

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2013

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

Decision (including any steps)

1. The complainant has requested information about Smart Meters. The public authority stated that, at the time of the request, it held no information. The Commissioner's decision is that the public authority did hold a report which falls within the scope of the request. He therefore requires it to reconsider the request to include this report and issue a fresh response in accordance with the FOIA.
2. The public authority 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.

Background

3. The request concerns 'Smart Meters'. Some general information about these can be found on the Department of Energy & Climate Change's (the "DECC") website¹. This advises that:

"The Government's vision is for every home in Great Britain to have smart energy meters, with business and public sector users also having smart or advanced energy metering suited to their needs."

¹http://www.decc.gov.uk/en/content/cms/tackling/smart_meters/smart_meters.aspx

The roll out of smart meters will play an important role in Britain's transition to a low-carbon economy and help us meet some of the long-term challenges we face in ensuring an affordable, secure and sustainable energy supply.

Consumers will have real time information on their energy consumption to help them control and manage their energy use, save money and reduce emissions. Smart meters will also provide consumers with more accurate information and bring an end to estimated billing.

Energy suppliers will be responsible for replacing over 53 million gas and electricity meters, involving visits to 30 million homes and small businesses. The mass roll-out of smart meters is expected to start in 2014 and to be completed in 2019. The majority of consumers will receive their smart meters during the mass roll-out".

Request and response

4. On 2 May 2012, the complainant wrote to the public authority and requested information in the following terms:

"Under the Freedom of Information Act I would like to request the latest project status report into Smart Meters, as part of the Cabinet Office's oversight of ICT projects".

5. The public authority responded on 25 May 2012. It stated that it held no information and suggested to the complainant that he should contact the DECC.

6. On the 5 June 2012 the complainant requested an internal review. He stated:

"Given that the Major Projects Authority and Efficiency and Reform Group both sit within the Cabinet Office, I find it surprising that neither body has had produced any reports on a project that is expected to have a significant impact on the British energy industry, including a potential multi-billion pound bill for taxpayers.

I would be grateful if you could confirm as your response states that neither of these groups have been engaged with the Smart Meter project".

7. On 9 August 2012 the complainant chased a response. The public authority apologised for the delay and further advised:

"I can confirm that the Cabinet Office holds information which we believe to be relevant to your request and we are consulting with a third party about disclosure – it is that consultation which is taking the time.

I'm sorry that we can't commit to a date by which we will be able to reply to you but we are doing all we can to conclude the review".

8. On 17 August 2012 the public authority provided its internal review. It advised him:

"... I have established that at the time of your request of 2 May the Cabinet Office did not hold the information you requested.

However, at the time of your request the Major Projects Authority (MPA) had just started a Project Assessment Review into Smart Meters. The review ran from 30 April to 18 May, and so at the time of your request the review team had not produced its report. We were therefore correct in saying that no information was held".

Scope of the case

9. On 22 September 2012 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He believed that information would have been held because he had: *"... had informal conversations with officials who have referred to several documents".*

10. In subsequent correspondence with the Commissioner he further clarified:

"My complaint is that the term "project status report" is a broad term and should not have been interpreted as a request for documents only titled "project status report" - there exist in Government a number of different project reporting processes and my request was focused on the latest of those reports.

In other words, the Cabinet office chose to rely on an interpretation of my request which constituted a request only for a document entitled a "project status report". Even allowing for this deliberately restrictive interpretation, under the duty to assist I believe that the Cabinet Office should have responded in

that circumstance with "however, XX document does exist (for example, a major project authority report or an interim progress report) and then considered my request.

I am aware of reports existing as I have twice attended meetings organised by DECC and discussed the Cabinet Office oversight of the project with officials. It would be very, very surprising if given the scale of the smart meter project, not a single report exists within the Cabinet Office on the status of the smart metering project. Indeed, I would find such an explanation simply unfeasible [sic] as the Cabinet Office is responsible for overseeing major IT projects".

11. The public authority has stated that it holds no information falling within the scope of the request. The Commissioner will therefore consider this below.

