

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 30 March 2023

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall

London

SW1A 2AS

### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to the work of the Commission on Race and Ethnic Disparities ("the Commission"). Cabinet Office refused to disclose the requested information, and in doing so, relied on section 36(2)(b)(i)(ii) and 36(2)(c) of FOIA (prejudice to the effective conduct of public affairs) and section 12 of FOIA (cost of compliance exceeds appropriate limit) to withhold the information.
2. The Commissioner's decision is that Cabinet Office has correctly applied section 12 of FOIA to withhold the information. No steps are required.

### **Request and response**

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3. On 2 April 2021, the complainant wrote to the Cabinet Office and requested information in the following terms:

"I am writing to seek information relating to the work of the Commission on Race and Ethnic Disparities under relevant provisions of the Freedom of Information Act 2000. I wish to be provided with the following:

i) All correspondence (including emails) between members of the Commission or its representatives and the Equalities Minister or her office following its establishment in July 2020.

ii) A full list of meetings (including online) and names of attendees held between members of the Commission or its representatives and the Equalities Minister or her office between 16 July 2020 and 30 March 2021. This should include all attendees at the meetings too.

- iii) Drafts of the Commission's report shared with the Equalities Minister or her office prior to its publication on 31 March 2021.
  - iv) Correspondence (including emails) between members of the Commission or its representatives and the Equalities Minister or her office relating to plans to publish the report."
4. Cabinet Office responded on 28 May 2021 initially withholding all the requested information under section 36(2)(b)(i)(ii) and 36(2)(c) of FOIA. The Complainant requested an internal review on 2 June 2021 challenging the Cabinet Offices decision. On 23 December 2021, Cabinet Office responded to the internal review request, upholding its original decision, and also relying on section 12 of FOIA to withhold parts of the request.

## Reasons for decision

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5. This reasoning covers why Cabinet office correctly stated that the request exceeds the appropriate cost limit.

### **Section 12- cost of compliance exceeds the appropriate limit.**

6. 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.
7. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations')<sup>1</sup> at £600 for central government department such as Cabinet Office. 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 Cabinet Office.
8. 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,
  - (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**

9. Cabinet Office has withheld some of the information in relation to the complainant's request at (i) and (iv) under section 12 of FOIA. It argues that the request exceeds the cost limit due to the time it would take to search for, locate and retrieve or extract any relevant information the in scope of those requests.
10. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
11. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.
12. In its internal review response, Cabinet Office informed the complainant that the information pertaining to their request relates to a period of 9 months spanning from the date the Commission was established to the date it published its report. It states that this covers a significant volume of information that would need to be searched to answer the complainant's request.
13. It also explained that the Commission held a significant number of meetings and therefore to compile a list of meetings and records of all correspondence over the period, officials will have to search through over 50 main folders each containing an average of five sub-folders. It says that each sub-folder contains up to 15 files and estimates 15 to 20 minutes would be required to review each folder. It states that this would take the search to around 62 to 83 hours. It maintains that conducting these tasks would exceed the appropriate cost limit.
14. During the Commissioner's investigations, he asked Cabinet Office whether it had undertaken a sampling exercise. Cabinet Office has explained that there are 32 inboxes containing emails that relate to the Commission Chair, the commissioners, and the Minister for Equalities.

15. It also explains that the Commission's secretariat was disbanded in March 2021 and the vast majority of its staff have left the Cabinet Office which has complicated the process by which information sought is searched for. Cabinet Office says that to ascertain the information, it will need to search inboxes by the following means:
  - a. the folder containing the inbox email is copied and downloaded.
  - b. the folder is then transferred into Mbox (file viewing software); and
  - c. opening Thunderbird (an email application), clicking on the available link and opening the relevant inbox.
16. It says that the process would have to be repeated for each inbox and on each occasion, Thunderbird must be closed and restarted in order to ensure that the correct folder was available to view. Cabinet Office says that it will take approximately one minute in respect of each inbox and estimates that to be around 30 minutes for all inboxes in total.
17. As an example of the volume of emails, Cabinet Office argues that in conducting a test on 10 inboxes it found that there were between 1 and 1339 emails potentially falling within the scope of the request. It argues that due to the high volume of emails, the remaining 22 inboxes could return a similar number of emails.
18. Cabinet Office considered two such inboxes containing 62 emails that were either addressed to or received from the Minister. It says that each email in scope would need to be open, read and searched. It estimates that it will take one to five minutes to review each email depending on the detail. It says that this will take approximately one to five hours to review all the 62 emails in order to determine if it is within scope. It argues that it is unlikely that reviewing all the emails falling with the search would take only one minute to complete. It says it is clear that the time taken to search emails addressed to and received from the Minister would take more than 24 hours.
19. The Commissioner is therefore satisfied with the arguments provided by Cabinet Office and he considers these arguments to be reasonable estimation of the work involved to meet the complainant's request at point (i) and (iv). Equally the Commissioner is also of the view that to respond to the remainder of the complainant's request together with their request at (i) and (iv) will exceed the cost limit. If one part of a request triggers the cost limit, this means that the whole request can be refused under section 12. Based on the evidence submitted by Cabinet Office, the Commissioner agrees that the volume of information to be searched would exceed significantly what it would be able to review within the appropriate cost limit of £600, or 24 hours of work.

20. The Commissioner notes that in line with its obligations under section 16 of FOIA, Cabinet Office provided the complainant with advice and assistance as to how they might be able to bring their request within the cost limit and the Commissioner is satisfied with this explanation.
21. He therefore concludes that section 12(1) is engaged and Cabinet Office was not obliged to comply with the request. As the Commissioner is satisfied that the request is exempt under section 12(1) he has not gone on to consider the application of section 36.

### **Other matters**

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22. The complainant explained to the Commissioner that they were dissatisfied by the significant delay by Cabinet Office in responding to their request for internal review. FOIA does not impose a statutory time within which internal reviews must be completed albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe. In the Commissioner's view it is reasonable to expect most reviews to be completed within 20 working days and reviews in exceptional cases to be completed within 40 working days.
23. In this case the complainant submitted their internal review on 2 June 2021. Cabinet Office informed them of the outcome of the internal review on 23 December 2021, about 124 calendar days later. The Commissioner clearly considers this to be an unsatisfactory period of time.

## **Right of appeal**

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

25. 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.
26. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**