

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 July 2018

Public Authority: The Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office for an updated version of the 'G-cloud' dataset and details of its future publication schedule for this dataset. The Cabinet Office refused the request on the basis of section 22(1) of FOIA in its refusal notice and then subsequently relied on section 21(1) of FOIA in its internal review as an updated version of this dataset had now been published. The complainant disagreed with the application of both of these exemptions, complained about the time it took the Cabinet Office to respond to the request, raised concerns about the accuracy of the dataset which had been published and complained that the Cabinet Office had failed, in response to his request, to provide information about the future publication schedule for this dataset.
2. The Commissioner has concluded that sections 22(1) and 21(1) do not apply to the request and that the Cabinet Office breached section 17(1) by failing to respond to the request within 20 working days. However, the Commissioner is satisfied that the Cabinet Office did hold any information about the future publication schedule for this dataset at the point the request was submitted and that the complainant's concerns about the accuracy of the data published are not ones that fall to be considered under section 50 of FOIA. Despite the Commissioner's findings in relation to the exemptions, due to a disclosure of information made by the Cabinet Office during the course of her investigation, she does not require any steps to be taken.

Request and response

3. The complainant submitted the following request to the Cabinet Office on 7 June 2017:

'Government publishes G-Cloud spend at the following location -

<https://digitalmarketplace.blog.gov.uk/sales-accreditation-information/>

No updates have been published since 10th Jan 2017. Please publish an updated data set with data through to end May 2017 in the usual format.

The data is used to provide analysis using govspend.org.uk. Over 1,000 people use the govspend.org.uk web site each month.

Please also provide a timetable that you expect to publish data to moving forward. Previously the data was published monthly.

I have previously made this request several times on twitter via messages to the @GOVUKdigimkt twitter account. All requests have received no response.'

4. The Cabinet Office responded to this request on 6 July 2017 and explained that it considered the dataset he had requested to be exempt from disclosure on the basis of section 22(1) of FOIA which provides an exemption for information intended for future publication.
5. The complainant contacted the Cabinet Office on 19 July 2017 and asked it to undertake an internal review of this decision.
6. The Cabinet Office informed him of the outcome of the internal review on 22 September 2017. The review explained that it was of the view that at the point the request was submitted section 22(1) had been correctly applied. However, the Cabinet Office explained that the dataset was published on 24 August 2017 and therefore this information was considered to be exempt from disclosure on the basis of section 21 of FOIA which provides an exemption if the requested information is reasonably accessible.¹

¹ The Cabinet Office to directed the complainant to the following link:
<https://www.gov.uk/government/collections/digitalmarketplace-sales>

Scope of the case

7. The complainant initially contacted the Commissioner on 31 July 2017 to complain about the Cabinet Office's handling of his request. Following the completion of the internal review the complainant contacted the Commissioner again on 8 October 2017 and confirmed that he remained dissatisfied with the Cabinet Office's handling of his complaint.
8. In January 2018, the Commissioner agreed with the complainant that the scope of her investigation would be to consider the following issues:
 - The Cabinet's Office reliance on section 22(1) of FOIA at the point at which it issued its refusal notice;
 - The Cabinet Office's reliance on section 21(1) of FOIA at the point at which it issued its internal review;
 - The complainant's concerns that although the dataset had now been published it did not include any data about the 'ProductNameandDescription' for each entry which had been included in previous versions of the dataset;
 - The Cabinet Office's failure to respond to the part of the request which sought information about the future publication timetable for the dataset;
 - The complainant's view that some of the data contained in the published dataset was inaccurate; and
 - The Cabinet Office's delay in responding to the request.
9. During the course of the Commissioner's investigation, she exchanged a number of rounds of correspondence both with the Cabinet Office and the complainant about the above issues. As a result of this correspondence, the Cabinet Office provided the complainant with a copy of the 'ProductNameandDescription' data which it held for the period covered by the request.²
10. As a result of these developments during the course of her investigation, the Commissioner's decision notice therefore considers the following points:

² This information was provided to the complainant on 18 July 2018. However, it is important to note that although the Cabinet Office provided the complainant with this information, in its view such information did not fall within the scope of the complainant's request. This issue is discussed in further detail in the decision notice below.

