

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 September 2012

Public Authority: Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information from the Cabinet Office (CO) about the reasons why those with science, mathematics and engineering qualifications are not more strongly represented at the most senior levels of the civil service.
2. The Information Commissioner's decision is that CO complied with the exemption where cost of compliance exceeds the appropriate limit in section 12 FOIA but that it did not provide the appropriate advice and assistance to the applicant required by section 16 FOIA.
3. The Information Commissioner requires CO, to ensure compliance with the legislation:
 - to provide further advice and assistance in accordance with paragraph 14 of the section 45 FOIA code of practice.
4. The CO must take these steps 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 31 August 2011 and again on 16 and 17 November 2011, the complainant wrote to CO and requested information in the following terms:

31 August 2011

Please will you answer each of the following requests, each of which should be treated as separate request.

Definitions: In each request the term:

A) "Science Qualification" means a degree level qualification in natural science, medicine or engineering but not in a social or political science or economics, and "science" has a corresponding meaning in the questions below.

B) "Mathematics Qualification" means a degree level qualification in mathematics.

C) "Fulton" means the Fulton Report 1968 Command 3636.

Requests

1. When, within the last 5 years, has the Cabinet Office revisited the criticisms made at Fulton paragraph 17, on what evidence and with what result?

2. When, within the last 5 years, has the Cabinet Office discussed whether their split Fast Stream recruitment process, including their website, perpetuates the state of affairs criticised at Fulton paragraph 17, on what evidence and with what result?

3. What selection criteria has the Cabinet Office established for the promotion of individuals to posts at each of Grades 1 to 3?

4. When, within the last 5 years, did the Cabinet Office consider the desirability, in the interests of effective government, of ensuring that any particular proportion of the body of Permanent Secretaries taken as a whole has a Science Qualification, on what evidence and with what result?

5. When, within the last 5 years, did the Cabinet Office last consider the desirability, in the interests of effective government, of ensuring that any particular proportion of the body of Directors General (Grade 2) level that are generalist administrators as opposed to science specialists have a Science Qualification, on what evidence and with what result?

6. When, within the last 5 years, did the Cabinet Office last consider the desirability, in the interests of effective government, of ensuring that any particular proportion of the body of Directors (Grade 3) that are generalist administrators as opposed to science specialists have a Science Qualification, on what evidence and with what result?

7. When, within the last 5 years, did the Cabinet Office last consider the desirability, in the interests of effective government, of ensuring that any particular proportion of the body of Directors (Grade 5) that are generalist administrators as opposed to science specialists have a Science Qualification, on what evidence and with what result?

8. What measures does the Cabinet Office have in place to ensure that Civil Servants with a Science Qualification are encouraged and trained to become both sufficiently qualified and sufficiently experienced

enough to become Permanent Secretaries, as recommended by Fulton at Paragraph 100?

9. Has the Cabinet Office considered, within the last 5 years, whether there are cultural and/or behavioural factors or attitudes within the Civil Service that impede the promotion of those with a Science Qualification to the most senior levels, and if so based on what evidence and with what result?

10. What is the policy of the Cabinet Office on what Fulton Paragraph 124 described as "Late Entry" for those with a Science Qualification?

11. What measures does the Cabinet Office have in place to ensure that fast stream recruitment for policy makers and administrators (as opposed to science based specialists) contains any particular proportion of individuals who have a Science Qualification? What is that proportion?

12. What proportion of Fast Stream recruits for policy makers and administrators (as opposed to science based specialists) have a Science Qualification? How does this compare to any proportion that the Cabinet Office have as their objective?

13. What proportion of Fast Stream recruits have a Science Qualification? How does this compare to any proportion that the Cabinet Office have as their objective?

14. What proportion of current Permanent Secretaries have a Science Qualification?

15. What proportion of current Directors General (Grade 2) that are generalist administrators as opposed to science specialists have a Science Qualification?

16. What proportion of current Directors (Grade 3) that are generalist administrators as opposed to science specialists have a Science Qualification?

17. What proportion of current Directors (Grade 5) that are generalist administrators as opposed to science specialists have a Science Qualification?

18. Please answer Questions 4 to 20 as though the words "Science Qualification" were replaced with "Mathematics".

16 November 2011

Please also refer to a Cabinet Office FOI reply dated 18 August 2010 from [named CO officer].

