

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 April 2013

**Public Authority:** Department for Transport  
**Address:** Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

### Decision (including any steps ordered)

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1. The complainant requested copies of correspondence with and information relating to meetings with the Prince of Wales dating from 1995 to 1998. The Department for Transport (DfT) stated that it was unable to confirm or deny whether it held this information without incurring costs in excess of the limit, and so refused the request under section 12 of the FOIA.
2. The Commissioner's decision is that the cost estimate made by the DfT was reasonable and so it was not obliged to comply with these requests.

### Request and response

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3. On 19 September 2012, the complainant wrote to the DfT and requested information in the following terms:

*"[For the period 1 January 1995 to 1 January 1998]*

1. *Copies of all correspondence between His Royal Highness the Prince of Wales and individual members of the Ministerial team. Please note that I am interested in receiving both sides of the correspondence.*
2. *Copies of all correspondence between employees and / or representatives of his Royal Highness the Prince of Wales and individual members of the Ministerial team.*
3. *A list of all occasions when His Royal Highness the Prince of*

*Wales met with individual members of the Ministerial team. In the case of each meeting can you state the date, the time and the venue. Can you provide a list of all those present including members of the department and representatives of the Prince of Wales. Can you please provide details of the topic(s) under discussion. Can you please provide copies of any briefing notes distributed to participants beforehand and / or copies of any paperwork generated as a result of the meeting."*

4. The DfT responded on 15 October 2012. It stated that the requests were refused on cost grounds under section 12 of the FOIA.
5. The complainant responded on 17 October 2012 and requested an internal review. The undated response to the internal review stated that the refusal of the requests under section 12 of the FOIA was upheld. The point was made to the complainant at this stage that the estimate of the cost of his requests was well beyond the appropriate limit.

### **Scope of the case**

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6. The complainant contacted the Commissioner by letter dated 27 November 2012 to complain about the refusal of his information requests. As well as disagreeing that the cost of his requests would exceed the appropriate limit, the complainant also referred to a decision of the Upper Tribunal (Administrative Appeals Chamber)<sup>1</sup> which found that the public interest favoured the disclosure of information in relation to which section 37(1)(a) (communications with the Royal Family) of the FOIA was engaged; specifically, correspondence between the Prince of Wales and several government departments. The complainant believed that the public interest recognised by the Tribunal would also favour the disclosure of the information he had requested.
7. During the investigation of this case it was explained to the complainant that this Tribunal decision was not relevant owing to section 37(1)(a) having been amended so that it is no longer qualified by the public interest in relation to certain information. This amendment means that the class of information requested by the complainant – communications

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<sup>1</sup> <http://www.judiciary.gov.uk/media/judgments/2012/evans-v-information-commissioner>

with the heir to the Throne – has effectively been removed from the sphere of the FOIA. Therefore, even if it were the case that the requests could be complied with without exceeding the cost limit, disclosure of the information would be highly likely to be refused under section 37(1)(a).

8. The complainant made identical requests to those set out above to a number of other central government departments, all of which were also refused and in connection with all of which the complainant also made complaints to the ICO. In light of the amendments to section 37(1)(a) and that the cost estimates made by all of the departments were far in excess of the cost limit, the complainant agreed that only one decision notice in connection with section 12 would be issued.
9. All of the government departments in question gave similar reasoning in explanation for their cost estimates. Those departments, as well as the complainant, can take the analysis in this notice as giving an indication of what the decision of the Commissioner would have been had it been necessary to issue decision notices in any of the other cases.

## **Reasons for decision**

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### **Section 12**

10. Section 12 of the FOIA provides that a public authority is not obliged to comply with an information request where the cost of doing so would exceed the appropriate limit. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations) sets the limit at £600 for central government departments. The fees regulations also provide that the cost of a request must be calculated at the rate of £25 per hour, giving an effective time limit of 24 hours.
11. The tasks that can be taken into account when forming a cost estimate are as follows:
  - determining whether information is held
  - locating information
  - retrieving information
  - extracting information

The role of the Commissioner here is to reach a conclusion as to whether the estimate made by the DfT of the time that would be spent

on the above tasks in order to comply with these requests was reasonable.