- a. Whether the Cabinet Office was entitled to refuse the request at the refusal notice stage on the basis of section 22(1) of FOIA;
- b. Whether the Cabinet Office was entitled to refuse to comply with the request at the internal review stage on the basis of section 21(1) of FOIA;
- c. Whether the Cabinet Office held any recorded information about the timetable for the future publication of the dataset at the point that the request was submitted;
- d. Whether the information contained within the published dataset is accurate;
- e. Whether the Cabinet Office breached any procedural requirements of FOIA in handling the request; and
- f. Finally, during the course of her investigation the complainant asked the Commissioner to also consider the time it took the Cabinet Office to complete its internal review into its handling of the request.

Reasons for decision

Complaint a) the Cabinet Office's reliance on section 22(1) of FOIA

11. Section 22(1) of FOIA says that information is exempt if it at the time a public authority receives a request for it:
 - the public authority holds it with a view to its publication;
 - the public authority or another person intends to publish the information at some future date, whether determined or not; and
 - in all the circumstances it is reasonable to withhold the information prior to publication.
12. Therefore, in order to be engaged, a public authority has to demonstrate that each of the three criteria set out above are met.

The Cabinet Office's position

13. The Cabinet Office argued at the time it received the request it was its intention to publish the requested information at a later date. In support of this position the Cabinet Office explained that it had already

previously published the dataset requested 41 times.³ It argued that this history of prior publication set a more than ample precedent of its intention to continue publishing the material.

14. The Cabinet Office explained that at the time of the complainant's request, at the beginning of June 2017, there had been a short pause of couple of months in publishing the dataset. There were two reasons for this:
15. Firstly, the Cabinet Office and Crown Commercial Service were undertaking a review of the material being published. In response to this review, changes were made to how the data was presented at publication, including moving to a quarterly publication schedule (as noted in the request itself such data was previously published monthly). It also explained that as part of the review it found that the data being entered by suppliers into the free-text 'ProductNameandDescription' field of the 'Management Information Systems Online' (MISO) tool was either very inconsistent or not used at all, and would sometimes contain sensitive information that required manual intervention to remove. Collectively, this meant that the data contained in the 'ProjectNameAndDescription' field was considered poor quality and a decision was therefore made that in future it would not be published. The Cabinet Office noted that it was entirely within its purview to decide how best to present and publish the information it holds.
16. Secondly, the period 22 April 2017 up to the date of the request (and beyond) was covered by the pre-election purdah for the 2017 general election where there was the usual moratorium in place on government publications and publicity.
17. During the course of the Commissioner's investigation, she suggested to the Cabinet Office that in her view its application of section 22(1) of FOIA was invalid because it did not intend to publish all of the information falling within the scope of the request. (For similar reasons, the Commissioner suggested that this also invalidated its reliance on section 21(1) of FOIA). In brief, the Commissioner's rationale being that the version of the dataset subsequently published in August 2017 did not include the 'ProductNameandDescription' data and in her view such information fell within the scope of the complainant's request.
18. As part of its initial submissions to the Commissioner the Cabinet Office had noted that the complainant himself had questioned its reliance on

³ <https://digitalmarketplace.blog.gov.uk/sales-accreditation-information/>

section 21(1) of FOIA as the 'ProductNameandDescription' data was not contained in the version of the dataset published in August 2017 albeit that it was contained in previous versions. The Cabinet Office explained to the Commissioner that it rejected this analysis. It argued that as the name suggests, a dataset is a collection of many separate but related pieces of information, and the fact that a small percentage of those pieces may change does not invalidate the nature of the dataset as a whole. It argued that it was clear from both the complainant's original requests and the Cabinet Office's responses to him that they were both talking about the whole dataset and not every component therein. The Cabinet Office also argued that the complainant's 'throw-away line' in his request of wanting the dataset in '*the usual format*' did not alter this given that, in its view, such a remark failed to give sufficient focused direction within the original request as to which specific parts of the dataset were of interest to the complainant.

19. In its further submissions to the Commissioner, the Cabinet Office maintained this position and explained that it strongly disagreed with the Commissioner's interpretation of the request. The Cabinet Office noted that the Commissioner had indicated that she accepted that it had an intention to publish the dataset, and indeed did publish it. The Cabinet Office also noted that the Commissioner had accepted that it was entirely for the Cabinet Office to decide what individual items or categories should constitute its datasets. The Cabinet Office argued that the Commissioner's position mixed up the timeline of the definition of the information in scope. It explained that at the time of request, and at the time of the internal review, the Cabinet Office's assertions that it intended to publish or had published the dataset - as it defined the dataset - were entirely valid. It further argued that the dataset did not contain the data the complainant wanted is irrelevant; as the complainant only identified his interest in this data (which up until that point was not within scope as it did not form part of the defined dataset) at the point he made his complaint to the Commissioner, i.e. post-internal review. The Cabinet Office therefore argued that the information previously published under the heading 'ProjectNameandDescription' is outside of the originally requested dataset, did not come within scope of the complainant's request until he submitted his request to the Commissioner could not, therefore, invalidate statements about the datasets made at an earlier point in time.