A. Please confirm that the Cabinet Office is the only department charged with ensuring that the administrative Civil Service (fast stream graduate entry and above) as a whole is fit for purpose as regards the distribution of skills derived from undergraduate or postgraduate education (but excluding the study of skills required for business or civil service administration). If not please identify anyone else who has

a service-wide responsibility for these matters and explain the nature of their responsibility.

1 and 2: Has there been any discussion (i.e. including outside the context of Fulton) of the balance between those with a science qualification and other graduates at any of the levels at or above Fast Stream intake or any consideration of whether such an investigation might be desirable? If so please provide summary details, identifying (but not providing copies of) key documents.

B Your answers show a startlingly high decline in science-background administrators from 10% for fast stream policymaker intake (your answer 12) to 5% (grades 3 to 5 – your answers 16 and 17) to 1% at GD level (your answer 15). [Named CO officer's] answer shows that at that time, only 2 out of 42 Permanent Secretaries appeared to have a science qualification. Was the Department aware of this startlingly high drop-out rate and/or glass ceiling before these answers were given? If so please provide summary details, identifying (but not providing copies of) key documents.

C. Does the Department hold any information as to why there is such a startlingly steep drop-out rate and/or glass ceiling affecting those with a science background as they progress up through the levels of the Civil Service? If so please provide summary details, identifying (but not providing copies of) key documents.

D. Has there been any investigation into or discussion of the reasons behind or consequences of this startlingly high drop-out rate and/or glass ceiling? If so please provide summary details, identifying (but not providing copies of) key documents.

E. Has the Department considered or carried out any investigation into whether an institutional bias (analogous perhaps to the now (I hope) dealt-with institutional sexism formerly applied against women) is at work? If so please provide summary details, identifying (but not providing copies of) key documents.

F. Has the Department considered whether any attempt should be made to counteract this startlingly high drop-out rate and/or glass ceiling? If so please provide summary details, identifying (but not providing copies of) key documents.

G. Has any action been taken to counteract the causes of this startlingly high drop-out rate and/or glass ceiling? If so please provide summary details, identifying (but not providing copies of) key documents.

H. Has this startlingly high drop-out rate and/or glass ceiling been drawn to the attention of or discussed with the Cabinet Office's Minister? If so please provide summary details, identifying (but not providing copies of) key documents.

I. Has this startlingly high drop-out rate and/or glass ceiling been drawn to the attention of or discussed with or by any of the Cabinet Office's Non-Executive Directors (i.e. Lord Browne, Ian Davis, Rona Fairhead and/or Dame Barbara Stocking)? If so please provide summary details, identifying (but not providing copies of) key documents.

17 November 2011

[supplementing request C of the 16 November 2011 information request]

C1: Does the Department systematically collect or receive information (e.g. through exit interviews) on the reasons why those with science qualifications at levels at or above Director leave the Civil Service? If so please provide brief summary details of the of the nature information you have.

C2: If the Department does not, is the Department aware whether other Departments do collect such information? If the Department is so aware, please provide brief summary details.

6. On 21 October 2011 CO responded to the 31 August 2011 information request explaining what information might be held and saying that the information requested could be contained in very many files. CO said that section 12 FOIA relieved it from the duty to comply with the request for information as the cost of dealing with it would exceed the appropriate limit of £600.
7. On 14 December 2011 CO responded to the 16 and 17 November 2011 information requests. CO stated that section 12 FOIA relieved it of the duty to comply with those information requests and invited the complainant to refine his request but did not attempt to engage with him to consider how this might be done.
8. On 31 January 2012, following an internal review, CO wrote to the complainant again. CO said that it was relying on section 12(4) FOIA to aggregate the 31 August 2011, 16 and 17 November 2011 requests and also a further request made on 29 July 2011 which CO said had been made within a period of 60 consecutive working days. CO subsequently recognised that the 29 July 2011 request had not been made within 60 working days of the 16 and 17 November 2011 requests.

Scope of the case

9. On 3 April 2012 the complainant contacted the Commissioner to complain about the way his requests for information had been handled.
10. The Information Commissioner considered the application of the appropriate costs limit exemption at section 12(1) FOIA and the aggregation of requests at section 12(4) FOIA. He considered the extent to which CO had offered advice and assistance as required by section 16(1) FOIA.

