

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 July 2023

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information about the National Disability Strategy. The Cabinet Office refused the request as it considered that compliance with it would exceed the cost limit under section 12 FOIA.
2. The Commissioner's decision is that the Cabinet Office has correctly cited section 12(1) FOIA in response to the request. It has also complied with its duty to provide advice and assistance in line with the requirements of section 16 FOIA.
3. The Commissioner does not require the Cabinet Office to take any steps.

Background

4. The National Disability Strategy (NDS) was published in July 2021.
5. In January 2022, the High Court ruled the strategy unlawful, based on the consultation process.
6. On 13 June 2022, the Government applied for permission to appeal to the Court of Appeal and, in the meantime, some of the policies in the strategy were paused.
7. In November 2022, the Government was granted permission to appeal.
8. On 11 July 2023, the Court of Appeal overturned the original High Court declaration. The Commissioner understands that this means that NDS and the consultation were lawful.

9. The Government has said it will provide further details to Parliament in September 2023 about the implementation of the NDS.¹

Request and response

10. On 2 February 2022 the complainant requested information in the following terms:

“Under the Freedom of Information Act 2000, I would like to request a copy of all documentation (including reports) reviewing the UK Government’s progress towards achieving aims, goals and priorities set out in its National Disability Strategy, published in July 2021.”

11. The Cabinet Office issued a refusal notice on 28 February 2022 and cited the cost limit exemption under section 12 FOIA. The Cabinet Office also provided some advice and assistance under section 16 FOIA about how the complainant might refine the request to bring it within the cost limit.
12. The complainant requested an internal review on 2 March 2022.
13. The Cabinet Office provided the outcome of that review on 17 March 2022. The Cabinet Office maintained reliance on the cost limit at section 12 FOIA and repeated its advice and assistance under section 16 FOIA.

Scope of the case

14. The complainant contacted the Commissioner on 20 March 2022 to complain about the way the request for information had been handled.
15. The Commissioner considers the scope of this case to be to determine if the public authority has correctly cited section 12(1) FOIA in response to the request. He has also considered whether the Cabinet Office complied with its duty to provide advice and assistance under section 16 FOIA.

¹ <https://commonslibrary.parliament.uk/research-briefings/cbp-9599/>;
<https://www.gov.uk/government/news/government-reveals-plans-to-improve-disabled-people-s-lives>

16. As is the practice in a case where a public authority has cited the cost limit under section 12, on 16 January 2023 the Commissioner asked the Cabinet Office to provide a more detailed explanation of its cost estimate. The Cabinet Office responded to the Commissioner on 26 June 2023.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

17. Section 12(1) 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.
18. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for public authorities such as the Cabinet Office.
19. 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) FOIA effectively imposes a time limit of 24 hours for the Cabinet Office to deal with this request.
20. 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.
21. 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".

22. Section 12 FOIA 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 the public interest in compliance.
23. Where a public authority claims that section 12 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 FOIA.

Would the cost of compliance exceed the appropriate limit?

24. During the course of the Commissioner's investigation the Cabinet Office confirmed that it remained of the view that compliance with the request would exceed the cost limit.

25. The Cabinet Office advised the Commissioner that the information request was broad:

"It asks for [Cabinet Office's emphasis] **'all documentation'** (including reports) reviewing the UK Government's progress towards achieving **'aims, goals and priorities'** set out in its National Disability Strategy'. This could potentially cover a very wide range of material. The published strategy was 121 pages long and included a very broad range of 'aims', 'goals' and 'priorities' cutting across numerous policies and departments across government. Seeking all and any documentation reviewing progress on any of these would include formal reports, but also other more general information including correspondence and emails. Simply seeking everything regarding such a broad range of points within the entire strategy is self-evidently a very wide request."

26. In addition, the Cabinet Office noted that the six month timeframe of the request was a 'significant period of time' saying:

"...it should also be noted that the request is further burdensome in light of the time frame it covers. The request was submitted on 2 February 2022, six months after the publication of the strategy. This would be a significant period of time to search for, particularly when using the numerous potential search terms that might be relevant for the 'aims', 'goals' and 'priorities' of the strategy".

