

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 July 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 2011 England riots. 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(2) of FOIA. The Commissioner also finds that the Cabinet Office complied with its obligations under section 16 to offer advice and assistance.
3. The Commissioner does not require the Cabinet Office to take any steps.

Request and response

4. On 18 August 2021, the complainant made the following request for information to the Cabinet Office:

"I wish to see any reports, reviews and research relating to the 2011 England riots produced by the Prime Minister's Office during 2011 and 2012."

5. The Cabinet Office responded on 16 September 2021. It stated that it might hold information within the scope of the request, but that the cost of searching all potentially relevant digital and physical files and folders for information would exceed the cost threshold of £600 for central government public authorities. In accordance with this finding, the Cabinet Office issued a section 12 refusal notice in reply to the complainant's request for information. The Cabinet Office advised that it

would be unable to comply with the request unless the complainant could relate the information sought to a definite context such as a particular policy or region or a notable event or initiative. The Cabinet Office also advised that if it did hold any information, it may be subject to one or more of the exemptions contained in FOIA.

6. The Cabinet Office upheld its initial application of section 12 of FOIA via internal review on 2 December 2021.

Scope of the case

7. The complainant contacted the Commissioner on 2 December 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 Commissioner considers the scope of this case to be to determine if the Cabinet Office has correctly cited section 12(2) of FOIA in response to the request. The Commissioner has also considered whether the Cabinet Office met its obligation to offer advice and assistance, under section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

11. Section 12(1) of the 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 the 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.
13. The Cabinet Office relied on section 12(2) in this case.
14. 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.

15. 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.
16. 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.
17. 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 in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, 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.
18. 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.
19. 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?

20. Although the Cabinet Office did not provide any calculations for the cost of compliance it did state that there were roughly 2900 physical and digital files, folders and records that could contain information relevant to the request. From this figure, the Cabinet Office would need to spend no more than 30 seconds assessing each record to identify whether relevant information was held. The Cabinet Office stated that it was unable to do so within the cost limit, which amounted to a submission that an average of 30 seconds per record was insufficient time to consider each file. Given that the request covers potentially lengthy reports, reviews and research and that a large proportion of the records are kept in physical archives, thus introducing additional handling time, the Commissioner accepts that it would take more than 30 seconds to assess each file to determine whether the information was held in scope of the request.
21. The Cabinet Office's initial response and internal review could have provided more explicit detail to the complainant about how it had concluded that it would exceed the appropriate cost limit to determine whether it held information in scope of the request. Nevertheless, based on the information provided in the internal review, the Commissioner was satisfied that a decision could be reached without seeking further submissions from the Cabinet Office.
22. On the basis of the information provided, the Commissioner considers that the Cabinet Office concluded reasonably that it would take more than the 24 hours / £600 limit to identify whether it held information relevant to the request. The Cabinet Office was therefore correct to apply section 12(2) of FOIA to the complainant's request.

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

23. Section 16(1) of 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).

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

24. The Commissioner notes that the Cabinet Office advised that it would be unable to comply with the request unless the complainant could reduce the time frame and focus on a specific aspect of the riots, or could relate the information sought to a definite context such as a particular policy or region or a notable event or initiative. The Cabinet Office also advised that if it did hold any information, it may be subject to one or more of the exemptions contained in FOIA. The Commissioner is therefore satisfied that the Cabinet Office met its obligations under section 16 of FOIA.

Right of appeal

25. 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@justice.gov.uk

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

26. 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.
27. 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

Claire Churchill
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