

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 December 2020

**Public Authority:** Cabinet Office

**Address:** Room 401  
70 Whitehall  
London  
SW1A 2AS

#### Decision (including any steps ordered)

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1. The complainant requested information with regards to two reports relating to the impacts of Covid 19 on people from black and minority ethnic backgrounds. The Cabinet Office refused the request relying on section 12 of the FOIA as it considered it would be over the cost limit to respond.
2. The Commissioner's decision is that the Cabinet Office has breached section 16(1) of the FOIA as the request did not have a single objective reading, but the Cabinet Office did not seek clarification of the request under section 1(3) of the FOIA before determining whether section 12 of the FOIA was engaged.
3. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with advice and assistance by requesting clarification of the request.
4. The Cabinet Office 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

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5. On 9 July 2020 the complainant made the following information request to the Cabinet Office:

*"On 16 April 2020 the government announced a formal review into why people from black and minority ethnic backgrounds appeared to be disproportionately affected by coronavirus. The government published a first review report on 2 June 2020. On 16 June 2020 Public Health England published a second report: Understanding the impact of COVID-19 on BAME groups.*

*Using the Freedom of Information Act, I can ask for 'information held on computers, in emails and in printed or handwritten documents as well as images, video and audio recordings'. I am using that right to request you send me ALL emails, letters, documents, faxes, telexes, texts or any form of written, video or audio communication you hold between the prime minister, Downing Street, secretaries of state, ministers, civil servants, Cabinet Office, NHS England and Public Health England pertaining to decision processes taken regarding the scope of this inquiry; the decision processes and discussions to delay the publication of the first report; the decision process to stop Fenton from leading the review as announced publicly by the health secretary; the decision process to exclude the findings of Professor Fenton and his team in the first report; the decision process to publish the second report; and the decision process concerning the timing of the announcement. To be clear 'decision process' or 'decision processes' mean who, what, when, where, which, how and why a decision was made. I am requesting this information because I cannot find it on your website.*

*Since you will have collected all this material already because of the need to keep open and transparent records of meeting and correspondence (e.g. records of meetings and notetaking purposes and record keeping), it will not require you going over the hours necessary where you need to charge me."*

6. The Cabinet Office responded on 4 August 2020 refusing the request under section 12(1) of the FOIA as it determined that to provide the information would be over the appropriate cost limit.
7. The complainant requested an internal review on the same day and the Cabinet Office responded on 26 August 2020 upholding its initial response.

## Scope of the case

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8. The complainant contacted the Commissioner on 26 August 2020 disputing the Cabinet Office's refusal.
9. Based on the submissions provided by the Cabinet Office to the Commissioner, the Commissioner considers it appropriate to firstly consider section 16 of the FOIA in this case – advice and assistance.
10. If the Commissioner considers appropriate advice and assistance has been provided, then she will go on to consider the Cabinet Office's application of section 12(1) of the FOIA.

## Reasons for decision

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### Background

11. The Cabinet Office explained to the Commissioner that the NHS and Public Health England conducted a formal review into why people from black and minority ethnic backgrounds appeared to have been disproportionately affected by COVID-19. This review was announced by the Government on 16 April 2020.
12. It advised that there were two reports published in June 2020 by Public Health England. The first report "*COVID-19: review of disparities in risks and outcomes*" was published on 2 June 2020 and concerned how different factors affected COVID-19 risk and outcomes<sup>1</sup>. The second report, titled "*Understanding the impact of COVID-19 on BAME groups*", which was published on 16 June 2020 was "*a summary of stakeholder insights into factors affecting the impact of coronavirus (COVID-19) on black, Asian and minority ethnic (BAME) communities*"<sup>2</sup>.

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<sup>1</sup> <https://www.gov.uk/government/publications/covid-19-review-of-disparities-in-risks-and-outcomes>

<sup>2</sup> <https://www.gov.uk/government/publications/covid-19-understanding-the-impact-on-bame-communities>

## Section 16 of the FOIA – Advice and Assistance

### *Interpreting and Clarifying requests*

13. Part of the Cabinet Office submissions to the Commissioner were that the subject matter of the complainant's information request was too vague and that the complainant asked for disclosure of correspondence relating to a number of "decision processes".
14. The Cabinet Office told the Commissioner that the term "decision process" is open to interpretation and could certainly be interpreted widely.
15. Within the request, the Cabinet Office points out that the complainant has tried to assist in the clarification of this term by stating "*to be clear 'decision process' or 'decision processes' mean who, what, when, where, which, how and why a decision was made.*" However, the Cabinet Office indicated to the Commissioner that it did not consider this wording to be adequate clarification.
16. Section 16(1) of the Act states:

*"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".*
17. Therefore if the Cabinet Office considers that the request is unclear or ambiguous, the authority's section 16 duty to provide advice and assistance is triggered and it should have gone back to the complainant to ask for clarification as per section 1(3) of the FOIA.
18. Section 1(3) of the FOIA states:

*"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."*
19. In its response to the complainant's request, in applying section 12(1) of the FOIA, the Cabinet Office asked the complainant to refine his request. However, it should have been clearer that it actually required

clarification of the request and as stated above, responded under section 1(3) of the FOIA.

20. As covered in the Commissioner's guidance on interpreting and clarifying requests<sup>3</sup>, where a request does not have a single objective reading a public authority is obliged to seek clarification from the requester. It should not proceed with responding to the request until that clarification has been received.
21. As the Cabinet Office has itself indicated that it did not regard the request as entirely clear, but did not go back to the complainant and identify that it required clarification of the request, it only advised that the request needed refining, the Commissioner finds that it has breached section 16(1) of the FOIA.
22. The Commissioner therefore requires the Cabinet Office to seek clarification of the request from the complainant.
23. As the Commissioner finds that the Cabinet Office should have firstly sought to clarify the request before refusing it under section 12 of the FOIA, she is not able, at this stage, to consider whether or not the cost limit may be exceeded. As clarification of the request may in itself allow the Cabinet Office to respond within the cost limits.

## Other Matters

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24. The Commissioner notes that the Cabinet Office, in its responses to the complainant, has stated that he needs to refine the request, but has not offered any explanation as to why it considers the request would be over the appropriate limit to respond.
25. When complying with the step above, this would provide an opportunity for the Cabinet Office to respond more in the spirit of the Act by also offering some explanation to the complainant as to why it considers the request is too costly to respond to.

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

26. For example, it might consider providing the complainant with a copy, or extracts, of the explanations it has provided to the Commissioner on why it considers responding to the request would be over the appropriate limit.
27. This may allow the complainant to consider, as well as providing clarification to the request, whether he is able to refine his request in a way that may bring the request within the cost limits of section 12 of the FOIA, should the clarification alone not do that.

## Right of appeal

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28. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. 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.
30. 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** .....

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**