

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 November 2012

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

Decision (including any steps)

1. The complainant has made 15 requests about different individuals and their involvement with the Prime Minister, his special advisers or officials from the public authority. The public authority aggregated the requests and refused them on the grounds that compliance would exceed the cost limit. The complainant did not accept that they were sufficiently similar to be aggregated. The Information Commissioner's decision is that the public authority was correct to cite section 12(1) of the FOIA. However, he does find that the public authority failed in its duty to provide advice and assistance thereby breaching section 16(1).

Request and response

2. On 29 March 2012 the public authority received 15 individual requests from the complainant. They were all worded as follows, but the named party in each request was different:

"Under the Freedom of Information Act 2000, I request 10 Downing Street to provide me with the following information.

- *All correspondence, including email correspondence, between [named party] and the Prime Minister, the Prime Minister's special advisers or Cabinet Office officials.*
- *Details of all occasions on which [named party] has visited 10 Downing Street since 12 May 2010, including details of who else was present at any meetings or events he attended, and any notes taken at any such meetings or events.*

I would prefer to receive this information electronically.

If my request is denied in whole or in part, I ask that you justify all deletions by reference to specific exemptions of the Act. I will also expect you to release all non-exempt material. I reserve the right to appeal your decision to withhold any information or to charge excessive fees".

3. The public authority responded on 19 April 2012. It stated that it was aggregating the requests and that compliance would therefore exceed the appropriate limit.
4. The complainant did not agree that the requests could be aggregated. On 17 May 2012 he asked for an internal review stating:

"You imply that none of the requests, taken individually, would exceed the cost threshold - that it is the act of aggregation itself that would see the threshold exceeded. Your response therefore seems to hinge on the decision to treat the requests as seeking "same or similar information". While I accept that it is possible to treat requests for people met by the Prime Minister as "similar" I would argue that this is an unfairly broad definition - so broad as to be obstructive and contrary to the original purpose of FOI legislation. Furthermore, such an interpretation would feasibly mean that it is impossible for any one person to acquire an accurate picture or pattern of official Prime Ministerial business. Arguably the logical conclusion of such an approach would be to allow aggregation of all and any questions relating to the Prime Minister (or indeed a Cabinet Minister) under a heading such as "relating to Prime Ministerial business" thus ruling out any chance of a single individual making more than one request. I would hope you would agree that this is not the intention of the law.

I would argue that while these requests do all deal with 'meetings' this is too broad a category on which to base a decision; setting a bad and potentially dangerous precedent. A far better method of judging these requests would be to consider they relate to a variety of very different individuals.

Since each of my requests relates to a different individual who may or may not have met David Cameron, they do not relate to "the same or similar information". There I would suggest that there is therefore no need to aggregate the requests".

5. Following an internal review the public authority wrote to the complainant on 25 June 2012. It stated that it still found that the

requests were similar enough to be aggregated and that it was therefore continuing to rely on the appropriate limit.

Scope of the case

6. On 2 August 2012 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled.
7. The basis of this complaint is whether or not the requests can be aggregated. The Information Commissioner will also consider whether the cost limit would be exceeded.

Reasons for decision

Substantive Procedural Matters

Section 12 – cost of compliance exceeds appropriate limit

8. By virtue of the provisions of section 12(1), a public authority is not obliged to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate cost limit prescribed by the Secretary of State in the relevant regulation.
9. The appropriate limit is prescribed in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 as £600 for public authorities listed in Part 1 of Schedule 1 to the Act, and £450 for any other public authority. This is estimated at £25 an hour. The appropriate cost limit for the public authority is £600 as it is a public authority listed in Part 1 of Schedule 1 to the Act.
10. Section 12(4) of the Act provides that, in certain circumstances set out in the Fees Regulations requests can be aggregated so that the estimated total cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them. Regulation 5 of the Fees Regulations sets out the relevant condition in this case and provides that multiple requests can be aggregated in circumstances where the two or more requests relate to any extent, to the same or similar information. Although this test is very broad, it is possible that one or more requests may not meet this test and the Information Commissioner has therefore considered whether he is satisfied that the requests relate to the same or similar information.
11. The complainant made 15 requests, on the same day, which have been aggregated by the public authority and considered jointly. Regulation 5

of the fees regulations provides that the cost of complying with multiple requests can be aggregated where two or more requests are received within the same 60 working day period and relate to any extent to the same, or similar, information. The requests were all made on the same day so this element is clearly met. It therefore remains to consider whether or not the requests are for the same, or similar, information.

12. The public authority has submitted that the requests in question are related, the overarching subject being meetings between the Prime Minister and party donors. The complainant's contention is that the requests all concern different parties so are not related.
13. The Information Commissioner notes that the regulations state that, in order to be aggregated, requests only need to relate *"to any extent, to the same or similar information"*. As the wording of the requests is identical other than the name of the party concerned the Information Commissioner agrees with the public authority that this makes the requests sufficiently similar to allow them to be aggregated.

Would compliance with the requests exceed the appropriate limit?

14. Section 12(1) 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.
15. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations').
16. Paragraph 4(3) of the Regulations states:

"In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in-

 - (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."*
17. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. The cost limit in this case is £600, which is equivalent to 24 hours' work.

