

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 December 2022

Public Authority: Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information relating to the review of inter-governmental relations commissioned by the Joint Ministerial Committee ("JMC"). Cabinet Office ("CO") withheld the information and relied on section 12 of FOIA (cost of compliance exceeds appropriate limit) as its basis for doing so.
2. The Commissioner's decision is that CO have correctly relied on section 12 of FOIA to withhold the information. However, he also finds that CO had failed to meet its obligations under section 16 of FOIA in handling the request.
3. The Commissioner requires CO to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance as to how the request maybe refined or confirm that this would not be possible in accordance with its obligations under section 16 FOIA.
4. 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. The complainant requested information in the following terms:

"Please can you confirm whether the Cabinet Office holds any information produced since 14 March 2018 (when the review of

intergovernmental relations was commissioned by the Joint Ministerial Committee (JMC)) which relates to the matters of:

a) The creation of a UK Intergovernmental Council (UKIC), UK Government and Devolved Administrations Council, or similar replacement for the JMC.

b) What the name of such a body should be - including, but not limited to, the advantages and disadvantages of the names (i) UK Intergovernmental Council, and (ii) UK Government and Devolved Administrations Council.

c) Whether the chairmanship of such a body should be permanently held by the UK prime minister or rotated among the heads of each of the member administrations.

d) Whether such a body should be put on a statutory footing. If any such information exists, please can you provide it to me."

6. CO responded and explained that it was unable to comply with the complainant's request. It stated that since the review of the intergovernmental relations was jointly initiated with devolved administrations in 2018, information relevant to the complainant's request could be contained in many files. CO stated that the complainant's request exceeded the cost limit laid down in the regulations to search for information that might be relevant to their request. In providing advice and assistance CO stated:

"If you wish, you may refine your request in order to bring the cost of determining whether the Cabinet Office holds relevant information, locating, retrieving and extracting it, below the appropriate limit. One way to refine it would be to narrow the period it covers but even a shorter period would require us to search many files and would not be sufficient, on its own, to make it possible for us to comply with your request within the appropriate limit."

7. The complainant requested for internal review in which they stated:

"You state that "information relevant to [my] request could be contained in many files" since (i.e., because) "the review of intergovernmental relations was jointly initiated with the devolved administrations in 2018". That is, the reason that information relevant to my request could be contained in "many" files is the length of time that the review of intergovernmental relations has been ongoing (approximately three years). However, you then go on to say that "even a shorter period would require us to search many files and would not be sufficient, on its own, to make it possible for us to comply with your request within the appropriate limit". This appears to be in tension with the previous assertion, the

logical conclusion of which is that if the review of intergovernmental relations had started only last week, say, information relevant to it would not be contained in many files, and thus my request could be complied with (or at least complying with it would not exceed the appropriate limit). In any case, the logical inference of the latter remark is that the Cabinet Office can never respond positively to a freedom of information request about any matter which has been treated over a period of time, even if the requester is willing to limit the time period to which their request relates. This surely must mean that the Cabinet Office can almost never respond positively to freedom of information requests at all."

8. Following an internal review, CO maintained its original decision. They explained that:

"The reason why the narrowing of the time period is not likely to bring down the cost of the request is because our information is held by theme/individuals, rather than by a time period. As a result, the majority of our files and folders would still be required to be examined in order to comply with the request."

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

9. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
10. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations')¹ at £600 for central government department such as CO. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours for CO.
11. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - (a) determining whether it holds the information,

¹ <https://www.legislation.gov.uk/uksi/2004/3244/made>

- (b) locating the information, or a document which may contain the information,
- (c) retrieving the information, or a document which may contain the information, and
- (d) extracting the information from a document containing it.”

Cabinet Office's position

12. In its submissions to the Commissioner, CO maintained that it would exceed the appropriate limit to comply with the complainant's request. It says that the request is broad and covers a long period of time from 14 March 2018 to 27 March 2021 (i.e., 3 years of records). CO argue that the request does not ask for very specific information relating to the broad matters specified in the complainant's request. It says that because the requester wants "any information" which "relates to" those broad matters listed in their request it is difficult for CO to define and set out a short and thorough set of search terms that would identify all the information in the scope of the request. It says that the use of fairly generic search terms is likely to produce a high volume of information that would need to be checked if it was in the scope of the request.
13. In addressing the nature of the searches that would need to be conducted, CO stated that it would require broad searches that covers any records that have been saved within electronic files and that might be in scope of the request. It says that due to the breadth of the wording of the request it would also need to search email accounts within relevant policy teams. CO have informed the Commissioner that since 2018 to the time of the request, Intergovernmental Relations ("IGR") provided over 60 submissions and briefings to CO Ministers on its progress. It says that this work was underpinned by monthly official-level meetings by two IGR review project boards; one internal board with the UK government departments and one external with the devolved administrations, in addition to supplementary ad hoc meetings, external engagements with parliamentarians and academics. CO argue that records relating to these engagements and submissions would need to be searched for any relevant information that would be in scope of the request.
14. CO argues that the request covers any internal communication that relates to the matter referred to and will require searching email exchanges covering the three-year period. CO says that these searches would be difficult to carry out, due to the lack of a single shortlist of search terms that would cover the request as well as the identifying the relevant officials and mailboxes covering the three-year period. CO state that as a result of the difficulty associated with identifying the all the information in scope of the request, it has not been possible to