27. Further, the Cabinet Office explained that the wording of the request includes the work of a large number of teams within the Cabinet Office who would all need to search their records for relevant information. The Cabinet Office told the Commissioner:

"There is no single central repository for all potential information being sought by the requester. The Strategy covers over 100 separate

policies and the following teams within the Cabinet Office, at least, would need to search for any information in scope:

- a. The Equality Hub:
 - i. Disability Unit
 - ii. Race Disparities Unit
 - iii. Government Equalities Office
 - iv. Social Mobility Commission
 - b. Economic and Domestic Affairs Secretariat
 - c. No.10
 - d. The Elections Division
 - e. Public Appointments Systems, Propriety & Ethics
 - f. Civil Service HR
28. Further, the Cabinet Office explained that it would have “difficulty in formulating a complete list of the totality of searches that would need to be conducted to find and identify all of the information in scope” because “ ..there are of course definable search terms that officials could use to conduct searches, but the volume and breadth of those searches based on the wording of the request inhibits the ability to identify a full and easily searchable list within cost limits under the Act. Therefore there is no single short list of search results the Cabinet Office can provide to set out and estimate the length of time it would take to respond to the entirety of the complainant's request”.
29. The Cabinet Office state it could only provide a ‘speculative’ cost estimate - because of the breadth of the request, and the difficulty in formulating a complete list of the totality of searches that would need to be conducted to find and identify information in scope, it was difficult to formulate a precise calculation of the costs of complying with this

request. The Cabinet Office noted that the ICO has accepted this approach in FS50768806² and FS50768657³.

30. The Cabinet Office explained that overall an official would need to coordinate this search work. The official would need to identify all teams that might potentially hold information in scope of the request and define the search terms - this is estimated to take a working day (7 hours) due to the breadth of the strategy and the request. Next, the official would need to instruct searches, gather results and assist in concluding what was in or out of scope of the request.
31. A speculative costs estimate was prepared for the Commissioner based on a small sample of records and the Cabinet Office explained as follows:
- The Disability Unit's cross government lead conducted a search of emails (using the title of the Strategy) received for the 6 month period after the launch of the Strategy and this produced 3,663 results;
 - Not every email and attachment in the 3663 results will be directly related to request so they would need to be manually checked to see what was in or out of scope of the request. The terms used in the original request ('aims', 'goals' and 'priorities') would not assist with this search. Using them would likely generate more results, and using them as a filter for the 3,663 emails would equally not guarantee they were in scope, or that those results filtered out would be out of scope.
 - At a conservative average of 2 minutes an item, the 24 hour limit would be far exceeded in this sample search alone.
 - The Cabinet Office acknowledged these results and searches could be further refined, but said that the speculative sample

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2614079/fs50768806.pdf>

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2614285/fs50768657.pdf>

gives an example of why the request, as worded, would require very burdensome searches to answer.

32. Therefore, to identify and extract the relevant information held by a member of one team (the Disability Unit's cross government lead) in the 3,663 results, the Cabinet Office estimated it would take 122 hours (plus it is noted the seven hours for the co-ordinating official set out above). Further to conducting a sampling exercise for the Disability Unit, it is noted by the Cabinet Office that nine other teams (as set out above) would, in addition, also need to search for potential information.
33. The Commissioner is not convinced that the Cabinet Office's estimate of a blanket two minutes per email is one that can be considered particularly realistic or reasonable. In this case, the Cabinet Office has not provided the Commissioner with sufficient details of a timed sampling exercise nor of the specific actions and steps that would need to be undertaken for each email to solidify the estimation of two minutes per email.
34. It is noted that the Cabinet Office does acknowledge that the results of its speculative estimate 'could be further refined.' However, the Commissioner expects the estimates provided to him to be based on cogent evidence and this usually involves the public authority conducting an adequate sampling exercise before responding to the Commissioner, even if it is a speculative one.
35. In such circumstances therefore, the Commissioner would have expected to see the Cabinet Office further refine its estimate. For example, one way of doing this would be to take account of the fact that the 3,663 emails could be further sorted into categories as follows:
 - Category A: covered roughly 50% of the emails and were relatively straightforward to review: 30 seconds per email
 - Category B: covered roughly 40% of the emails and required more consideration: 90 seconds per email;
 - Category C: covered roughly 10% of emails and were more complex or lengthy: 2 minutes per email.
36. If this were the case, the Commissioner calculates the estimate as follows for the 3,663 emails:
 - Category A: 50% of the emails: 1831 x 30 seconds per email = 15 hours
 - Category B: 40% of the emails: 1465 x 90 seconds per email = 21.9 hours

