

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 July 2017

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

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office for all information held on the Slack channel ukgovernmentdigital.slack.com. The Cabinet Office initially refused the request on the basis that it did not hold the requested information for the purposes of FOIA. However, it amended its position and then sought to refuse the request on the basis of section 14(1) (vexatious) because of the burden involved in complying with the request. The Commissioner has concluded that the Cabinet Office can rely on section 14(1) as a basis to refuse to comply with the request.

Background

2. This request focuses on the Cabinet Office's use of an online cloud based collaboration tool called Slack, and in particular the channel ukgovernmentdigital.slack.com. Slack allows users to communicate with each other in a variety of different ways including via public channels, private channels and direct (or private) messages.¹
3. The version of Slack used by the Cabinet Office is the free tier version. This version of the tool has limited functionality. Such limitations include

¹ 'Public channels' are those which all registered users of the particular Slack site – in this case ukgovernmentdigital.slack.com – can access. The term 'public channels' does not mean that the information is in the public domain.

a limited ability to export data. The following data fields can be exported using the free version of the tool:

- message history in channels;
 - links to files shared in channels;
 - archived channels; and
 - integration activity logs.
4. However, the exportable data from the free tier specifically excludes private group history and files, direct message history and files, and edit and deletion logs.

Request and response

5. The complainant submitted the following request to the Cabinet Office on 1 August 2016:

'This is a Freedom of Information Act request. Could you please provide the full history/all information held from the ukgovernmentdigital.slack.com Slack.

This should include messages in both public and private channels, private messages, files shared, archived channels and message edit & deletion logs etc. As you will be aware, this can be achieved through a 'compliance export'

<https://get.slack.help/hc/enus/articles/204897248> .

I am happy for personal data of non-senior persons to be redacted where needed and you will be aware that redaction time will not count towards the cost limit. As this Slack is used across Government departments - I would ask each user to be listed alongside their relevant department and, where possible, job role, including where their name has been redacted.

I would request any redactions be individually annotated or listed with reasons for them. Please let me know if there are any issues, such as any apparent errors or lack of clarity that could make the request difficult to respond to, if you are considering applying any exemptions under the act and wish to discuss or would require the request to be refined for cost purposes.'

6. The Cabinet Office contacted the complainant on 31 August 2016 and explained that his request, sent via gov.uk, was not passed on to the FOI department and therefore it only became aware of his request on 22 August. The Cabinet Office explained that it hoped to be in a position to respond to this request shortly.

7. The Cabinet Office provided the complainant with a response to his request on 20 September 2016. The Cabinet Office explained that no information falling within the scope of the request was held for the purposes of FOIA. This was on the basis that: *'Slack is not used in any official capacity and staff are required to ensure any part of the decision making process made outside of official systems is properly recorded and transferred to official systems.'*
8. The complainant contacted the Cabinet Office on the same day and asked it to conduct an internal review of this request. He disputed the Cabinet Office's position that the requested information was not held for the purposes of FOIA. In support of his position the complainant made the following points:

'The Slack channel is widely, publicly, accepted as being a communications tool operated and used by GDS/Cabinet Office, e.g. "in our crossgovernment Slack channel and email list" <https://gds.blog.gov.uk/2016/04/25/communitiesofpeopleinspiringeachother/>, "The Government Digital Service (GDS) uses Slack [as an official tool of communication] <https://www.gov.uk/servicemanual/agiledelivery/createagileworkingenvironment> and <https://gdstechnology.blog.gov.uk/jointheconversation/> etc.

As you will be aware the Freedom of Information Act makes no distinction between information held on "official systems" and not, see FS50422276 for example, although I would dispute the idea this is not an 'official system' to start with regardless of whether it is on department servers or cloud hosted.

I would also challenge the assertion that "Slack is not used in any official capacity" and would like to see some basis for this claim given that the language GDS etc use publicly seems to be entirely at odds with the statement and it's even in the GDS 'unofficial rules' for new staff as a work communication tool <https://gds.blog.gov.uk/2016/05/25/itsoktosaywhatsok/>.'

9. The Cabinet Office responded on 1 February 2017. The internal review confirmed that no information was held for the purposes of FOIA. The review also explained that:

'The UK Government Slack is the Free tier version, and does not offer the compliance export functions that you refer to in your request, so the data available specifically excludes the information you requested - namely (i) private group history and files; (ii) direct message history and files; and (iii) edit and deletion logs. To use the tools referred to in your request requires the Plus tier, at a cost of approximately \$30,000 USD per annum.'

