

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 January 2025

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

Decision (including any steps ordered)

1. The complainant has requested information about the decision to leave the EU. The Cabinet Office relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that the public authority was entitled to rely on section 12(1) of FOIA to refuse the request. The Commissioner also finds that the public authority complied with its section 16 obligation to offer advice and assistance.
3. The Commissioner's decision is that the public authority failed to provide a response within 20 working days. By failing to provide such a response within the statutory time for compliance, the Commissioner finds that the Cabinet Office breached section 10(1) of FOIA.
4. The Commissioner does not require further steps to be taken.

Request and response

5. On 11 March 2024, the complainant wrote to the public authority 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 <https://hansard.parliament.uk/commons/20...>).

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."

6. On 12 March 2024, the public authority responded. It said:

"Thank you for your recent FOI request, copied below. Before we can proceed with your inquiry we require some clarification.

If you can provide such, we will be able to continue with your request.

We are unclear as to what recorded information you are asking for. Are you referring to who made the decision to hold the referendum, or who took the decision to leave the EU?"

If we do not hear from within two months of the date of this email, we will consider the matter closed."

7. The complainant responded on 12 March 2024 and said:

"Thank you for your prompt attention. I would like to know about the decision to leave the EU. Clearly it was parliament who made the decision to hold a referendum, but they did not make the decision to leave the EU."

8. The Cabinet Office responded on 13 March 2024 and said:

"Unfortunately your email does not constitute a valid request for information as outlined in section 8(1)(c) of the Freedom of Information Act 2000. The Act does not require public authorities to create new information or to provide opinion or explanation in order to respond to a request or query. The purpose of the Act is to consider the confirmation or provision of recorded information that already exists. Advice on how to make a valid request can be accessed on the Information Commissioner's website at: [1]<https://ico.org.uk/for-the-public/offici...>

Alternatively, if you would like your email treated as correspondence, you can contact the Cabinet Office by accessing its web form at the following website: [2]<https://www.gov.uk/guidance/contact-the-...>

You might also find it helpful to know that all debates in parliament are documented in Hansard which you can find on the Parliament's website."

9. The complainant responded on 13 March 2024 and said:

"Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Cabinet Office's handling of my FOI request 'Can we see the minutes of the meeting where the decision to leave the EU was made?'.

The request very clearly asks for the minutes of the cabinet meeting where the decision to leave the EU was taken, or if it was not taken by the cabinet, the record of the prime ministers' decision, along with the reasons.

A full history of my FOI request and all correspondence is available on the Internet at this address: <https://www.whatdotheyknow.com/request/c...>"

10. On the 10 July 2024 the complainant said:

"I expect that with a change of government there will be some degree of upheaval in your offices, so I am writing to remind you that this information request is still outstanding. I can give you some leeway for the delay.

If your answer is that the information is not held, then can you please clarify if it is not held because it was shredded by the outgoing government, in which case, I would ask on what authority they did that, and you should treat that as an additional FOI request."

11. On 8 August 2024 the Cabinet Office provided a fresh response to the request of 12 March 2024. It acknowledged that it was wrong to refuse the original request and instead should have requested further clarification. The Cabinet Office apologised for the error and went on to address the request.

12. The Cabinet Office provided some context around the request and said:

"Having reconsidered your request, we can confirm that the Cabinet Office considers Section 12(2) (cost limits) of the Act to apply, because of the broad scope and the misconception around there being a single decision, when there were numerous decision points across Government."

13. The Cabinet Office therefore argued that it would take more than 24 hours to determine whether it held information falling within the scope

of the request, hence its reliance on section 12(2) of FOIA to refuse the request – a position it upheld following an internal review provided on 16 September 2024.

Scope of the case

14. The complainant contacted the Commissioner on 22 September 2024 to complain about the way their request for information had been handled. The complainant disagreed with the Cabinet Office's application of section 12(2) of FOIA.
15. The Commissioner issued decision notice [ic-300094-p9q7.pdf](#). The Commissioner's decision rejected the Cabinet Office's application of section 12(2) FOIA.
16. Subsequent to that decision notice on 1 November 2024 the Cabinet Office issued a fresh response citing section 12(1) to refuse the request. It remained of the view that it disagreed with the decision notice findings.
17. The Commissioner considers the scope of this case to be to determine if the Cabinet Office has correctly cited section 12(1) of FOIA as per its revised response of 1 November 2024.
18. The Commissioner has also considered whether the Cabinet Office met its obligation to offer advice and assistance under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

19. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
20. 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")
21. The appropriate limit is set in the Fees Regulations at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the public authority is £600.

22. 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.
23. 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.
24. 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.
25. 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.
26. 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.

The complainant's position

27. In its response to the complainant the Cabinet Office explained "the decision to exit the EU was taken at multiple levels in Government, including Parliamentary processes, and as a result there is no one document, nor series of documents that would comprise recorded information on 'the decision' to leave the EU."
28. In their request for an internal review the complainant challenged the Cabinet Office's position that the information isn't held in one document. They argued that "Either you have misinterpreted the minister's

meaning and the decision he referred to was the decision to leave, in which case it should be easy to find.”