formulate a precise calculation of the costs of complying with the request. While CO concedes that there are definable search terms that could be used to conduct searches, it says that the volume and breadth of those searches based on the wording of the request inhibits the ability to identify a full and easily searchable list within the appropriate cost limits.

15. The Commissioner asked CO if a sampling exercise had been undertaken. CO stated that the possibility of a sampling exercise would not be “sensible and realistic,” and a small sample would not be representative of the whole. Therefore, it could only provide a speculative estimate for a sample of the records for the Commissioner to consider and judge in this case.
16. CO argued that, at a minimum, an official would need to coordinate the search work. It says that searches would need to be identified and conducted and any information would need to be reviewed to ascertain if it is within the scope of the request. As a small example of the sort of volumes of files that would need to be searched within IGR and UK Governance Division, CO says that there are 68 logged submissions submitted to Ministers. It estimates that at 15 minutes for each file, this would take 17 hours to search and identify any information relevant to the request. Similarly, CO argues that the records of an estimated 96 project board meetings, would take an estimate of 15 minutes for the files and records of each meeting, to search and identify the relevant information in scope. It says that this would take an additional 24 hours of work, although it may take longer than 15 minutes for board meetings that considered particularly lengthy papers. CO emphasized that these records alone do not represent a complete search of potentially relevant information and does not include internal communications within the IGR team that might or might not be in scope of the request. It explained that the Deputy Director for the Union and Constitution Group searched the following terms: ‘UKIC’ which resulted in 2500 returns, and ‘PM rotating’ which resulted in 1700 returns. It says that while it acknowledges that these results and searches could be refined, it is an indication of why the request as worded would require burdensome searches to be conducted.

The Commissioner’s view

17. The Commissioner accepts that the main aspect of the complainant’s current request, their reference to “**any information**” which “**relates to**” suggests that it is broad in scope. The wording coupled with the lengthy period suggests that the request is too broad. Based on the explanation provided by CO the Commissioner accepts that the request as worded will exceed the appropriate cost limit. The Commissioner accepts that due to the circumstances of the request, i.e., the breadth of the request and the breadth of the searches, it was difficult for CO to

fully conduct a representative sampling exercise. He also notes that the formulation of the exact calculation is not required in the application of section 12 of FOIA. He considers that CO has provided an explanation which is sufficient to demonstrate the scope of the work required and the time which would be necessary to undertake that work. As such, the Commissioner is satisfied that, at the time of the complainant's request, CO could not have complied with the request and has therefore appropriately relied on section 12(1) of FOIA to refuse the complainant's request.

Section 16 - duty to provide advice and assistance

18. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. Where section 12 is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit.
19. The Commissioner agrees with the complainant's arguments contained in the internal review about the advice and assistance provided by CO in its refusal notice. It is particularly unsatisfactory for the CO to state that the complainant "did not take the opportunity to refine their request". The Commissioner does not consider that CO's further explanation in the internal review response provided the complainant with sufficient or appropriate advice and information to enable them to make an informed refined request.
20. From CO's submissions to the Commissioner, it is apparent that it was in possession (without having to expend further time searching) of significant information which, if relayed to the complainant, would be of considerable assistance allowing them (if they wished to do so) to submit a refined and narrowed request. For instance, it is likely that the most important and key information held on these topics and probably that which would most interest the complainant will be contained in the sixty-eight submissions to Ministers. Whilst the Commissioner acknowledged that CO cannot provide all the submissions without exceeding the cost limit, they could (and should) have told the complainant about the existence of these submissions and the approximate time it would take to check each one. The information would have allowed the complainant to submit a request for some of the submissions, those of a period of particular interest to them, which could have been within the cost limit.
21. Additionally, the Commissioner considers that CO could have told the complainant about the existence of the main relevant policy team for the subject area, which is the IGR team, as this information could have enabled the complainant to submit a refined request for relevant

information held or produced only by that team. The Commissioner considers that any such request may not have exceeded the cost limit.

22. In this case the Commissioner does not consider that CO have taken adequate steps to fully comply with its obligations under section 16 of FOIA and considers that it could have provided further advice and assistance to help the complainant refine their request.

Right of appeal

23. 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

24. 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.

25. 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

**Esi Mensah
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