

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 July 2012

Public Authority: Cabinet Office
Address: Admiralty Arch
North Entrance
The Mall
London
SW1A 2WH

Decision (including any steps ordered)

1. The complainant requested information about the number of civil servants employed and the number of those who participated in industrial action on 30 June 2011, broken down by department and grade in the North West region. The Commissioner's decision, is that on a balance of probabilities, the Cabinet Office does not hold the requested information and therefore it complied with its section 1(1)(a) obligations in this case.

Request and response

2. On 2 July 2011 the complainant wrote to the Cabinet Office and requested the following information:
 - "a) *the total number of civil servants (headcount) employed on a non-agency basis who are in post (ie employed) on 30 June 2011 broken down by department and grade in the North West Region; and*
 - b) *the total number of civil servants (headcount), exclusive of agency workers, who did not attend their between shift after 1800 hours on 29 June 2011 or on 30 June 2011 (before 1800) broken down by department and grade in the North West Region; and*

- c) *the total number of civil servants (headcount) who were absent from work due to ill health after 1800 hours on 29 June 2011 or on 30 June 2011 (before 1800).*

I appreciate that this information will not be held exclusively by the Cabinet Office but, as the lead department for the civil service in the UK I feel that you are best placed to coordinate a response."

3. The Cabinet Office responded on 21 July 2011. It stated that information about Civil Service employment for the North West region as at 30 June 2011 was not held by the Cabinet Office. It provided a link to the Office for National Statistics (ONS) which it advised held information on the total number of civil servants in post by Government Office region, including the North West. It also advised that the remainder of the requested information was not held by the Cabinet Office.
4. The complainant requested an internal review on 23 July 2011. He stated *"...For the sake of ease I am willing to settle for the number of those who are recorded as taken part in the industrial action of 30/06/11 and total number of FTE staff and omit the sickness details."*
5. Following an internal review the Cabinet Office wrote to the complainant on 13 October 2011, several months late. It stated *"whilst you raised a number of issues with our original response to your request, you have indicated that you are now content to receive less detailed information, reframing your request such that you are now seeking information on: the number of those who are recorded as taken part in the industrial action of 30/06/2011 and the total number of FTE staff."*
6. The Cabinet Office provided the total number of civil servants recorded by departments who had taken part in the industrial action day and reconfirmed that it did not hold numbers of FTE civil service employees, referring the complainant again to ONS. It advised that FTE numbers as at 14 September 2011 would now be available via the ONS website as part of its quarterly public sector employment statistics.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant maintained that the Cabinet Office must hold information falling within the scope of his request because one its ministers had been quoted in a number of media outlets on 30 June 2011 setting out the low turnout for the industrial action undertaken across the Civil Service.

8. At the outset of his investigation, the Commissioner contacted the complainant to clarify the scope of his complaint. The complainant confirmed he wanted the total numbers of civil servants in employment on the day of the industrial action (part (a) of his original request), together the numbers of those who had actually taken part in the industrial action (part (b) of his original request), in both instances to include the breakdown by the North West region.
9. The Commissioner notes that in his request for an internal review the complainant indicated that he was willing to accept less information and "omit the sickness details". In the circumstances of this case and bearing in mind the context of those comments, the Commissioner is prepared to accept that the reframed request could be interpreted as covering the parts (a) and (b) of the original request and has proceeded on that basis.
10. The Commissioner therefore investigated whether, on the balance of probabilities, the Cabinet Office held any information relevant to parts (a) and (b) of the request.
11. As explained below, some of the issues arising in this case are not related to the requirements of Part I of FOIA. Therefore those issues are not relevant to the Commissioner's decision under section 50. However, where the issues relate to compliance with the section 45 Code of Practice the Commissioner has made further comments in the 'Other Matters' section at the end of this notice.

Reasons for decision

12. Section 1 of FOIA states that:

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him."
13. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency (EA/2006/0072)* which clarified that the test to be applied when determining whether information is held was not certainty but the

balance of probabilities. Therefore this is the test that the Commissioner has applied in this case.

14. When reaching a decision about whether requested information is held by a public authority, the Commissioner will generally take into account the scope, quality, thoroughness and results of the searches carried out by the public authority and/or any other reasons it has offered to explain why the information is not held. This may include explanations about whether there is any business purpose for recording and/or retaining information. The Commissioner will also take into account any arguments put forward by the complainant as to why relevant information is held.
15. The Commissioner asked the Cabinet Office for details to explain why it did not hold the requested information and the following analysis is based on its responses.

Part (a) – Breakdown of the total number of civil servants in post

16. During the investigation the Cabinet Office maintained that information about the number of staff in post (by department and grade in the North West region) at the time of the request was not held, explaining this was why it had directed the complainant to the ONS website to access its Civil Service Statistics (compiled from the Annual Civil Service Employment Survey) which includes location, grade and department.
17. Where a public authority denies holding information but is aware that it may be held by another public authority it should consider the best way of assisting the applicant with his or her request. This issue is not a requirement of Part I of the Act. However, as it does relate to the section 45 Code of Practice; the Commissioner has included further comments about the reference to ONS in the 'Other matters' section at the end of this notice.
18. The Commissioner notes that in the initial request the complainant acknowledged that the requested information was unlikely to be held exclusively by the Cabinet Office. He suggested that, "as the lead department for the Civil Service in the UK" it was "best placed to coordinate the response". The Commissioner has also made further comments regarding this statement in the 'Other matters' section of this decision notice.
19. The Cabinet Office confirmed that it does not collect or hold the total number of employed civil servants for its own business purposes. It explained that this is why it denied holding the requested information.

