

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2018

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested details of the amounts that the Cabinet Office has spent on consultancy services.
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on Section 21 to withhold the requested information.
3. The Commissioner does not require the Cabinet Office to take any further steps.

Request and response

4. On 29 November 2017, the complainant wrote to the Cabinet Office and requested information in the following terms:

"(1) Please state the amount your department has spent with consultancy firms in each of the last five financial years and the current financial year to date.

"(2) Please provide a breakdown of this figure by the amount spent with each firm, for each year.

"Please also give a description of what each individual spend was for."

5. The Cabinet Office responded on 29 December 2017. It stated that it did hold the information requested, but refused the request citing Section 12 (Cost exceeds the appropriate limit).

6. On 1 January 2018, the complainant wrote to the Cabinet Office again, stating:

"Your transparency data referenced has a code listing 'consultancy services' as an option. I am happy to limit my request to these figures for the period of my request.

"Please note, that the monthly release referenced is not reasonably accessible under the meaning of the FOIA. It would require me to go through hundreds of excel documents and extract information manually. The Cabinet Office would not have to, as it holds the original database from which the information was produced, meaning section 12 could not be applied as a report would be easy to extract along the lines of my request.

"As First Tier Tribunal decision EA/2007/0110 Christopher Ames v Information Commissioner notes, it is highly unlikely that section 21 could be relied upon to exempt information if large amounts of searching would be required by an applicant, as there would be in this case."

7. The Cabinet Office treated the above correspondence as a request for a review of the way it handled the initial request for information. It completed its review on 2 February 2018 and upheld its decision that complying with the request would exceed the cost limit.

Scope of the case

8. The complainant contacted the Commissioner on 21 February 2018 to complain about the way his request for information had been handled.
9. The complainant subsequently clarified that he only wished the Commissioner to consider whether his request of 1 January 2018 ("the January Request") engaged the cost limit.
10. During the course of the Commissioner's investigation, confusion arose as to the scope of the January Request. The Cabinet Office sought clarification from the complainant and, as a result, revised its position. It now confirmed that the request could be responded to without engaging the cost limit, but refused to provide the information – relying on Section 21 (reasonably accessible) to do so.
11. The scope of this case is to determine whether the information requested in the January Request is reasonably accessible to the requestor, hence the following analysis covers the citing of the exemption provided: section 21 of the FOIA.

Reasons for decision

12. Section 1(1) of the 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. Section 8(1) of the FOIA states:

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.*

14. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

15. Section 21 of the FOIA states that:

- (1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.*
- (2) For the purposes of subsection (1)—*
 - (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and*
 - (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.*

The Cabinet Office's position

16. The Cabinet Office has argued that the requested information is reasonably accessible to the complainant. It states that it publishes its

spend data monthly, that all the requested information is contained within these datasets and that the datasets can be manipulated relatively easily to isolate the requested information.

17. It accepts that the complainant will need to search through several datasets to extract the information that he is seeking but states that it still believes the requested information to be "reasonably accessible" to the complainant.
18. It also notes that, due to changes in its financial systems, the older data could not be produced any more easily from its internal systems than from going through the monthly datasets.

The complainant's position

19. The complainant accepts that the information he has requested is included within the datasets, but he argues that is not "reasonably accessible" to him because of the time and effort involved in extracting the specific information he is seeking from the large datasets produced by the Cabinet Office.
20. He has cited the Information Tribunal (as it was at the time) judgement in *Ames v Information Commissioner*¹ (EA/2007/0110) which stated, in essence, that information would not necessarily be regarded as reasonably accessible if a requestor had to search through large amounts of irrelevant information to locate the exact information they were seeking.
21. The complainant further argues that as the Cabinet Office holds the aggregated data from which the monthly datasets are produced, it could provide the information much more easily to him than if he were required to manipulate the datasets himself.
22. In essence the complainant accepts that the information is "accessible" to him, but not "reasonably" so.