The complainant's position

20. The complainant questioned the Cabinet Office's position that at the time of his request it was intending to publish the requested dataset. In support of this he noted that the Digital Marketplace Blog clearly states that 'We publish the updated figures on this page each month' and 'G-Cloud figures last updated 10 January 2017'.⁴ The complainant therefore argued at the point he submitted his request in June 2017 the Cabinet Office had failed to publish the dataset inline within its own published timetable and also it had not updated its guidance in relation to what its revised publication schedule was. In light of this the complainant argued that a reasonable person would have concluded that the Cabinet Office had ceased publication of the data and had no disclosed intention to re-start publishing the data at any time. The complainant argued that unless the Cabinet Office could provide specific evidence that at the time it issued the first response to his request that it had set a date for publication then section 22(1) could not apply to this request.
21. Furthermore, the complainant argued that the Cabinet Office's suggestion that the dataset was not published due to purdah should also be questioned. He noted around the time of, and during the purdah period for, the May 2015 general election four versions of the G-cloud dataset were published on the Digital Marketplace blog. Therefore, he argued that there is a precedent that the Cabinet Office did not view the data in question as being subject to purdah precisely because it had previously published it during purdah. Furthermore, he noted that the purdah period was relatively short, typically six weeks from the announcement of the election to the date of the election. Therefore, the overlap of his FOI request with the purdah period was limited to 7 and 8 June 2017 as the election was on 8 June and so from 9 June 2017 purdah did not apply.

The Commissioner's position

22. With regard to the interpretation of the request, as noted above, the Commissioner agrees with the Cabinet Office that it is within its gift to decide what data to include within a particular dataset, including the G-Cloud dataset, and it is not within her role to suggest or require certain categories of data to be contained within a particular dataset.

⁴ <https://digitalmarketplace.blog.gov.uk/sales-accreditation-information/>

23. However, the Commissioner notes, as the Cabinet Office did, that the complainant's request stated that he wished to be provided with an updated version of the dataset *'in the usual format'*. The Commissioner also understands that the previous 41 published datasets contained the field *'ProjectNameAndDescription'*. Therefore, in the Commissioner's view the reference by the complainant in his request to wanting the dataset *'in the usual format'* should not be seen, as the Cabinet Office suggests, as a throwaway line. Rather, interpreted objectively it is a clear expression of his intention to have an updated version of the dataset in the same format that the previous versions of the dataset were published in. Such previous versions included the *'ProjectNameAndDescription'* field. The Commissioner accepts that the fact that the complainant intended his request to cover this category of information no doubt became clearer during the course of her investigation. However, such greater clarity does not mean that interpreted objectively the original request did not include this information.
24. In light of the Commissioner's interpretation of the request, in order for the Cabinet Office to be able to correctly rely on section 22(1) at the point it refused the request it must have had an intention to publish the dataset in the format it had previously been published, ie to include the field *'ProjectNameAndDescription'*. As is clear from the above, given the Cabinet Office's review of the G-cloud dataset and the decision to no longer to publish this particular field of data, there was no such intention. On this basis the Commissioner has therefore concluded that the Cabinet Office could not rely on section 22(1) to refuse to comply with this request.
25. The Commissioner recognises that for different reasons the complainant has argued that the Cabinet Office could not rely on section 22(1) of FOIA. In light of her finding above, she does need not consider these grounds of complaint in this notice. However, for the purposes of completeness, she would note that the complainant's criticisms about the Cabinet Office's suggestion that purdah provided a reason to explain why the publication of the datasets had stopped would be appear to be reasonable ones. Nevertheless, in terms of whether the Cabinet Office actually had an intention to publish a version of the G-cloud dataset in the future, the Commissioner accepts that it did. The previous publication of 41 versions of the datasets do, in her view provide legitimate grounds for the Cabinet Office's point that it intended to publish a version of the G-cloud dataset in the future. The subsequent publication of it August 2017 is of course further evidence of this. The Commissioner would also emphasise that in order to correctly rely on section 22(1) a public authority only has to have an intention to publish the requested information at a point in the future; the date does not have to have been determined. (And for the reasons discussed below, in

relation to complaint c) the Commissioner is satisfied that at the time of the request the Cabinet Office had not yet determined the date at which the dataset would be published).

