

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 January 2025

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

Decision (including any steps ordered)

1. The complainant has requested information about the United Kingdom's decision to leave the European Union. The Cabinet Office refused to comply with the request, citing section 12(1) (cost limits) of the FOIA.
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 12(1) of the FOIA to refuse the request.
3. The Commissioner does not require further steps.

Request and response

4. On 11 March 2024, the complainant wrote to the Cabinet Office and requested information in the following terms:

"The judgment of the Supreme Court was that the referendum on the EU was not a decision, however the European Union Notification of Withdrawal Act was passed on the basis of "A decision already made". (See European Union (Notification of Withdrawal) Bill - Hansard - UK Parliament). It follows that the decision must have been made by the government, or unilaterally by the prime minister.

If it was the government then it must have been made in a cabinet meeting, and the minutes of that meeting will be recorded, else if it was made by the prime minister alone, then they should have put their reasons on record. Please provide a copy of these records, or if there

are no records, then please confirm which prime minister made the decision.”

5. On 12 March, the Cabinet Office asked the complainant to clarify if they meant who had made the decision to hold a referendum, or who made the decision to leave the European Union.
6. The complainant clarified they were asking for information about the decision to leave the European Union. Initially, the Cabinet Office stated the request did not constitute a valid request under FOIA, as it was not a request for recorded information. It did not provide an internal review.
7. After the requester complained to the Commissioner, the Cabinet Office issued a new response on 8 August 2024, in which it refused the request under section 12(2) of FOIA.
8. Section 12(2) provides that a public authority doesn't have to inform a requester whether it holds information of the description specified in the request, if the estimated cost of doing so would exceed the appropriate limit.
9. In other words, if the cost of establishing whether information of the description specified in the request is held would be excessive, the public authority is not required to do so.
10. The ICO considered it unlikely the Cabinet Office did not hold any information in scope of the request. On 3 October 2024, it therefore issued a decision notice finding the Cabinet Office was not entitled to rely on section 12(2) and must issue a new response.
11. The Cabinet Office did so on 1 November 2024, stating its reliance on section 12(1).
12. The complainant challenged this and raised a further complaint to the ICO.

Reasons for decision

13. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
14. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for

central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the Cabinet Office is £600.

15. 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(1) effectively imposes a time limit of 24 hours for the public authority.
16. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - 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.
17. 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. The Commissioner considers that any estimate must be sensible, realistic and supported by cogent evidence. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
18. 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 there is a public interest in the disclosure of the information.
19. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

Would the cost of compliance exceed the appropriate limit?

20. The Cabinet Office has previously provided detailed submissions explaining the volume of information that would need to be searched and how long it estimates this would take. The Commissioner does not intend to reiterate these arguments here, but they can be read in full as part of his previous decision notice IC-300094-P9Q7.

21. As part of these arguments, the Cabinet Office estimated it would take approximately 58 hours to fulfil the request.

The Commissioner's view

22. Having considered the Cabinet Office's submissions, it is clear that responding to this request would considerably exceed the cost limit.
23. Therefore, the Commissioner finds the Cabinet Office were entitled to rely on section 12(1) to refuse this request.

Section 16(1) – The duty to provide advice and assistance

24. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
25. As noted in the previous decision notice, the Cabinet Office offered the complainant advice and assistance in terms of potentially narrowing or refining their request, although it did note breaking the request down into a series of smaller requests could still result in a refusal under section 12 if the aggregated cost were to exceed the limit.

The Commissioner is satisfied that the Cabinet Office met its obligations under section 16 of FOIA.

Right of appeal

26. 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

27. 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.
28. 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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