¹ <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i122/Ames.pdf>

The Commissioner's position

23. The Commissioner's view is that the complainant has misunderstood the meaning of Section 21 and that the requested information is reasonably accessible to him.
24. Whether or not the Cabinet Office could produce the information more easily is not relevant to the issue of whether it is reasonably accessible to the requestor. The FOIA says that information must be "reasonably accessible" to the requestor for section 21 to apply – not that it must be equally as accessible to the requestor as it is to the public authority.
25. The Commissioner considers that the purpose of the section 21 exemption is to protect the scarce resources of public authorities by shielding them from replying to requests for information which the requestor could have found elsewhere. It also acts as an incentive for public authorities to be proactive in publishing information as part of their publication schemes.
26. The complainant has cited the judgement in *Ames* in support of his arguments. However the issue in *Ames* was that the public authority (coincidentally, also the Cabinet Office) had directed the requestor to a website containing hundreds of documents, without setting out to him exactly where the precise information he was seeking could be found (indeed, the Tribunal further found that the information was not, in fact, contained on the website). The issue was the time spent *searching* for the requested information, not the time spent *manipulating* it.
27. The issues here are different: all parties agree that the requested information is contained within the datasets and that the complainant knows where the datasets can be found. The issue at hand is whether the manipulation, of those datasets, that would be required to produce the requested information is so onerous that it means the requested information is not reasonable accessible to the complainant.
28. The Commissioner considers that a better precedent against which to assess this complaint would be *Benson v Information Commissioner*² (EA/2011/0120). In that case, the requestor appealed the Commissioner's decision (that section 21 was engaged) on the basis that the email addresses that he had requested were strewn across multiple pages of the public authority's website and would require considerable time to collate into a complete list.

²[http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i628/\[2011\] UKFTT_G RC_EA-2011-0120_2011-11-10.pdf](http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i628/[2011] UKFTT_G RC_EA-2011-0120_2011-11-10.pdf)

29. The Tribunal in *Benson* concluded that:

"The information requested was not said by the Appellant to be difficult for him to find on the website, merely that it was spread across a number of web pages so that he found it inconvenient to harvest and re-use the information. The Tribunal finds that this is not a relevant consideration in relation to the question of whether the information requested was 'reasonably accessible' to the Appellant in this case."

30. The datasets which the Cabinet Office publishes are produced in a commonly-used format (.csv) which can be easily manipulated by a person with a reasonable knowledge of Microsoft Excel or similar spreadsheet software.
31. As a test, a member of the Commissioner's staff (not an IT expert) was able to extract the data which the complainant requested, for a 12 month period, in around 25 minutes. To produce equivalent datasets for the five financial years which the complainant is interested in could therefore likely be achieved in 2-3 hours.
32. Section 21 does require the information to be "reasonably accessible to the applicant." Whilst disclosure under the FOIA should, in most cases, take no account of the identity of the requestor, an exception is necessary in relation to this exemption. A public authority is able to consider the circumstances of the requestor in so much as it affects what information may already be possessed by that individual or whether there are special circumstances which might disadvantage that particular requestor in accessing information.
33. In this case, the circumstances of the requestor encourage the Commissioner to find that the information in question would be reasonably accessible to him. The complainant is a journalist. Even if he himself were insufficiently familiar with Excel to perform the data manipulation, the Commissioner considers it reasonable to expect that there would be others within the complainant's organisation who would be able to assist.
34. The Commissioner accepts that the term "reasonably" does qualify the term "accessible" in the legislation and therefore some consideration does have to be given as to what steps it is reasonable to expect a requestor to take to access information. However, for the reasons given above, she concludes that the information *is* reasonably accessible to the complainant and therefore the Cabinet Office is entitled to withhold the information under section 21 of the FOIA.

Other matters

35. Whilst accepting that the Cabinet Office is entitled to rely on the exemption it eventually cited, the Commissioner considers that the Cabinet Office handled the request poorly.
36. In particular, the Cabinet Office wrongly interpreted the complainant's correspondence of 1 January 2018 as a request for an internal review of his original request of 29 November 2017, when it should have recorded it as a fresh request for information.
37. Having made this mistake, the Cabinet Office then failed to understand the scope of the complainant's January Request properly. This led to the Commissioner's investigation being delayed unnecessarily in looking at an exemption (section 12) which should not have been applied in the first place.
38. Finally, by failing to recognise the January Request as a fresh request, the Cabinet Office failed to offer the complainant the opportunity to seek an internal review of the refusal notice. Had a thorough internal review been carried out, some, if not all, of the issues mentioned in this Notice might have been resolved without the Commissioner's intervention.

Right of appeal

39. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

40. 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.
41. 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

Ben Tomes
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