Reasons for decision

Cost of compliance exceeds appropriate limit – section 12 FOIA

11. 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.”

Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, SI 2004 No. 3244 (the regulations).

12. The appropriate limit for central government departments is £600 which is equivalent to 24 hours of one member of staff's time at a flat rate of £25 per hour.
13. The regulations allow a public authority to count the following activities in calculating whether or not it has complied with the appropriate limit:
 - determining whether the information is held;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
14. Section 12 explicitly states that public authorities are only required to estimate the cost of compliance with a request, not give a precise calculation. Therefore, it is the Information Commissioner's task in this

situation to decide whether or not the estimate provided by CO is reasonable in the circumstances.

15. Section 12(4) provides that:

“The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

16. The Information Commissioner considered the contents of the information requests made on 31 August 2011, and 16 and 17 November 2011. He decided that their content and direction were such that CO was justified in aggregating them for this purpose and that they fell within a period of 60 consecutive working days. The 29 July 2011 information request was similar in its scope to the other requests but did not fall within the 60 consecutive working days period.
17. The Information Commissioner obtained from CO details of the activities it would need to carry out and estimates of the time required to be taken for it to conduct the relevant searches to identify the information it held falling within the scope of the information requests.
18. CO provided the Information Commissioner with its estimates of the time needed to locate, retrieve and extract the information held in respect of each of the three parts of the information request. CO said that to answer the information requests it would need to: review governance committee minutes for the past five years for references to the Fulton Report in relation to mathematics and science qualifications; identify relevant data and proxy data, interrogate relevant databases, create relevant data fields, and quality assure data for both mathematics and science qualifications; search relevant paper files including those for some 35-40 Permanent Secretaries; fully search civil service governance groups' minutes or discussions with non-executive directors over the last five years, for relevant references to discussions of mathematics or scientific backgrounds of Permanent Secretaries or senior civil servants, and to retrieve relevant information; and extract and compile data into its response.
19. The CO estimated that the sum of the time it would take to conduct the activities it would need to carry out to search for the information requested would be 5.75 days. However the Information Commissioner

decided that, of the activities listed by CO, the time identified for submission, on two occasions, each of 0.5 days, of a draft response for approval, might not all fall within the activities allowable as defined by the regulations. However, he did accept that a member of CO staff would still need to spend not less than 4.75 days, or some 34.2 hours, in conducting essential searches and that this would be well in excess of the appropriate limit for CO of £600.

20. The Information Commissioner decided that the appropriate limit provided for in the regulations would be exceeded and that CO was therefore justified in not complying with the information request.

Advice and assistance - section 16 FOIA

21. Section 16 FOIA states as follows:

“(1) 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.

“(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.”

22. Thus section 16(1) FOIA places a duty on public authorities to provide advice and assistance to applicants who have made or are planning to make requests for information. Where a request engages the appropriate costs limit, the process of providing advice and assistance usually involves the public authority in opening a dialogue with the applicant to try to find ways to refine the request in order to bring it under the appropriate costs limit.

23. Paragraph 14 of the section 45 FOIA Code of Practice (the code) says that where a public authority is not obliged to comply with a request, because it would exceed the appropriate limit to do so, then it:

“...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee.”

24. Where a public authority has satisfied the requirements of the section 45 code, it will be deemed to have complied with section 16. However, this should not be taken to mean that a public authority should not go

beyond the provisions of the code, as the Information Commissioner considers that public authorities should try to be as helpful and flexible as possible.

25. In cases where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is to:

- **either** indicate if it is not able to provide any information at all within the appropriate limit; **or**
- provide an indication of what information could be provided within the appropriate limit; and
- provide advice and assistance to enable the requestor to make a refined request.

26. In correspondence with the Information Commissioner on 10 September 2012 CO told him that it had suggested to the complainant that he might wish to narrow the range of information he was seeking but CO accepted that it could have provided more advice either in its initial response to the 16 and 17 November 2011 requests or at internal review, or both. CO told the Information Commissioner about the ways in which it had engaged with the complainant in previous correspondence regarding related matters and added that, in its view, any attempt to suggest that the complainant refine his request only resulted in further requests. The Information Commissioner did not see this as a reason for CO not to provide advice and assistance, which he now requires CO to do.

Right of appeal

27. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

28. 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.
29. 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

Jon Manners
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