. FOIA does not contain a statutory timeframe within which internal reviews must be completed. Therefore the Cabinet Office's delay in completing the internal review does not equate to breach of FOIA. The

Commissioner has therefore considered the delayed internal review in the Other Matters section below.

47. However, in this case the complainant's request for an internal review also included in a clarified, and therefore new, request for information, ie "please send me the relevant correspondence/emails/messages."
48. The Cabinet Office was therefore under an obligation under section 10 of FOIA to respond to that request within 20 working days. If a public authority wishes to refuse a request it must, in line with section 17 of FOIA, issue a refusal notice within the same timeframe.
49. The Cabinet Office's failure to issue its refusal notice citing section 12(1) within that timeframe constitutes a breach of section 17(5) of FOIA.

Other matters

50. FOIA does not impose a statutory time within which internal reviews must be completed, albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe.⁵ The Commissioner expects that most internal reviews should be completed within 20 working days, and even for more complicated requests, reviews should be completed within a total of 40 working days.⁶
51. In this case the Cabinet Office took 6 months to complete the internal review. The Commissioner notes that the Cabinet Office accepts this was an excessive period of the time.
52. Whilst such a delay is clearly unacceptable in any case, in the circumstances of this request this had a particularly detrimental impact on the complainant because it was only at the review stage that the Cabinet Office provided her with a response to her clarified request which was contained in her request for an internal review. As noted above, this resulted in a breach of the procedural requirements of FOIA.

⁵ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

⁶ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>

Right of appeal

53. 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

54. 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.
55. 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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