

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 February 2024

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information from the Cabinet Office relating to possible breaches of the Cabinet Office Code of Conduct for Board Members of Public Bodies by members of the Channel 4 board.
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 12(1) (cost limit) of FOIA to refuse to comply with the request. He also finds that the Cabinet Office met its obligations under section 16(1) of FOIA to provide advice and assistance.
3. The Commissioner does not require the Cabinet Office to take any steps.

Request and response

4. On 4 September 2022 the complainant made the following request for information under FOIA:

"Please could you provide me with copies of all documents generated or received in connection with possible breaches of the Cabinet Office Code of Conduct for Board Members of Public Bodies by members of the Channel 4 (C4C) board since 1st December 2021."

5. The Cabinet Office responded on 3 October 2022 and provided some information within the scope of the request, specifically a letter. Regarding this letter, the Cabinet Office stated that it was exempt from disclosure under section 21(1) of FOIA (information accessible to applicant by other means) but that it was releasing this information as it understood the document would already be in the complainant's possession. It also withheld some information within the scope of the request under section 42 of FOIA (legal professional privilege). In this response the Cabinet Office stated that the search terms it had used to identify information held within the scope of the request were "breach" and "C4C".
6. The complainant requested an internal review on 10 October 2022, on the grounds that they believed the Cabinet Office held further information within the scope of the request. They also raised concerns about the disclosure of the letter under FOIA, due to the personal data contained within it.
7. The complainant subsequently contacted the Cabinet Office again on 18 October and suggested that, in order to identify all of the information held within the scope of the request, the Cabinet Office expand its search terms from "breach" and "C4C" to include terms such as "Channel 4", "C4", "Code", "Code of Conduct" and "board".
8. The Cabinet Office provided an internal review on 3 January 2023 in which it revised its position to refuse the request under section 12(1) (exemption where cost of compliance exceeds appropriate limit). It provided some advice and assistance to the complainant regarding refining their request.
9. At internal review the Cabinet Office also acknowledged that the letter it disclosed on 3 October 2022 should not have been disclosed to the world at large under FOIA, stating that it was exempt under section 40(1) and 40(2) of FOIA.

Scope of the case

10. This notice considers whether the Cabinet Office is entitled to rely on section 12(1) (cost limit) of FOIA to refuse to comply with the request. The Commissioner has also considered whether the Cabinet Office met its obligation to offer advice and assistance, under section 16 of FOIA.
11. It will not address the disclosure of the letter containing personal data under FOIA, this issue has been considered separately as a data protection complaint.

Reasons for decision

Section 12(1) – cost of compliance

12. 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 cost limit. The appropriate limit for central government departments such as the Cabinet Office is £600. As the cost of complying with a request must be calculated at the rate of £25 per hour, section 12(1) effectively imposes a time limit of 24 hours for the Cabinet Office.
13. 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:
 - determining whether the information is held,
 - locating the information, or a document containing it,
 - retrieving the information, or a document containing it,
 - and extracting the information from a document containing it.
14. 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. 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.
15. The Commissioner's guidance¹ is clear that the estimate should be based on how the public authority actually holds its records and that it should be reasonable in terms of the activities required to identify, locate and retrieve the information. It also states:

“There may well be different ways to search for the requested information. This does not mean that you have to consider every possible means of obtaining the information to produce a reasonable estimate. However, an estimate is unlikely to be

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-12-requests-where-the-cost-of-compliance-exceeds-the-appropriate-limit/#produce-an-estimate>

reasonable where an authority has failed to consider an obvious and quick means of locating, retrieving or extracting the information."

16. In its submissions to the Commissioner, the Cabinet Office provided the following information regarding how it had estimated that the time taken to comply with the request would exceed the appropriate cost limit of £600/24 hours:

"The Cabinet Office carried out a central search against some of the search terms sought by the requester, specifically 'Code of Conduct', 'Channel 4' and 'board'. For those search terms, there were 45,069,898 emails in 21,477 accounts. For each account, the results would need to be extracted, placed in a folder, and then reviewed manually. The majority of these results would have no relevance to the request. Even assuming that each email account could be considered in five minutes, which is unlikely, this would result in 1,800 hours of work."

17. The Commissioner notes that in addition to the search terms "Code of Conduct", "Channel 4" and "board", the Cabinet Office had also originally used the search terms "breach" and "C4C".
18. Although the Cabinet Office has not carried out a sampling exercise, the Commissioner accepts the estimate of a minimum of five minutes per email account to be a reasonable estimate for the time required to carry out the permitted activities as listed in paragraph 13 of this notice.
19. As to whether the Cabinet Office selected appropriate search terms to reach the estimate, the Commissioner considers that the term "board" does seem more likely than the other terms selected to return a high number of results which do not relate to the request, in that it is more general than the other search terms used.
20. Although the use of this search term was suggested by the complainant, it is the Cabinet Office's responsibility to select appropriate search terms to produce a reasonable estimate, based on its understanding of how information within the scope of the request is likely to be held and the searches that would be required to retrieve it.
21. The Commissioner's view in this case is that, on balance, it was reasonable for the Cabinet Office to use the search term "board" as well as "Code of Conduct" and "Channel 4" as he considers it likely that information held within the scope of the request would be identified through the use of this term which would not be located through the use of the two more specific search terms alone.

22. The Commissioner is therefore satisfied that the Cabinet Office used appropriate search terms to identify the number of emails that may contain information within scope of the request. As he is also satisfied that a minimum of five minutes per email account is a reasonable estimate for the time required to carry out the permitted activities, he therefore considers the Cabinet Office's estimate of 1800 hours, or 1789 hours and 45 minutes to be more precise (5 minutes for each of the 21,477 accounts), to be reasonable.
23. The cost of complying with the request would therefore significantly exceed the appropriate limit of 24 hours/£600.
24. The Commissioner's decision is that the Cabinet Office estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, the Cabinet Office is entitled to rely on section 12(1) of FOIA to refuse to comply with the request.

Section 16 – advice and assistance

25. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice² in providing advice and assistance, it will have complied with section 16(1).
26. The code of practice states:

“Where it is estimated the cost of answering a request would exceed the “cost limit” beyond which the public authority is not required to answer a request (and the authority is not prepared to answer it), public authorities should provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within the costs limit.”
27. At internal review the Cabinet Office provided advice and assistance to the complainant regarding refining their request. Specifically, it suggested that they:
 - Narrow the length of time covered in the request.

² <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

- Further define the precise information of interest, beyond “all documents” in connection with “possible breaches” generally.
 - Identify any potential breaches that are of direct interest.
28. The Commissioner is therefore satisfied that the Cabinet Office met its obligations under section 16(1) of FOIA.

Right of appeal

29. 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

30. 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.
31. 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

Victoria James
Senior Case Officer
Information Commissioner's Office
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