

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 October 2022

Public Authority: Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office seeking the materials delivered by an external contractor in relation to two contracts it was awarded to undertake research into the public's attitude to the government's Covid health messaging. The Cabinet Office refused the request on the basis of section 12(1) (cost of compliance) of FOIA.
2. The Commissioner's decision is that the Cabinet Office was entitled to refuse the request on the basis of section 12(1). The Commissioner is also satisfied that the Cabinet Office provided advice and assistance to the complainant in line with its duty at section 16 of FOIA.
3. No steps are required.

Request and response

4. The complainant submitted the following request to the Cabinet Office on 19 February 2021:

'This is a request for information under the Freedom of Information Act. According to Contracts Finder, two contracts were awarded to Public First Limited. In light of this, I would like to request the following:

(1) CONTRACT ONE:

<https://www.contractsfinder.service.gov.uk/notice/191a0d98-feef-46d4-ba9f-20988b7d950c?origin=SearchResults&p=1> Please provide all materials - including key deliverables - that have been produced by

Public First for the department for this contract. I expect this to include "Same-day topline reporting and next-day fuller reporting of focus group findings."

(2) CONTRACT TWO:

<https://www.contractsfinder.service.gov.uk/notice/b891c1af-d124-4cf8-b024-09400605ab35?origin=SearchResults&p=1>

Please provide all materials - including key deliverables - that have been produced by Public First for the department for this contract.

I would like to receive this information in an electronic format. If you feel that a substantive response to this request is not possible within a reasonable time frame, I would be grateful if you could contact me and provide assistance as to how I can refine the request. If you need any clarification, please contact me.'

5. The Cabinet Office responded on 17 March 2021 and confirmed that it held the information but considered this to be exempt from disclosure on the basis of section 35(1)(a) (formulation or development of government policy) of FOIA. Following an internal review, it informed the complainant on 17 August 2021 that section 35(1)(a) had not been correctly applied to the request. Instead, the Cabinet Office explained that it should have refused to comply with request on the basis of section 12(1) of FOIA given the estimated cost of complying with it. In order to bring the request within the cost limit the Cabinet Office suggested that she '*could provide a timeframe for which you require information, or reduce the type of information you are concerned with*'.

Scope of the case

6. The complainant initially contacted the Commissioner on 1 July 2021 in relation to the Cabinet Office's failure to complete the internal review. She subsequently confirmed that she wished to challenge the outcome of the internal review.

Reasons for decision

Section 12(1) – appropriate cost limit

7. Section 12(1) of FOIA allows a public authority to refuse a request if fulfilling it could exceed the appropriate cost limit. The limit for the Cabinet Office is £600 or 24 hours work.¹

The Cabinet Office's position

8. The Cabinet Office explained that the requested information is stored on the Cabinet Office's shared drive and is contained within numerous documents of merged qualitative research results. These results are from research conducted by multiple suppliers, including Public First who undertook the two contracts about which the requester is seeking information.
9. The Cabinet Office explained that these documents contain research questions, communication assets, responses from focus groups and wider insights on public opinion, and key findings from the research conducted. It noted that the documents are not in a standardised format and each page contains unique data in different formats. (The Cabinet Office provided the Commissioner with a sample of these documents.)
10. The Commissioner sought clarification from the Cabinet Office whether this was the only location where it held the information falling within the scope of the request or whether it held 'all materials' produced by Public First in a raw form before they were merged into qualitative research results, and if so, whether the raw form information could be used to answer the request the cost limit.
11. In response the Cabinet Office explained that it did not hold all of the raw data from Public First. Rather the information it held were the top level findings and reports as previously described. Therefore to fulfil the request it would have to examine the merged qualitative research results.
12. The Cabinet Office explained that it conducted a sampling exercise with reference to one month of data in respect of contract one. It explained that for that month there was 310 pages of reporting. Therefore, over a

¹ Further details about how section 12(1) works and the tasks that can be taken into account when calculating the appropriate limit are set out in decision notice IC-82174-V4D3 at paragraphs 29 to 34 <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021684/ic-82174-v4d3.pdf>

six month period there would therefore be approximately 1,860 pages of reporting for Contract One.

13. The Cabinet Office estimated that it would take officials at least 2½ minutes to read and review the contents of each page to consider whether the any information contained on the page is within the scope of the request. It explained that it would therefore take 77½ hours to read and review the contents of each page. The Cabinet Office argued that even if the review were to be quicker than 2½ minutes, for example if it took 2 minutes, 1½ minutes or 1 minute, which it maintained that it would not be, the total time taken in relation to contract one would still exceed the 24 hour limit. (2 minutes per page = 62 hours work; 1½ minutes = 46½ hours work and 1 minute = 31 hours.) The Cabinet Office explained that similar actions would have to be taken to locate the information in respect of contract two, thus resulting in further time to fulfil the request.

The Commissioner's position

14. The Commissioner is satisfied that the only format in which the Cabinet Office holds the requested information is in the merged research reports, a sample of which he has seen. Based on sight of these reports, and based on the Cabinet Office's own sampling exercise, the Commissioner is satisfied that fulfilling the request will exceed the cost limit, albeit that in his view the estimate of 1 to 1½ per page is arguably a more realistic one. Nevertheless, this would still put the estimated time of fulfilling only part of the request at least 31 hours. Therefore the Commissioner is satisfied that the Cabinet Office can rely on section 12(1) to refuse the request.

Section 16 – advice and assistance

15. Section 16(1) places a duty on public authorities to provide advice and assistance to requesters in so far as it would be reasonable to expect them to do so. In cases where a public authority has refused a request on the basis of section 12 this includes providing advice on to submit a refined request that can be answered within the cost limit. The Commissioner is satisfied that the advice and assistance provided the Cabinet Office in this case was reasonable.

Right of appeal

16. 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

17. 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.
18. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
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