Complaint b) the Cabinet Office's reliance on section 21(1) of FOIA

26. Section 21(1) of FOIA states that information is exempt from disclosure if it is reasonably accessible to the applicant. The Cabinet Office argued that the requested information was accessible to the applicant at the internal review stage because the updated version of the G-cloud dataset had now been published and it provided him a link to it. The complainant argued that section 21(1) did not apply because the dataset failed to include the field 'ProjectNameAndDescription'.
27. For the reasons set out above in relation to her analysis of section 22(1) of FOIA, in the Commissioner's view interpreted objectively the request sought not simply an updated version of the G-cloud dataset but one which would include the field 'ProjectNameAndDescription'. As a dataset including this field of information was not available to the complainant at the time of the internal review, because as detailed above the content of the published dataset had changed, the Commissioner has concluded that the Cabinet Office could not argue that the requested dataset was reasonably accessible to the complainant and thus section 21(1) did not apply.

Complaint c) whether the Cabinet Office held any recorded information at the time of the request about the future publication of the G-cloud dataset

28. Neither the Cabinet Office's initial response to the complainant nor its internal review made direct reference to the part of the complainant's request which read as follows '*Please also provide a timetable that you expect to publish data to moving forward. Previously the data was published monthly.*'
29. As the beginning of this investigation the Commissioner explained to the complainant that her role in terms of this aspect of her request was limited to considering whether the Cabinet Office held any recorded information falling within this aspect of the request at the time it was submitted. She noted that if the Cabinet Office did not hold any recorded information falling within the scope of this request, then under FOIA, it was not obliged to answer this request.
30. As the start of her investigation, the Commissioner therefore asked the Cabinet Office whether it held any information about this aspect of the request and if so whether this could be provided to the complainant or whether it considered such information to be exempt from disclosure.

31. Furthermore, and despite the limitations of her role in terms of dealing with this aspect of the complaint, the Commissioner also explained to the Cabinet Office that the complainant had argued that the lack of a clear publication timetable is only likely to result in him making further, and repeated requests to get routine access to the dataset, a situation he has suggested was not an efficient use of either his or the Cabinet Office's resources. The Commissioner explained that she had some sympathy with the complainant's position and therefore suggested that even if the Cabinet Office did not hold any recorded information about the further publication timetable it considered, outside the scope of FOIA, advising the complainant of when, and how often, this dataset will be published in the future.
32. In response the Cabinet Office confirmed that as result of the aforementioned review of the G-cloud dataset it had moved to a quarterly publishing regime for this information. It also explained that it did not have specific dates identified for precisely when publication will occur, as these may vary slightly depending upon a range of factors, such as the speed with which particular batches of data can be quality assured; the current workload of the teams compiling, assessing and publishing the data; and any potential clashes with other publishing commitments already established in the department's wider publication strategy. However, it confirmed that the information will continue to be published on a regular basis in three-month batches.
33. Following its initial response to her, the Commissioner sought greater clarity from the Cabinet Office as to whether it held any recorded information falling within the scope of this request on 7 June 2017. In response the Cabinet Office confirmed that at the time of the complainant's original request no information was held on the specifics of a future timetable. This was because at that time an ongoing review of the material being published was in progress; following that process, which was completed after the complainant's request, a number of changes to how the data was presented at publication were made, including revising the publications schedule for the G-Cloud spend data to move to a quarterly publishing regime. It noted that this change, along with other changes to make the data better, was announced on the 24 August 2017 on the GOV.UK Government Digital Service web blog, which can be found at:

<https://gds.blog.gov.uk/2017/08/24/why-spend-data-is-important-for-the-digital-marketplace/>
34. In light of the Cabinet Office's further response the Commissioner is satisfied that on the balance of probabilities the Cabinet Office did not, at the time of the request, hold any recorded information falling within

this aspect of the complainant's request. She has reached this finding because at the time of the request the Cabinet Office was still in the process of reviewing its approach to publishing this data and had not yet determined what the further publication timetable would be.