20. The Commissioner asked whether the Cabinet Office holds any information about its own employees in relation to the request and it confirmed that it has no employees based in the North West.
21. The Commissioner notes that the complainant did not provide any arguments or evidence to suggest why information relevant to part (a) of the request was in fact held by the Cabinet Office.
22. The Commissioner has considered all the available information and, on the balance of probabilities, accepts that the Cabinet Office did not hold the total numbers of employed civil servants, broken down by department and grade in the North West region as at 30 June 2011. This is on the basis that there was no business purpose for it to do so.

Part (b)-Breakdown of the total number of civil servants who took part in industrial action on 30 June 2011

23. The Commissioner has then considered whether, on a balance of probabilities, the Cabinet Office holds any information in relation to the breakdown of the numbers taking part in the industrial action on 30 June 2011.
24. As part of its response to the Commissioner's enquiries during the investigation, the Cabinet Office included the following statement:

"the Cabinet Office does not hold the information broken down in the way [the complainant] requested. During periods of industrial action the Cabinet Office collects the numbers of staff involved by government department. It does not collect include [sic] information about the staff numbers of staff [sic] taking industrial action by region or grade."
25. The Commissioner has investigated further and has established that the Cabinet Office uses a 'strike information template form' in hard copy to collate gross numbers of those taking part in industrial action on a given day from Civil Service Departments and Agencies. It explained these gross figures are used so that ministers can understand the extent of the industrial action across the Civil Service and to respond to media enquiries.
26. The Cabinet Office explained that the gross figure for each department is not needed for long term business purposes and is not retained as a public record. The hard copy forms are collated by one individual and are usually destroyed once the action is concluded. If any information were retained it would have been entered into the Electronic Document and Records Management (EDRM) system. However the Cabinet Office has confirmed that no such record exists on the EDRM system. The Cabinet Office has also confirmed that the hard copy strike information

- forms received in response to the industrial action on 30 June 2011 were destroyed the same day as there was no business reason to retain them.
27. The Cabinet Office has also clarified that no breakdown of those taking part in industrial action by grade and North West region was ever collated as it had no business need for that information.
 28. As mentioned earlier, the complainant asserted that the requested information must have been held because one of the Cabinet Office ministers was quoted in the media setting out the low turnout for industrial action undertaken across the civil service. The Commissioner has considered this argument and notes that the public statements made at the time of the action included headline figures that could have been compiled from the returns provided by individual departments, rather than a detailed breakdown as the complainant has requested.
 29. The Commissioner also asked the Cabinet Office whether it held any information about its own employees who had taken part in the industrial action on 30 June 2011. In response, it confirmed it does not have any employees in the North West region. Furthermore, any Cabinet Office data that was collected on the day of the industrial action would have been destroyed once the business need for it had passed ie on the same day.
 30. The Commissioner has considered all the arguments and evidence above and has concluded that, on a balance of probabilities, the Cabinet Office did not hold the requested breakdown information about those taking part in the specified industrial action at the time of the request. Therefore it complied with its obligations under section 1(1)(a) of FOIA.

Other matters

Information held by the ONS

31. Part III of the section 45 Code of Practice includes information about what public authorities should do in instances where they do not hold all (or some) of the requested information but they are aware that another public authority may do.
32. Paragraphs 17 and 18 state that if an authority "*has reason to believe that some or all of the information requested, but which it does not hold, is held by another public authority, the authority should consider what would be the most helpful way of assisting the applicant with his or her request.*"
 18. *In most cases this is likely to involve:*
 - o *contacting the applicant and informing him or her that the information requested may be held by another public authority;*
 - o *suggesting that the applicant re-applies to the authority which the original authority believes may hold the information; and*
 - o *providing him or her with contact details for that authority".*
33. As explained above, when the Cabinet Office denied holding any information about the total number of civil servants in post, it also referred the complainant to the ONS website as it was aware that the ONS did collate statistics about Civil Service employees of the nature requested.
34. The Commissioner has viewed the latest report from ONS which was published in September 2011 and included figures up to 31 March 2011. The report includes details of the number of civil servants employed by individual departments, the number of staff in the North West region and a breakdown of grades across departments as a whole. However, it does not appear possible to determine the grade breakdown by region.
35. Having viewed the information, the Commissioner acknowledges that it was reasonable for the Cabinet Office to inform the complainant about the ONS statistics. However, at the time of the request, data was only available up to 31 March 2010. As the request related to total staff numbers as at 30 June 2011 no information relevant to part (a) of the request was in fact available from ONS. The Commissioner would encourage Cabinet Office to clarify what information is actually

available in any similar cases in the future so that it can better manage requesters' expectations.

Coordinating a response

36. When the complainant made his request he indicated that although the Cabinet Office may not hold all the requested information, he felt that "as the lead department for the Civil Service in the UK [the Cabinet Office] are best placed to coordinate a response".
37. There is no provision within FOIA that would require the Cabinet Office to coordinate the response in the way that the complainant has suggested. However, as a matter of good practice, the Cabinet Office could have explained this to the complainant and considered suggesting that he make separate requests to the individual government departments.

Right of appeal

38. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

39. 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.
40. 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

Jo Pedder
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