Reasons for decision

12. During the course of his investigation the public authority advised the Commissioner that, during its searches, it had located a report which it concluded fell outside the scope of the request. The Commissioner will firstly consider whether or not the searches undertaken were adequate to qualify the public authority's assertion that it held no information. He will therefore consider whether or not the located report falls within the scope of the request.

Section 1 – general right of access Adequacy of searches undertaken

13. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case to have that information communicated to him.
14. The standard of proof that the Commissioner has applied in determining whether the public authority does hold information relevant to the complainant's request is the civil standard of the balance of probabilities. Where the public authority has correctly stated that it does not hold information falling within the scope of the refined request, the Commissioner will conclude that it has complied with the requirements of section 1(1)(a).
15. The public authority advised the complainant that it had undertaken a search of its records and had found no information, although it did not

provide any further detail. It also advised him to contact a different public authority, namely the DECC, as it held no information itself. It subsequently implied that it did hold information when it advised the complainant that it was considering its internal review, then went on to advise that *at the time of his request* nothing was held. This was further clarified by explaining that a review had just begun two days prior to the request being made and that nothing at that point had been written. In view of the short timeframe between commencing the review and the request being made, the Commissioner accepts that this would be the position.

16. However, it is the complainant's contention that other information should have existed as he had had *informal conversations* with officials which would lead him to this understanding. The Commissioner therefore asked the public authority to explain what searches it had undertaken at the time of the request.
17. It went on to explain the searches that it had undertaken and why these would have been likely to retrieve any information held. It explained that it had contacted the areas it believed would be most likely to hold any relevant information and that officials in these areas had undertaken electronic searches using the search terms 'smart meters' and 'report' and 'review' which should be sufficient to identify any relevant information. It clarified that the searches "*would have included information held on laptops used by key officials and in corporate electronic information stores and databases*".
18. The Commissioner is satisfied that the searches undertaken were adequate and that they would have been sufficient to locate any information falling within the scope of the request. Therefore, on the basis of the evidence provided, the Commissioner is satisfied that there was no breach of section 1(1)(a).

Interpretation of request

19. As stated above, any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case to have that information communicated to him.
20. During its searches the public authority did locate one document which it concluded fell outside the scope of the request, namely a review of the smart metering programme. The Commissioner will consider this below.

21. In response to queries raised by the Commissioner, the public authority advised that because it had not limited its searches to documents only entitled "*project status report*", it had located a report which it subsequently decided fell 'out of scope'. It explained that it had given "*considerable thought*" as to whether or not the report it had retrieved could be considered to be a "*status*" report but had concluded that it could not. Having discussed the report with the Business Unit that 'owned' it, it explained to the Commissioner:

"We interpret the phrase 'project status report' to mean a report that is provided by or for the project on a fairly regular basis to update others on progress, such as a 'Gateway' report. The [report retrieved] was a one-off report that focussed on the project's compliance with the Government's ICT strategy and best practice".

22. The Commissioner considers this interpretation as to what constitutes a 'status report' to be a reasonable one. However, having read the report concerned, the Commissioner notes that it states that it is an evidence-based review "*of the project's status at the time of the review*". Therefore, whilst he is satisfied that the report is clearly a "*review*" it also clearly relates to the "*status*" of the project.
23. Having considered the content and the report's own title page the Commissioner concludes that the public authority interpreted the request too narrowly and that the report that it located did fall within the scope of the request. In failing to identify that it fell in scope it breached section 1(1) of the FOIA.
24. The public authority should now reconsider its previous position and issue a fresh response to the complainant which considers the report to fall within the scope of the request.

Other matters

25. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters.

Internal review

26. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his '*Good Practice Guidance No 5*',

the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

27. The Commissioner does not consider this case to be 'exceptional', so is concerned that it took over 20 working days for an internal review to be completed.

The located report

28. The public authority has advised the Commissioner that, since dealing with this request, it has dealt with a further request by the same complainant. As part of this further request it has considered the report identified in this notice and has made a partial disclosure to the complainant. Whilst the Commissioner recognises that compliance with this notice may involve a duplication of work, he has to consider events at the time the request was made.

Right of appeal

29. 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

30. 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.
31. 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

Gerrard Tracey
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