35. During the course of her investigation, the complainant sought to query the Cabinet Office's response. He noted that if the current plan was to publish quarterly then he could see no reason why the Cabinet Office could not put that intention online, as it had done in the past. He noted that the new location where the data is published contains not such intention.⁵ He also noted that the Cabinet Office had failed to meet this new quarterly timetable; after the dataset published in August 2017 the next publication was not until February 2018.
36. Whether the complainant is content with how the Cabinet Office is communicating the publication schedule it now has in place, or indeed whether it was meeting such a schedule, is not a matter on which the Commissioner can comment. For the reasons set out above, in terms of FOIA and her investigation of this aspect of the request is limited to determining whether the Cabinet Office held any recorded information at the time of the request about the future publication strategy; and she is satisfied that it did not.

Complaint d) whether the information contained within the published dataset is accurate

37. In his initial submissions to the Commissioner the complainant argued that the latest data published at the link above was not accurate and noted that the dataset published in August 2017 does not correlate with previously published data. (He provided examples to illustrate his point). During the course of the Commissioner's investigation the complainant provided her with further examples of information within the dataset which he considered to be inaccurate.
38. Having been informed of the initial examples provided to the Commissioner by the complainant the Cabinet Office disputed the suggestion that the dataset is inaccurate. The Cabinet Office explained that the datasets are a series of time-bound snapshots of constantly evolving expenditure contracts (which are often lengthy in nature). The Commissioner noted that as a result, the data will naturally change over time as the expenditure against those contracts accrues or changes and

⁵⁵ <https://www.gov.uk/government/collections/digital-marketplace-sales>

as the data is revised and reconciled. These are not final end of year or end of project totals.

39. With regard to this aspect of the complaint, the Commissioner explained to the complainant at the outset of her investigation that she has a limited role in terms of whether information disclosed under FOIA is accurate. Again, this stemmed from the fact that the right of access under FOIA is simply to recorded information. Therefore, if a public authority located the requested information and discloses it, the Commissioner would take the position that the request has been complied with regardless as to whether the recorded information contains any errors or inaccuracies. However, the Commissioner acknowledged that there can instances where information disclosed by a public authority appears inaccurate because the public authority has failed to locate the specific information that has been requested.
40. Taking into account the above limitations of FOIA, and taking into account the Cabinet Office's response on this point, the Commissioner is satisfied that it has disclosed the requested information, ie the dataset in question published on 24 August 2017, save of course for the information contained in the field 'ProjectNameAndDescription'. It has not published a different dataset but the one that fell within the scope of the complainant's request. Therefore, the Commissioner is satisfied that the Cabinet Office has disclosed the information that the complainant requested and she cannot comment on whether the information contained within that dataset is accurate or not.

Complaint e) whether the Cabinet Office breached any procedural requirements of FOIA in handling the request

41. Section 17(1) states that:

'(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.'

42. The time for complying with section 1(1) of FOIA is 20 working days as set out by section 10(1) of FOIA:

'Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.'

43. In the circumstances of this case the complainant submitted his request to the Cabinet Office on 7 June 2017 and the Cabinet Office responded to it on 6 July 2017 which by the Commissioner's calculations is 22 working days after the request was submitted. The Cabinet Office therefore breached section 17(1) of FOIA by failing to issue its refusal notice citing section 22(1) within 20 working days.

Other matters

44. The complainant expressed his concern to the Commissioner about the length of time it took the Cabinet Office to complete its internal review. He noted that it took the Cabinet Office 47 working days to complete the internal review which significantly exceeded the Commissioner's guidance that internal reviews should only take 20 working days. The complainant suggested that it appeared that the Cabinet Office responded in a slower timeframe so that it could do so only after the latest version of the dataset had been published.
45. 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. As the complainant notes, in Commissioner's view it is reasonable to expect most reviews to be completed within 20 working days, however she does accept that in exceptional cases to be completed within 40 working days.
46. In this case the Cabinet Office failed to meet this outer time limit and the Commissioner would take this opportunity to remind the Cabinet Office, as she has done on a number of previous occasions in decision notices, of the need to ensure that internal reviews are completed in line with the timeframes set out in her guidance. The Commissioner has not seen any evidence that the Cabinet Office deliberately delayed its internal review response as the complainant suggested. Moreover, as the previous comments in this paragraph suggest the Cabinet Office taking more than 40 working days to complete an internal review is not an isolated occurrence.

Right of appeal

47. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

48. 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.
49. 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

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