

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 March 2017

**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 from the Cabinet Office. He is sight impaired and does not have ready access to the internet. He made a verbal request to the Cabinet Office expecting it to check the wording with him by sending a printed copy of the request in large font for him to approve before progressing it. The complainant understood that this had been agreed with the Cabinet Office. However, it did not do so, and sent him the outcome of the "request" in a letter printed in standard font. He raised concerns with the Commissioner about the difficulties he experienced in making this request. The complainant also had difficulty in drawing this directly to the Cabinet Office's attention. Once the Commissioner drew this matter to the Cabinet Office's attention, it took steps to improve its processes.
2. The Commissioner's decision is that the Cabinet Office contravened the requirements of section 16 of the FOIA (advice and assistance) when handling this request.
3. No steps are required.

#### Request and response

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4. The complainant explained to the Commissioner that after a considerable amount of difficulty in finding a number to call, he telephoned the Cabinet Office to ask for assistance in making a request at some point in June 2016. He had explained to the Cabinet Office that

he was sight impaired and had no access to the internet. He indicated the information he wanted to request under the Act during the telephone conversation.

5. The complainant asserted that it was agreed that the Cabinet Office would send a written version of his request back to him in large print so that he could sign it off, that is, confirm the request wording was correct. This did not occur. The Cabinet Office did not send him a large print version of his request for him to sign off as agreed with him.
6. The complainant received a written response to the verbal request in a letter dated 20 October 2016. This was in in standard print and not large print. All the contact information on the letter was either in small print or standard print. There was no contact telephone number which, in the complainant's particular circumstances, would have been helpful for further queries.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 5 November 2016 on this matter although he had contacted the Commissioner earlier with other similar concerns about other public authorities.
8. The Commissioner has considered whether the Cabinet Office has complied with its section 16 obligations in respect of the above request.
9. The complainant is sight impaired and does not have access to the internet. In considering this complaint, the Commissioner has looked solely at the requirements of the FOIA and whether the Cabinet Office provided this individual with adequate advice and assistance as required by section 16 of the FOIA.
10. The Commissioner has no remit to consider whether the Cabinet Office has complied with any other legislation regarding an organisation's obligations towards individuals who have a disability or disabilities. She has therefore not considered the Cabinet Office's compliance with other legislation in this case.

### **Reasons for decision**

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## Section 16 – advice and assistance

11. In considering this case, the Commissioner has had regard to her own guidance.<sup>1</sup>

12. Section 16 of the FOIA states the following: -

(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

13. The section 45 Code of Practice says the following about the advice and assistance expected for those making requests:

**“Advice and assistance to those proposing to make requests:**

4. Public authorities should publish their procedures for dealing with requests for information. Consideration should be given to including in these procedures a statement of:

- what the public authority's usual procedure will be where it does not hold the information requested (see also III - "Transferring requests for information"), and when the public authority may need to consult other public authorities and/or third parties in order to reach a decision on whether the requested information can be released (see also IV - "Consultation with third parties"),

5. The procedures should include an address or addresses (including an e-mail address where possible) to which applicants may direct requests for information or for assistance. A telephone number should also be provided, where possible that of a named individual who can provide assistance. These procedures should be referred to in the authority's publication scheme.

6. Staff working in public authorities in contact with the public should bear in mind that not everyone will be aware of the Act, or Regulations made under it, and they will need where appropriate to draw these to the attention of potential applicants who appear unaware of them.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1624140/duty-to-provide-advice-and-assistance-foia-section-16.pdf>

7. Where a person is unable to frame his or her request in writing, the public authority should ensure that appropriate assistance is given to enable that person to make a request for information. Depending on the circumstances, consideration should be given to:

- advising the person that another person or agency (such as a Citizens Advice Bureau) may be able to assist them with the application, or make the application on their behalf;
- in exceptional circumstances, offering to take a note of the application over the telephone and then send the note to the applicant for confirmation (in which case the written note of the telephone request, once verified by the applicant and returned, would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received).

This list is not exhaustive, and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant."

14. Section 8 of the FOIA, states:

"(1) In this Act any reference to a "request for information" is a reference to such a request which—

- (a) is in writing,
- (b) states the name of the applicant and an address for correspondence, and
- (c) describes the information requested.

(2) For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request—

- (a) is transmitted by electronic means,
- (b) is received in legible form, and
- (c) is capable of being used for subsequent reference."

15. Section 8 requires that a request under the FOIA be made in writing. The section 45 Code of Practice (at paragraph 7) provides examples of steps a public authority can take to assist those who cannot make a request in writing.

16. While a public authority may wish to assist a sight impaired requester by dealing with as much of their query as possible over the phone, any request is, strictly speaking, not valid unless a written (and mutually agreed) record is created. This could be overcome by, for example, an exchange of emails. However, where an individual does not have ready access to the internet (as was the case here), an exchange of emails is not possible. It is incumbent upon public authorities to take section 8 of the FOIA into account when handling a request by a sight impaired

requester over the telephone as well as the requirements of the section 45 Code of Practice.

17. The failings of the Cabinet Office in respect of its initial handling of this request are self-evident:
  - It did not provide the complainant with a typed up copy of his request for him to sign off as recommended by the Code of Practice.
  - It provided a response to a request that, strictly speaking, was not valid because it had been made verbally and not signed off.
  - The response was, in any event, not in a reasonable font size contrary to what the complainant asserted had been agreed.
  - It did not provide him with a contact telephone number to enable him to call and discuss the request.
18. The Commissioner is not making any findings as to the delay which took place between the complainant asking to make a request (June 2016) and the Cabinet Office providing a response (October 2016) because, as the request itself was not valid, no findings on compliance with the time requirements of the FOIA can be made. It is also self-evident, however, that there was a protracted delay between the making of the request and the Cabinet Office actioning it, albeit incorrectly.
19. The Commissioner does not wish to be prescriptive about how all requests made by sight impaired requesters should be handled. It may be that a request in such a scenario can be dealt with informally over the telephone, if both parties agree to it. The key point here is whether or not both parties agree to the informal resolution of a request. However, if a public authority's systems and procedures make it difficult for a sight impaired requester to make a valid request, to follow it up or to request an internal review, this cannot accord with the requirements of section 16 of the FOIA. If a sight impaired requester is then further disadvantaged by not having the necessary evidence to make a complaint to the Commissioner about their request, this is also not in accordance with the FOIA. If all the exchanges between the requester and the public authority have been over the telephone, there is no evidence for the Commissioner to consider in the event of a dispute.

## **Conclusion**

20. The Commissioner has concluded that the Cabinet Office contravened the requirements of section 16 when it first handled this request. While it may have intended to follow the recommendation of paragraph 7 of the section 45 Code of Practice when handling the request, this did not

happen. It failed to provide adequate advice and assistance to the complainant in this case.

21. The Commissioner recognises that the Cabinet Office has subsequently taken steps to improve how it handles requests from sight impaired requesters and others who may find it more difficult to make a request in writing. The Cabinet Office advised that it is now piloting a new procedure and reports that it has already had positive results. It has also provided the complainant with a different telephone number that allows a more direct connection with its Freedom of Information team. The Cabinet Office has acknowledged to the Commissioner that it made mistakes in this particular case.

### **Other matters**

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22. The Commissioner would hope that every public authority has procedures in place to ensure that sight impaired requesters have little or no delay when making FOIA requests. It cannot be assumed that every sight impaired requester has ready access to the internet to make requests by email and therefore this is not an adequate alternative.
23. It cannot be the case that a sight impaired requester has to overcome a number of obstacles before making meaningful contact with a public authority about a request.

## 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.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** .....

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**