

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 May 2023

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

Decision

1. The complainant requested information relating to the Lockerbie bombing.
2. The Commissioner's decision is that the Cabinet Office was entitled to apply section 12(2) of FOIA to the aggregated requests, and he is satisfied that the Cabinet Office met its obligations under section 16(1) to offer advice and assistance.
3. No steps are required.

Request and response

4. In October and November 2022, the complainant submitted three separate, but related, requests for information to the Cabinet Office. These are set out in Annex A to this Notice.
5. On 24 November 2022, in response to request 1, the Cabinet Office told the complainant that they had conducted searches of electronic and paper records and had established that the information requested in request 1 was held by the Cabinet Office but cited the exemption in section 12 of FOIA (cost limit) as the reason why the request was refused.

6. On 23 December 2022, the Cabinet Office aggregated the requests in Annex A and refused to comply with them, relying on section 12(2) of FOIA as its basis for doing so.
7. On 17 March 2023, on internal review, the Cabinet Office upheld the application of the section 12(2) exemption.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

8. Section 1 of 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.”
9. Section 12(1) and section 12(2) are two separate exemptions. Section 12(1) exempts a public authority from complying with a request for information if to do so would exceed the appropriate limit. However, under section 12(2) a public authority is not required to comply with section 1(1) if the cost of establishing whether or not it holds the requested information would exceed the appropriate cost limit.
10. The appropriate cost 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.
11. 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 FOIA effectively imposes a time limit of 24 hours for the Cabinet Office to deal with the requests.
12. As mentioned above, in its response dated 24 November 2022, the Cabinet Office told the complainant that they had conducted searches of electronic and paper records and had established that the information requested in request 1 was held by the Cabinet Office.
13. In its response dated 23 December 2022, the Cabinet Office cited section 12(2) stating that:

"Section 12(2) of the Freedom of Information Act relieves public authorities of the duty to comply with section 1(1)(a) of the Freedom of Information Act if the cost of complying would exceed the appropriate limit. The appropriate limit has been specified in regulations and for central Government this is set at £600. This represents the estimated cost of one person spending 3 ½ working days in determining whether the Department holds the information, and locating, retrieving and extracting it."

14. In its internal review response dated 17 March 2023, the Cabinet Office stated:

"The Cabinet Office has carefully reviewed the handling of your request and consider that the exemption at section 12(2) was correctly applied to each of the aggregated requests."

15. It appears that the Cabinet Office relied on section 12(1) in respect of request 1 but then changed its position to rely on section 12(2) of FOIA in light of the further responses which it then aggregated. Therefore, the Commissioner's analysis will consider whether the Cabinet Office was entitled to rely on section 12(2) in order to refuse the aggregated responses.

Was the Council entitled to aggregate the requests?

16. Regulation 5 of the Fees Regulations states:

"(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which—

(a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and

(b) those requests are received by the public authority within any period of sixty consecutive working days.”

17. There is no doubt that the requests were all made by the complainant. The requests were also received by the Cabinet Office within a period of sixty working days.
18. The Commissioner’s accepts that the phrase ‘to any extent’ represents a fairly wide test. However, the Commissioner’s guidance also notes ‘requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested.’¹
19. The Commissioner acknowledges that the requests relate to different aspects of the Lockerbie bombing and both cover a broad range of information. However, the Commissioner is satisfied that the requests relate, to some extent, to similar information and therefore the Cabinet Office was entitled to aggregate the requests in accordance with section 12(4) of FOIA.

Would the aggregated costs of the requests exceed the appropriate limit?

20. When considering whether section 12(2) applies, the authority can only take into account certain costs, as set out in Fees Regulations. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. 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”.
21. When citing section 12, the Commissioner expects a public authority to provide a reasonable estimate as to how long compliance with the request would take. This estimate should be based on cogent evidence,

¹ [costs of compliance exceeds appropriate limit.pdf \(ico.org.uk\)](#)

on the quickest method of gathering the requested information and usually will involve the public authority conducting a sampling exercise.

