

Freedom of Information Act 2000

Decision notice

Date: 9 September 2014

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

Decision (including any steps ordered)

1. The complainant requested information about a government procurement strategy. The request was not considered by the Cabinet Office to be a request under the terms of the Freedom of Information Act 2000 (the Act).
2. The Commissioner's decision is that the request is not valid under the terms of the Act. No further action is required.

Request and response

3. On 24 July 2013, the complainant wrote to the Cabinet Office and requested information in the following terms:

"Is the Francis Maude referred to on:

[Hyperlink – no longer active]

the same Francis Maude who was, inter alia, Financial Secretary to the Treasury in Government which abolished, inter alia, the Crown Suppliers?"

4. The Cabinet Office responded on 20 August 2013. It stated that the requested information was exempt under section 21 of the Act and provided a link to a webpage on the government's website which has a brief biography of Francis Maude.

5. The complainant submitted another request on the same day for the following information:

"Is the said Francis Maude correctly reported as having said a couple or so years ago, while in his current post (or a substantially similar one):

"It is bonkers for different parts of Government to be paying vastly different prices for exactly the same goods. We are putting a stop to this madness which has been presided over for too long."

and if that quote is substantially correct have he and/or his officials devised any (and if so what) explanation as to how it may be understood otherwise than as describing as "bonkers" and "madness" a procurement system which the government in which he served as Financial Secretary went to great lengths to create?"

6. The Cabinet Office responded on 20 September 2013 and stated that *"this question does not constitute a valid request for information as outlined in the Freedom of Information Act 2000."*
7. The complainant requested an internal review on 22 September 2013. Following exchanges with the Commissioner, the Cabinet Office issued a further response to the complainant on 9 July 2014. This confirmed and further explained the original decision.

Scope of the case

8. The complainant contacted the Commissioner on 4 November 2013 to complain about the way his request for information of 20 August 2013 had been handled.
9. The Commissioner considers the scope of the case to be whether the complainant's request meets the definition of a request for information under the terms of the Act.

Reasons for decision

10. Section 1 of the Act states that:

"(1) Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him*

...

(3) *Where a public authority –*

(a) *reasonably requires further information in order to identify and locate the information requested, and*

(b) *has informed the applicant of that requirement,*

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

11. The definition for a request is provided in section 8 of the Act:

"(1) In this Act any reference to a "request for information" is a reference to such a request which –

(a) *is in writing*

(b) *states the name of the applicant and an address for correspondence, and*

(c) *describes the information requested."*

12. The Cabinet Office response of 20 September 2013 which refused the complainant's request did not explain which subsection of section 8 had not been met. However, the Commissioner considers that it is 8(1)(c) as the complainant wrote to the Cabinet Office in an email and received a response, so clearly met the requirements set out in paragraphs (a) and (b).

13. Section 8(1)(c) is only concerned with the validity of the description; it cannot be used to refuse requests that are unclear. An example of an unclear request would be if a requester asks for minutes of a meeting chaired by an individual, but the individual concerned has chaired several meetings. In this instance the request would be unclear and the public authority would be obliged to inform the complainant as such and state that it needs further information in order to identify the information requested.¹

14. The Commissioner does not consider that the request in this instance is simply unclear. Rather, it is a question, conditional upon particular

¹ For more information please see:

http://ico.org.uk/~media/documents/library/Freedom_of_Information/Research_and_reports/recognising-a-request-made-under-the-foia.pdf

circumstances, couched in negative and rhetorical terms. At best, it is a request for an explanation. However, it is not a request for recorded information.

15. In the complainant's request for an internal review of 22 September 2013 he explained the information that he felt came within the scope of his request:

"I asked for any information you hold showing whether a speech made by your Minister in his official capacity was accurately reported. Whether a speech was accurately reported is a matter of information. The speech was surely prepared by or with the assistance of officials, and there must be some record of its preparation. If it was inaccurately reported there would almost certainly have been some internal record of that.

I also asked for any information as to the explanation if any which the Minister or his officials may have devised to show that the Minister was (if accurately reported) not describing as bonkers a system which was devised by the (earlier) Government in which he served, it being the more or less inevitable conclusion from the curious wording used that a great deal of thought went into official preparation of the speech, and it is likely that there would have been some written discussion of the precise wording and the reason for its choice."

16. Regarding the first paragraph, the Commissioner of the view that this is not an accurate representation of the original question put by the complainant. In any event, such a question would not be a request for recorded information. It is a request for confirmation of a proposition, based on certain assumptions (that there would be a record of the accurate or inaccurate delivery of a prepared speech.) The Cabinet Office might hold a record of the speech, but whether the speech was reported accurately in the media is very unlikely to be recorded information. If the complainant asked directly for a copy of recorded information held about the speech then this would be a valid request as it describes the information, but the complainant has not done so.
17. Regarding the second paragraph, the words used do not amount to a description of the information being requested. This supposed explanation is not sufficient to convert the original question put into a valid request for information. The question is expressed negatively ("not describing as bonkers") and is speculative, appearing to be contingent upon assumptions about speech preparation. It does not constitute a request which describes the information requested in a way which is intelligible or usable. There is no description as such which could be relied upon to identify any relevant recorded information which would answer the question which has allegedly been put.

18. In its letter to the complainant dated 9 July 2014, the Cabinet Office said, "The Act does not confer an obligation on public authorities to respond to rhetorical questions or to statements made for rhetorical effect such as are contained in your email." The Commissioner agrees.
19. The Commissioner's decision is that, for the reasons stated above, the request fails to meet the criteria stipulated in section 8 and so does not constitute a request for information under the terms of the Act. As the request is not valid the Cabinet Office is not obliged to respond to the request and no further action is required.

Other matters

20. Under section 16 of the Act, public authorities have a duty to provide advice and assistance to requesters. Whilst the Commissioner does not consider the complainant's request to be valid under the terms of the Act, it is clear that the complainant is trying to obtain information using the rights afforded to him by the legislation and so the Commissioner considers section 16 applies. This is in keeping with paragraph 7 of the section 45 codes of practice which states:

"Where a person is unable to frame his or her request in writing, the public authority should ensure that appropriate assistance is given to enable that person to make a request for information."

21. The Commissioner notes that the Cabinet Office informed the complainant on both 22 September 2013 and 9 July 2014 that the request was not seen as valid and explained why this was the case. It referred the complainant to the Commissioner's published guidance on the subject. The Cabinet Officer explained to the complainant why it considered that it had discharged its obligation to provide assistance to the complainant under section 16. The Commissioner agrees that in this respect the Cabinet Office did what could reasonably be expected of it in all the circumstances.

Right of appeal

22. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

23. 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.
24. 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

**Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
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Cheshire
SK9 5AF**