29. The complainant went on to argue that they considered it was “irrational” to say that the decision had been taken at multiple levels as “There can only be one actual decision to leave the EU.”
30. The complainant also argued that given the cost of the decision “it is quite unreasonable to balk at spending a mere £600 on looking for it. Unless, as discussed above, you know that it doesn't actually exist.”
31. In their complaint to the Commissioner the complainant argued that “it defied credibility” that the Cabinet Office could “not find” a record of the “biggest decision that the nation has made since we picked sides in WWII”.

The public authority's position

32. In its response the Cabinet Office said it would be helpful to “consider the internal logic of the request, as we think this is where some of the difficulty with it arises.”
33. It went on to provide context around the Supreme Court judgement in relation to the referendum result and explained that the result was not a decision to leave the EU in itself.
34. It then went on to say that the request raises the question of “who made the decision, given it was not the outcome of the referendum.” The Cabinet Office acknowledged the complainant was trying to find the answer to that question through their request.
35. The Cabinet Office then went on to provide further context in relation to the request and debates held at the time including statements made in the Supreme Court judgement.
36. The Cabinet Office further explained that in light of this context and given that there is no one document held determining a ‘decision to leave the EU’ this has resulted in a broad scope. It considered the broad scope to be due to “misconception around there being a single decision, when there were numerous decision points across Government.”
37. As a result of this broad scope the Cabinet Office cited section 12(1) - cost limits to refuse the request in its revised response of 1 November 2024.
38. The Cabinet Office explained that to comply with the request it would need to consider all of the stages and levels of Government involved in the decision. This would require the Cabinet Office to carry out a search

for all information that included a reference to the decision to leave the EU.

39. It went on to list a series of parliamentary events that would need to be included in the search which was not an exhaustive list.
40. Furthermore, the Cabinet Office explained that it would need to carry out searches across its archival records and its electronic records to identify any information in scope. In order to do this, it would need to use the search term "the decision to leave the EU."
41. It explained that for this search to be carried out it identified 41 files and 104 Cabinet records that would need to be searched. It estimated that to review all archival records and determine if they held information within scope, it would take 41 hours and, a further 17 hours to search the electronic records.
42. An estimated 58 hours for the activity of searching its records exceeds the appropriate limit as set out in the guidance.
43. When considering this the Commissioner has taken into account the Cabinet Office's submissions in case IC-300094-P9Q7 in which it said "(the) files can be anywhere between 250 and 500 pages long and contain multiple different types of documents, such as minutes, advice, accounts of meetings, and correspondence. It has optimistically estimated it would take one minute to review one A4 page of information, but admits in practice it would likely take longer."

The Commissioner's position

44. The Commissioner accepts the validity of the 58 hour estimate on the basis of the volume of the files that need to be searched. Furthermore he is of the opinion that the Cabinet Office has provided sufficient detail in its responses to the complainant and submissions to the Commissioner to demonstrate the extent of the searches required to recover all of the information held within scope.
45. The Commissioner acknowledges the complainant's point that the decision to leave the EU was a significant one however, he considers that this very point further supports the Cabinet Office's position that it holds a significant amount of information regarding it.
46. Equally, the Commissioner has considered the complainant's assertion that because "the European Union Notification of Withdrawal Act was passed on the basis of "A decision already made" 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". The Commissioner is of the opinion that the Cabinet Office have addressed this point and explained why it is not the case that information would be held or recorded in this way about this subject.

47. The Commissioner does not consider it reasonable to expect the Cabinet Office to hold only specific documents relating to a single meeting about the 'decision to leave'. Nor is it reasonable to expect that it would hold a small enough amount of information on this subject to be able to access it without extensive searches.
48. Equally, the Commissioner considers that the request itself and the subsequent clarification lend themselves to a wide scope in their lack of specificity about a subject matter that would have been discussed at length for a period of time by several bodies.
49. Therefore, the Commissioner considers that the scope of the request is wide enough to warrant the level of searches the Cabinet Office have detailed.
50. Complying with the request would therefore exceed the cost limit and so the public authority was entitled to rely on section 12(1) of FOIA to refuse the request.

Procedural matters

Section 16 – advice and assistance

51. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
52. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain, to the requester, how they could refine their request such that it would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.
53. In this case, the Cabinet Office informed the requester that limiting the request to relate to one specific event regarding the decision would increase the chances of processing the request within the cost limit.

54. The Cabinet Office also explained avoiding terms such as 'any information' would reduce the scope.
55. The Commissioner is therefore satisfied that the public authority did comply with section 16 of FOIA when dealing with this request.

Section 10(1)- time for compliance with request

56. Section 10 of FOIA states that, 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.
57. In this case the complainant submitted their request for information on 11 March 2024. On 12 March 2024 the Cabinet Office asked the complainant to clarify their request.
58. The complainant responded on 12 March 2024 and provided clarification.
59. The Cabinet Office responded on 13 March 2024 and stated it did not consider the request a valid request under FOIA.
60. On the 13 March the complainant asked that an internal review of their request be carried out. The complainant chased their request on 10 July 2024.
61. The Cabinet Office provided a fresh response on 8 August 2024 in which it said it was incorrect to refuse the request as invalid.
62. In failing to issue its response within the statutory time for compliance, the Commissioner finds that the Cabinet Office breached section 10(1) of FOIA.

Right of appeal

63. 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

64. 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.
65. 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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