- Category C: 10% of emails: 366 x 2 minutes per email = 12.2 hours.
37. In total, therefore, to identify and extract the relevant information held by the Disability Unit's cross government lead in the 3,663 results, the Commissioner considers it may more realistically take 49 hours.
38. The Commissioner recognises, however, that the request is a broad, catch-all one for 'all documentation.' Therefore he accepts that the Cabinet Office would need to undertake further searches in addition to the one described above in the nine additional teams that might potentially hold information in scope of the request. Further, the Commissioner accepts that there is no single short list of search terms the Cabinet Office can use as the broad wording of the request inhibits its ability to identify an easily searchable list of key words.
39. The Cabinet Office are expected to search those areas where it is reasonable to expect that the information (if it existed) would be found. The broader the request, the more areas they are likely to be required to search. Case law in this area confirms that the Cabinet Office are required to search for all the information it holds – not just the information which can most easily be found or the information it thinks is most relevant to the request.
40. In conclusion, having reviewed and considered the Cabinet Office's estimate and responses, the Commissioner accepts that the situation is more complex, and the work required by the Cabinet Office more involved, than it would initially appear. Whilst the Commissioner considers that the Cabinet Office's estimate of two minutes per email may be inflated, given the breadth of the information involved, the difficulty of setting out a short list of terms to adequately conduct searches to answer the request, the manual checking of information that is required, and the fact that ten teams potentially hold information, he is satisfied in the circumstances, even if the two minute cost estimate was refined as set out above, the request will be very difficult to answer within the cost limit.
41. The Cabinet Office can demonstrate reasonably and cogently that to comply with the complainant's request would exceed the cost limit. The Commissioner notes that, even if the Cabinet Office's speculative cost estimate was refined as described above, it would still be far in excess of the cost limit of 24 hours.
42. The Cabinet Office was therefore entitled to apply section 12(1) FOIA to the complainant's request.

Section 16 – advice and assistance

43. Section 16(1) FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request where it would be reasonable to do so. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice⁴ in providing advice and assistance, it will have complied with section 16(1).
44. In general, where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester how their request could be refined or reduced to potentially bring it within the cost limit.
45. The Commissioner notes that the Cabinet Office suggested ways the complainant may wish to consider refining the request on 28 February 2022, and again on 17 March 2022. It suggested that the request could be refined by specifying the types of documents that the complainant required or by specifying the particular priorities in the NDS he was interested in.
46. The Commissioner considers these were appropriate responses in the circumstances given the broad nature of the original request. He is therefore satisfied that the Cabinet Office met its obligation under section 16 FOIA.
47. Despite the suggestions provided by the Cabinet Office, the complainant advised the Commissioner that he chose not to revise the request. The Commissioner suggests that they may wish to do so in future.

Other Matters

48. The complainant requested an internal review on 2 March 2022. He said:
“I would like to refer back to the wording of my request which requested “a copy of all documentation (including reports) reviewing the UK Government’s progress towards achieving aims, goals and priorities set out in its National Disability Strategy”.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

The wording of this request alludes to progress reports or documentation which consider the effectiveness of the strategy so far. Therefore, I do not believe the Cabinet Office would need to approach the different government departments to obtain the information I have requested because, if such a progress report exists, that process would have already been completed in order to compile such a document.

As a result, I would appreciate the request being carried out again to search for any progress reports or documentation providing an overview of each department's progress on the National Disability Strategy. If documents consolidating the achievements of each department into one document is not available, then I would appreciate the Cabinet Office declining my request and saying this information is not held by them".

49. When the complainant complained to the ICO on 20 March 2022, he said the Cabinet Office did not acknowledge his question above in the internal review response about whether a progress report exists.
50. During the Commissioner's investigation, he asked the Cabinet Office to respond to the complainant's query. The Cabinet Office said:

"we note we failed to address this particular point as part of the internal review. The Cabinet Office remains of the view that the requester, in light of the FOI and Internal Review responses, could have submitted a refined or clarified request and that this would have been more efficient than trying to seek a resolution through further complaints. However, it would clearly have been helpful for the Cabinet Office to have addressed the additional question raised by the requester in their complaint."
51. The Cabinet Office confirmed to the Commissioner that:

"In regards to the specific question about a consolidated and central record of all achievements in regards to the aims, goals and priorities of the strategy, we can confirm that there was no central singular record of the information being sought and this is why section 12 was cited in regards to the original wording of the request in the Cabinet Office's original response and its Internal Review."
52. The Commissioner welcomes the fact that the Cabinet Office has now provided this additional information and notes that it is good practice to respond thoroughly to internal review requests as it may resolve matters for the requester and reduce the likelihood of them making a complaint to the Information Commissioner.

Right of appeal

53. 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

54. 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.
55. 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

**Sarah O’Cathain
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