

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 August 2023

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant submitted an information request to the Cabinet Office for the dates and times that former Prime Minister Margaret Thatcher spoke to former President George Bush, during the period of January to April 1989.
2. The Commissioner's decision is that the Cabinet Office was entitled to rely on section 12(1) of FOIA to refuse the request, and that it complied with its obligations under section 16(1) of FOIA to offer advice and assistance. However, in failing to provide its refusal notice within 20 working days, the Cabinet Office breached section 17(5) of FOIA.
3. The Commissioner does not require further steps as a result of this decision notice.

Request and response

4. On 1 September 2022, the complainant wrote to the Cabinet Office and requested information in the following terms:

"I am writing to make an open government request for all the information to which I am entitled under the freedom of information act. In order to assist you with this request, I am outlining my query as specifically as possible. If however this request is too wide or too unclear, I would be grateful if you could contact me as I understand that under the act, you are required to advise and assist requesters.

I would like to know the dates and times that Margaret Thatcher spoke to President George Bush, either face to face or phone, during the period of January-April 1989."

5. A response was provided on 30 September 2022 in which the Cabinet Office stated it it did not hold the requested information
6. Following an internal review on 27 January 2023, the Cabinet Office amended its original position, confirmed the information was held but it was unable to provide it citing section 12(2) of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 30 January 2023 to complain about the way their request had been handled.
8. In their internal review request, the complainant states that they have found a document¹ listed by the National Archives, as being held by the Cabinet Office. The complainant explained that the document listed is "within the timeline of my request" and that as it is a diary, it would "contain appointment times for meetings and phone conversations".
9. The Commissioner therefore considers the Cabinet Office inadvertently cited section 12(2) instead of section 12(1) of FOIA , as it has already confirmed that some information, in relation to the request, is held. Therefore, he will proceed to consider if the Cabinet Office is entitled to rely on section 12(1) of FOIA.

¹ <https://discovery.nationalarchives.gov.uk/details/r/C14134302>

Reasons for decision

Section 12 cost of compliance

10. 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 cost limit.
11. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can make a notional charge of a maximum of £25 per hour to undertake work to comply with a request; 24 hours work in accordance with the appropriate limit of £600 set out above, which is the limit applicable to the Cabinet Office.
12. 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.
13. 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/20017/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence."
14. 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.
15. Where a public authority claims that section 12 of FOIA is engaged, it should, where reasonable, provide advice and assistance to help the complainant.

The Complainant's position

16. The complainant is "puzzled" by the Cabinet Office's responses, for they are aware that it holds "a document that would contain the information I was looking for", yet its responses suggest that it "didn't even look inside this typed diary".

The Cabinet Office's position

17. In its submissions to the Commissioner, the Cabinet Office explained that as the complainant did not provide any indication of the subject of the communication they were interested in, it "cannot solely rely on searching Mrs Thatcher's diary for records of all these communications", as the records of each Prime Minister's administration are filed by subject matter.
18. It further explained that the diaries are incomplete as they would not necessarily record either "impromptu telephone calls or informal meetings at international events". It further explained that it is likely some information is recorded in an appropriate subject file such as UK-US trade.
19. The Cabinet Office explained that it holds more than 300 files that cover the period specified by the complainant. If it excluded those that are unlikely to hold relevant information, it would leave at least 50 files that would need to be searched. It also explained that it holds a large number of extracts which could also contain information within scope of the request.
20. It estimated an average of one hour to search each file, and taking into account the time already taken to identify the relevant files to search, it was clear it would exceed the appropriate limit.

The Commissioner's decision

21. The Commissioner acknowledges the confusion the complainant has experienced. However, he is satisfied that, from the information provided, that even if the estimate was halved, it would still exceed the cost limit to comply with the request.
22. The Commissioner's decision is that the Cabinet Office was entitled to apply section 12(1) of FOIA to the request.

Section 16-Advice and assistance

23. Section 16(1) of FOIA provides that a public authority should give advice and assistance to a person making an information request.

24. In its internal review response, the Cabinet Office explained to the complainant that their request was very broad, and suggested the request could be refined by specifying a particular subject for example, by individual countries.
25. Furthermore, after issuing its internal review response, the Cabinet Office contacted the complainant to ask if they wanted their internal review request to be treated as a new request. The Commissioner is unsure as to whether the complainant has taken the Cabinet Office up on this offer.
26. The Commissioner is satisfied that the Cabinet Office met its obligations under section 16(1) of FOIA.

Procedural matters

27. Section 17(5) of FOIA requires a public authority, relying on section 12(1), to issue a response refusing the request within 20 working days. The Commissioner notes that the Cabinet Office did not rely on section 12(1) to refuse the request within 20 working days and therefore finds that it breached section 17(5) in responding to the request.

Other matters

28. There is no obligation under FOIA for a public authority to provide an internal review process. However, it is good practice to do so and, where an authority chooses to offer one, the section 45 Code of Practice sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
29. In this case the complainant requested an internal review on 13 November 2022 and the Cabinet Office provided the outcome of its review on 27 January 2023, over 50 working days later. The Commissioner reminds the Cabinet Office of the Code of Practice and urges it to respond in a timely manner.

Right of appeal

30. 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

31. 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.
32. 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

Susan Duffy
Senior Case Officer
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