

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 May 2022

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 the Grenfell Tower fire. The Cabinet Office refused to comply with the request citing section 12 (cost limit) of FOIA.
2. The Commissioner's decision is that the Cabinet Office was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. He also finds that the Cabinet Office met its obligation under section 16(1) of FOIA to offer advice and assistance. The Commissioner does not require the Cabinet Office to take any steps.

Request and response

3. On 11 June 2021, the complainant wrote to the Cabinet Office and requested information in the following terms:

"Full copies of all reports, assessments, memos, briefing notes and presentations relating to the Grenfell Tower fire that were produced in 2017."

4. The Cabinet Office responded on 29 June 2022 and refused to provide the requested information citing section 12 of FOIA. The Cabinet Office offered advice and assistance stating "One way to refine your request would be to narrow the period it covers, for example to a two month

period, but even a shorter period would require us to search many files and may not be sufficient, on its own, to make it possible for us to comply with your request within the appropriate limit. Alternatively, a refinement to a specific set or document type from the timeframe provided may also make it possible to comply with your request”.

5. On 30 June 2021, the complainant refined his request for information their request in the following terms:

“I'm willing to limit the time frame to June and July 2017.”

6. On 23 July 2021, the Cabinet Office again refused the request citing section 12 of FOIA. The Cabinet Office explained that the relevant information could be contained in very many files across the Cabinet Office and offered advice in order to get the request within the cost limits. This response was not clear about whether the Cabinet Office held the requested information.
7. On 27 July 2021, the complainant requested an internal review and state that the request had already been refined and believed that “it would not take over 3.5 days to retrieve” the information requested.
8. On 24 September 2021, the Cabinet Office provided its internal review outcome to the complainant. The Cabinet Office maintained its original position and explained that the “reason that your request exceeds the cost limit is that relevant information could be contained in very many files across the Cabinet Office and extends across over 14,000 documents for the Inquiry Sponsorship Team alone. Other parts of the department might also hold information in scope of your request. Searching all those files that might contain information relevant to your request would exceed the appropriate limit laid down in the regulations. This would be particularly time consuming in light of the breadth of your request which asks for a range of types of document”. The Cabinet Office also offered advice and assistance by suggesting the complainant refined their request further to bring it within the cost limit.

Scope of the case

9. The complainant contacted the Commissioner on 29 September 2021 to complain about the way their request for information had been handled. The complainant disagrees with the Cabinet Office’s application of section 12 of FOIA.
10. The scope of the following analysis is to determine whether the Cabinet Office was entitled to rely on section 12 of FOIA in this case. The

Commissioner has also considered whether the Cabinet Office met its obligation to offer advice and assistance, under section 16.

Reasons for decision

Section 12 – cost of compliance

11. 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 limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
12. Section 12(2) of FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. The Cabinet Office relied on section 12(1) in this case.
13. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the Cabinet Office is £600.
14. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours for the Cabinet Office.
15. Regulation 4(3) of the Fees Regulations states that 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.
16. 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. In accordance with the

First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/00041*, 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.

17. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
18. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

Would the cost of compliance exceed the appropriate limit?

19. As is the practice in a case in which the public authority has cited the cost limit under section 12 of FOIA, the Commissioner asked the Cabinet Office to provide a detailed explanation of the estimations it had reached to calculate the time and cost of responding to the request.
20. The Cabinet Office responded by explaining that the Prime Minister on 15 June 2017 announced a public inquiry into the fire at Grenfell Tower and that “no particular documents” were requested and that “the requested information was contained in very many files across the Cabinet Office and extends across more than 14,000 documents held by the Inquiry Sponsorship Team. A refinement to a specific set or document type from the timeframe provided may have made it possible to comply with his request, but searches would still be complicated without significant refinement”. The Cabinet Office further explained that there have been eight sub-departments that provided documents to the Grenfell Tower inquiry and these documents would also potentially be in the scope of the request.
21. The Cabinet Office explained searches would be required across the different sub-departments and a sampling exercise found that:

“From the above 14,000+ documents, a sample search exercise was conducted on one folder of documents provided by the Prime Minister’s Office, which contained a total of 313 subfolders. It took one hour to review the first subfolder (which contained 32 documents) for relevance. This parent folder alone holds 505 separate documents and we estimate that it would take (on average) two minutes to review each document based on the small sample search. This totals 16 hours

and 50 minutes for the whole folder. All of the documents in this folder are emails, so the relevant information would need to be extracted and any attachments downloaded and checked. All folders and the subfolders within them would need to be navigated and opened. File names alone would not be properly indicative for identifying information in scope or not or what the date of the document is. We would therefore be required to undertake an extensive manual search of all email records in these files”.

22. The Cabinet Office advised the Commissioner there were seven more folders that they would need to search for the requested information.
23. The Commissioner considers that, even taking into account a more conservative cost estimate of only 1 minute per piece of correspondence, the Cabinet Office would still take 233 hours (for 14,000 documents at 1 minute per document), which is considerably more than the 24 hour or £600 limit to respond to the request. The Commissioner accepts the explanation that it would have been necessary for the Cabinet Office to review many thousands of items of correspondence in order to locate all the information it held within the scope of the request. He also accepts that the estimate of two minutes per item of correspondence is appropriate, as well as noting that a considerably shorter estimate per item would still produce a total estimate well in excess of the cost limit.
24. The Commissioner’s overall conclusion is that the Cabinet Office estimated reasonably that to comply with the complainant’s request would exceed the cost limit. The Cabinet Office was therefore correct to apply section 12(1) of the FOIA to the complainant’s request.

Section 16(1) – The duty to provide advice and assistance

25. Section 16(1) of the 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 practice¹ in providing advice and assistance, it will have complied with section 16(1).
26. The Commissioner notes that the Cabinet Office outlined to the complainant that, due to the high volume of correspondence within the scope of the request, they may wish to resubmit a refined request which covered more specific information. The Commissioner considers this was

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

an appropriate response in the circumstances given the broad nature of the original time frame. He is therefore satisfied that the Cabinet Office met its obligation under section 16 of the FOIA.

Right of appeal

27. 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

28. 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.
29. 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

**Catherine Fletcher
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Wycliffe House
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