18. Section 12 of the FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation.
19. The public authority did not provide any estimate or breakdown of costs to the complainant, but it did advise the Information Commissioner as follows:

"As the request for all correspondence is not linked or connected to any specific topic or event, in order to determine whether the Cabinet Office holds any and all relevant information it would be necessary for the FOI team to ask all management units to search team shared drives and relevant paper files for information about correspondence and meetings with each of the 15 named individuals. Heads of units would also have to instruct individual members of staff to search personal drives... the request is very general and any area of the Cabinet Office could hold relevant information, which means that several hundred members of staff might be required to conduct these searches. The FOI team would also ask all heads of management units to instruct individual members of staff to search their individual email accounts for relevant information. Again, given the number of named individuals, and the indefinite breadth of the request, it is likely that hundreds of Cabinet Office staff would be required to carry out this part of the search.

I have assumed two hours in total to carry out the process of commissioning the searches from management units and for the heads a [sic] units to cascade these instructions to their staff. This is a conservative estimate. Following this, searching individual email accounts would exceed the appropriate limit on its own. The Cabinet Office assumed each search of an individual email account would take on average two minutes per named individual. This is a conservative estimate given that the limitations of the search facility in Microsoft Outlook means that many false positives would be generated and each 'hit' would have to be checked for relevance. Each member of staff would take 30 minutes to complete the search of their email accounts for all 15 individuals. The appropriate limit would be reached once 46 members of staff has completed a search. As I have explained, very many Cabinet Office units might hold relevant information. I consider it reasonable to assume that several hundred members of staff would be required to check their email accounts to determine whether they hold information.

The Cabinet Office did not go on to calculate the costs of searching personal and shared hard drives nor did the Cabinet Office calculate the cost of searching paper records for relevant information. These searches would add substantially to the cost of compliance.

I have considered whether a central search of our electronic records system would have made a search possible within the appropriate limit. I have concluded that it would not. In the first place, the Cabinet Office and the Prime Minister's Office use separate systems and each would require a separate search. These searches would not identify all the information within scope: they would not identify relevant information in paper records nor would they locate relevant information in scanned documents where the meta-data did not identify the content relevant to the request. Both of these categories may be substantial. These searches would identify a great deal of information not relevant to the request. The limitations of the search engines, the breadth of the request and the fact that some that of [sic] the names are shared by many people means that the output from any central electronic search would have to be sifted to identify and extract relevant information. This sifting would have to be undertaken by staff in the management units with relevant knowledge of the subject. This is, if anything, likely to be even more time consuming than an electronic and paper search organised at management unit level".

20. The Information Commissioner also asked the public authority to consider whether or not it would be possible to respond to a single request within the appropriate limit. It advised him that, as shown in its calculations above, even to respond to one request would exceed the appropriate limit as the same basic searches would need to be undertaken by hundreds of staff.
21. As stated above, when considering the cost limit a public authority is not required to give a precise calculation. Having considered the estimates provided the Information Commissioner finds that they are realistic and reasonable in respect of the requests as aggregated and also as singular requests. He therefore accepts that to provide the information would exceed the appropriate limit.

Section 16 – advice and assistance

22. Section 16(1) imposes an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the section 45 Code of Practice in relation to the provision of advice and assistance in that case.
23. Whenever the cost limit has been applied correctly, the Information Commissioner must consider whether it would be possible for a public authority to provide advice and assistance to enable the complainant to obtain information without attracting the costs limit in accordance with paragraph 14 of the Code.
24. The Information Commissioner notes that in both its refusal notice and its internal review the public authority has made no reference to the complainant of its obligation under the FOIA to provide advice and assistance. Furthermore, it has not offered any advice in suggesting how he may refine his requests to keep them within the limit – or by simply suggesting how many of his requests he can deal with within the bounds of the appropriate limit. It has also failed to provide a breakdown to explain how dealing with all 15 requests would exceed the appropriate limit.
25. In correspondence to the Information Commissioner it stated: *“Unless the request is narrowed in one of the ways we suggested in our reply to [the complainant], I do not see how we could comply with any one of these requests within the appropriate limit”*. The Information Commissioner can find no such suggestion in the responses that were provided.
26. Based on the above, the Information Commissioner considers that the public authority did not comply with its obligations under section 16(1) and therefore breached the FOIA. However, as the wording of each request is very broad he can see no obvious way to refine them to keep them within the limit. Had the public authority provided an explanation about how the information is held to the complainant then he may have been able to formulate a refined request using this additional knowledge.

Other matters

27. When conducting his investigation the Information Commissioner asked the public authority to advise him whether or not compliance with one

of the requests in isolation would exceed the limit. In its response the public authority stated:

"You asked me to make clear whether compliance with one request would exceed the appropriate limit or whether it would only be exceeded once more than one requests [sic] was considered. I do not consider this point to be germane to your investigation since, assuming you agree that the requests may be aggregated, all that is required is to establish that the cost of replying to the requests in aggregate exceeds the cost limit".

28. The Information Commissioner would remind the public authority that he usually needs additional information in order to proceed with his investigations. On this occasion, because the public authority had not previously provided any explanation as to how the appropriate limit had been met and exceeded, it was not possible to ascertain whether it could have complied with a single request. Had it been possible then the Information Commissioner would have expected the public authority to advise the complainant accordingly when offering advice and assistance and he would have suggested this in his findings.
29. Furthermore, whilst it may have seemed 'obvious' to the public authority that the requests were suitable for aggregation, on commencing an investigation the Information Commissioner needs to gather all relevant information to allow him to make a fully informed decision; he will also try to do so on a single occasion so he can deal with the complaint expeditiously.
30. If a public authority does not wish to comply with a request for additional information then the Information Commissioner will issue an information notice if necessary.

Right of appeal

31. 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

32. 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.
33. 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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