12. Section 12(2) provides that a public authority is not obliged to comply with the duty imposed by section 1(1)(a) where the costs of doing that alone would exceed the limit. In this case the DfT has been specific that it is citing section 12 in relation to section 1(1)(a). In other words, it estimates that the time that it would be necessary to spend in ascertaining whether it holds information falling within the scope of the requests would exceed the appropriate limit.
13. The fees regulations are also specific as to the circumstances in which a number of requests can be aggregated for the purposes of estimating the cost of compliance, stating that this is permissible where *"two or more requests...relate, to any extent, to the same or similar information"*. The view of the Commissioner is that it is clear that the three requests made by the complainant in this case do relate to similar information and so it was permissible for the DfT to aggregate these when arriving at its cost estimate.
14. Turning to the explanation given by the DfT for its cost estimate, in the refusal notice the DfT stated that it had verified that the information requested was not held centrally. The cost estimate referred to the time that would be taken to determine whether information falling within the scope of the requests was held elsewhere within the department.
15. When asked by the Commissioner's office to explain its cost estimate, the DfT first gave general reasoning as to why it would be extremely time consuming to establish whether information falling within the scope of the requests was held:
  - *"The fact that DfT does not have a dedicated file for correspondence or meetings with the Prince of Wales (or his representatives). Any such correspondence (or information about meetings) would not be filed centrally, e.g., by Ministers' Private Offices, but would instead be kept on files which cover the policy area to which any such correspondence (or meetings) related"*.
  - *"The fact that, in framing his request, the applicant did not limit his request to correspondence on any specific subject matter(s)"*.
  - *"The age of correspondence which the request sought (1 January 1995 to 1 January 1998). This timeframe pre-dates the Department's move to electronic filing, meaning that any relevant correspondence (or meeting notes) would be held as paper records."*
16. The DfT stated that it held approximately 533,000 paper files in *"its recognised file plan"*. It made the point that, even if it could discount

95% of these paper files on the basis that there was no possibility that these could hold information falling within the scope of the request, this would still leave 26,650 paper files that it would be necessary to search.

17. In support of this figure of 533,000 paper files, the DfT supplied to the ICO a spreadsheet giving monthly statistics for the number of DfT paper files held. The most recent figure on this spreadsheet was approximately 533,000. Whilst the relevant figure would be that for the month in which the request was made, that figure – for September 2012 – was actually higher than 533,000.
18. As to how long it would take per paper file to establish whether each of these held information of relevance to the request, the DfT stated that it had carried out a sample search of 10 files. The average number of pages within these files was 299. It stated that it took an average of 6.4 minutes per file to establish whether they contained any information falling within the scope of the request.
19. Even if, once again, 95% of the 533,000 paper files could be excluded, at an average of 6.4 minutes per paper file, searching the remaining 5% of paper files would still mean that the estimate of the amount of time spent on establishing whether relevant information was held would have been in the thousands of hours.
20. As to whether this is a reasonable estimate, the approach that the Commissioner takes to section 12 is that a cost estimate must be sensible, realistic and supported by cogent evidence. The DfT has supplied evidence in support of its estimate in the form of the spreadsheet showing the total number of files held. It has also taken a sensible approach in that it has not relied on it being necessary to search every file held, rather it has accepted that some of these could be discounted as possible locations of relevant information and instead focussed on the time that would be taken in searching a small minority of these files. As to the specifics of the estimate, the Commissioner accepts both that time spent searching the paper files for relevant information is a task that falls within those permitted to be taken into account by the fees regulations, and that 6.4 minutes is a realistic estimate of time spent to search files with an average of 299 pages.
21. Prior to reaching a conclusion, it is necessary to address whether the process described by the DfT was the most efficient possible means of establishing whether relevant information was held, or whether there may have been alternative and less onerous means of doing this. In correspondence with the Commissioner's office the DfT addressed this point and stated that there was no 'short cut', primarily due to this information being held in paper form. The Commissioner accepts this point.

22. An alternative method of locating information that has arisen in previous cases is the existing knowledge held by staff members. However, in this case the Commissioner is of the view that the passage of time since any relevant information would have been recorded, as well as the likely diffuse nature of the subject matter of any relevant information that may be held, means that this method of locating relevant information is unlikely to apply in this case. The Commissioner accepts the assurance from the DfT that no alternative method of identifying relevant information was available.
23. The overall conclusion of the Commissioner is that the estimate of the DfT that it would cost in excess of the appropriate limit to comply with section 1(1)(a) in relation to these requests was reasonable. The DfT was not, therefore, obliged to comply with the requirement to confirm or deny whether information was held in relation to these requests.

## **Section 16**

24. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. The Commissioner's view is that where a request is refused under section 12 the requester should be given advice and assistance as to how their request could be refined in order to bring it within the cost limit.
25. In this case the requester was given advice in the refusal notice on specifying a particular subject matter, rather than asking for information only by reference to the Prince of Wales. The Commissioner accepts, therefore, that the DfT did comply with section 16.
26. In any event, the Commissioner regards this as academic in this case for two reasons. First, the cost estimate made by the DfT is so far in excess of the limit that it is difficult to envisage how the request could be refined to bring it within the cost limit, whilst still bearing any resemblance to the original request.
27. Secondly, as covered above, the amendment to section 37(1)(a) has rendered the information requested by the complainant subject to an absolute exemption under the FOIA. Therefore, it is highly unlikely that any information that could be located within the cost limit would be disclosed.

## Right of appeal

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28. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

29. 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.
30. 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 .....**

**Graham Smith  
Deputy Commissioner  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**