22. The Commissioner is unable to judge whether the Cabinet Office's assertion that to comply with the requests would take more than 24 hours is excessive, as the Cabinet Office has not completed a sampling exercise or similar.
23. The Commissioner recognises that there will be occasions (such as this one) where a request is so broad that it would be impossible to quantify the total cost of compliance – but that does not mean that the public authority should simply dispense with this part of the process. In such circumstances, the Cabinet Office could simply have picked one part of the request and tried to estimate the cost of searching for that.
24. If a public authority can demonstrate that even a relatively focussed search both would incur a significant cost and would not come close to locating all relevant information (because the public authority would need to carry out similar searches of multiple areas), that will usually be sufficient to demonstrate that the overall cost will exceed the limit. It will not usually be sufficient to simply assert that the cost limit will be exceeded.
25. However, the Commissioner accepts that due to the broad nature of the requests (request 3 in particular is wide-ranging and non-specific), and the volume of potentially relevant information that the Cabinet Office may hold, the quickest method of retrieval appears to be a manual and electronic search of records held across all of the Cabinet Office's systems.
26. Whilst the Cabinet Office has not put forward a figure, the Commissioner is under no doubt that compliance with the aggregated requests would exceed 24 hours.
27. In reaching this decision, the Commissioner is informed by previous Decision Notices where manual searches of large volumes of documents were required:

<https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4023938/ic-208601-y8s7.pdf>

<https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024246/ic-202105-n4z1.pdf>

<https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024255/ic-213327-k9j6.pdf>

<https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4025071/ic-227023-h4c5.pdf>

28. Section 12 FOIA is not subject to a public interest test; if complying with the requests would exceed the cost limit then there is no requirement under FOIA to consider the public interest.
29. The Commissioner is satisfied that the Cabinet Office was entitled to rely on section 12(2) of FOIA to refuse the complainant's requests.

Section 16(1) - advice and assistance

30. 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.
31. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section, it will be taken to have complied with its obligations.
32. The Commissioner accepts that the Cabinet Office has offered advice and assistance to the complainant. For example, on 24 November 2022 the Cabinet office wrote to the complainant as follows:

"You may wish to refine your request by specifying a time frame and specify a particular aspect of the trial you are interested in. You may also wish to request official documents rather than internal correspondence."

And on 17 March 2023, the Cabinet Office offered the following advice:

"In relation to FOI2022/17014 we would suggest you consider narrowing the period it covers to a specific period of six months and specify a particular topic. This is because files will be organised in subject and topic areas. In relation to FOI2022/17018 and FOI2022/17025 we would suggest that you provide the names of the Cabinet Office Ministers and/or officials whose internal correspondence you are interested in."

33. As such, the Commissioner is satisfied that there was no breach of section 16(1) of FOIA.

Right of appeal

34. 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

35. 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.
36. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A

1. 27 October 2022 – Cabinet Office reference FOI2022/15414

"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 am looking for documents and internal correspondence concerning the verdict of the Camp Zeist trial that was announced on the 31st Jan 2001 concerning the bombing of Pan Am 103. I am interested in documents and internal correspondence about this period covering the period of Jan-Mar 2001.

Abdelbaset Megrahi was found guilty of the Pan Am 103 bombing at Camp Zeist on the 31st Jan 2001. He died in Tripoli on the 20th May 2012. His obituary can be found below:

<https://www.bbc.com/news/world-africa-18137896>

I understand that under the act, I should be entitled to a response within 20 working days."

2. 26 November 2022 – Cabinet Office reference FOI2022/17025

Following section 16 of FOIA advice from the Cabinet Office, the complainant refined Request 1 as follows:

"Then let's reduce the time frame to Jan-Feb 2001."

3. 28 November 2022 – Cabinet Office reference FOI2022/17014

"I am writing to you under the Freedom of Information Act 2000 (the FOI Act) to request the following information:

1. Confirmation as to whether letters of immunity were handed out to Libyan government officials and/or citizens during the period 2002 – 2009.
2. If they were, the number of letters of immunity that were sent out.
3. The names of the people who received the letters of immunity (who are now known to be deceased).

For the avoidance of doubt, 'letters of immunity' means any letters that gave assurance to the recipient that they were not of interest to any police force in the UK, and that they would not be arrested should they travel to this jurisdiction. They have the same meaning as the 'on the run letters' sent out to suspected IRA terrorists during the Northern Ireland Troubles, and which were subject to an Inquiry under the Right Honourable Dame Heather Hallett DBE in July 2014.

If the information that I require exceeds the cost of compliance limits identified in Section 12 of the FOI Act and it is not possible for you to provide the information, please provide advice and assistance, under the Section 16 obligations of the FOI Act, as to how I can refine my request."

4. 28 November 2022 – Cabinet Office reference FOI2022/17018

"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 am looking for documents and internal correspondence concerning the guilty verdict at the Camp Zeist appeal of Abdelbaset Megrahi that was announced on the 14th March 2002 over his involvement in the bombing of Pan Am 103. I am interested in documents covering the period of January-March 2002.

Abdelbaset Megrahi was found guilty of the Pan Am 103 bombing at Camp Zeist on the 31st Jan 2001. He died in Tripoli on the 20th May 2012. His obituary can be found below:

<https://www.bbc.com/news/world-africa-18137896>"