Scope of the case

10. The complainant contacted the Commissioner on 9 February 2017 to complain about the Cabinet Office's handling of his request. As the quoted correspondence above indicates, the complainant disputed the Cabinet Office's position that it did not hold the requested information for the purposes of FOIA. The complainant was also dissatisfied with the time it took the Cabinet Office to complete its internal review.
11. During the course of the Commissioner's investigation of this complaint, the Cabinet Office amended its position. It accepted that it held some of the information falling within the scope of the request for the purposes of FOIA. However, it argued that to provide this information would prove to be unduly burdensome such that it considered the request to be vexatious and therefore it was now seeking to rely on section 14(1) of FOIA to refuse to comply with the request.
12. The focus of the Commissioner's investigation has therefore been to determine whether the Cabinet Office can rely on section 14(1) to refuse to comply with the request.
13. Following the introduction of section 14(1), the complainant argued that the Cabinet Office had also failed to provide him with advice and assistance, in line with its obligations under section 16(1), to assist him in submitting a refined request that would not be unduly burdensome. The Commissioner has therefore also considered whether the Cabinet Office has complied with its obligations under section 16(1) of FOIA.

Reasons for decision

Section 14(1) – vexatious requests

14. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
15. In the Commissioner's view, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.

16. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is the position adopted by the Cabinet Office in this case.
17. The Commissioner believes that there is a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where:
 - The requester has asked for a substantial volume of information **and**
 - The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the Commissioner **and**
 - Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

The Cabinet Office's position

18. The Cabinet Office confirmed to the Commissioner, as it indicated in its responses to the complainant, that it had an explicit policy that Slack was not one of its official communication channels. Furthermore, the Cabinet Office explained that internal guidance to staff made it clear that any work information that is discussed on Slack should be recorded or summarised into a relevant place on an official system.
19. Nevertheless, the Cabinet Office explained that in response to this complaint it had conducted an audit of the contents of ukgovernmentdigital.slack.com. As part of this audit, conducted in February 2017, the Cabinet Office exported a version of the site containing approximately 85,000 public messages. The audit focused on around 6,000 of these messages from a variety of different channels. As is noted above the version of Slack has limited functionality which means that it could not export the data contained in the private channels nor could it export any direct messages.
20. The Cabinet Office explained that in conducting the audit, it took into account the Commissioner's guidance 'Official information held in private email accounts' and in particular the part of the guidance which explains that:

'Information held in non-work personal email accounts (e.g. Hotmail, Yahoo and Gmail) may be subject to FOIA if it relates to the official business of the public authority. All such information which is held by someone who has a direct, formal connection with the public authority

is potentially subject to FOIA regardless of whether it is held in an official or private email account. If the information held in a private account amounts to public authority business it is very likely to be held on behalf of the public authority in accordance with section 3(2)(b).²

21. The Cabinet Office explained that it also clarified what it understood to be information which would fall within the definition of 'official business'. It explained that for the purposes of this audit it took the term to mean information which forms part of the official record and information which otherwise directly relates to the running of government operations.
22. As a result of the audit the Cabinet Office concluded that few, if any, of the messages would be considered as being suitable for retention as part of the official record. However, it was now of the view that *some* of the information on UKgovernmentslack.com is held for the purposes of FOIA because it would relate to official business.
23. However, the Cabinet Office explained that in its view a request to provide 85,000 messages would be unduly burdensome, primarily because of the manual work needed to prepare such information for release.
24. The Cabinet Office provided the Commissioner with submissions to demonstrate how it believed that the three criteria set out above at paragraph 17 are met. The Commissioner has summarised these submissions below:

The requester has asked for a substantial volume of information

25. The Cabinet Office explained that in April 2017 (at the point it provided its submissions to the Commissioner) Ukgovernmentdigital.slack.com contained more than 308,000 messages. These messages were split between just over 32,000 in private channels, just under 99,000 in public channels and just under 177,000 direct messages between individuals. The Cabinet Office estimated that 400 new messages were added every 24 hours. Albeit, as noted above, the Cabinet Office explained that the free version of Slack being used does not allow for the extraction of private or direct messages.

² https://ico.org.uk/media/for-organisations/documents/1147/official_information_held_in_private_email_accounts.pdf

The authority has real concerns about potentially exempt information

26. The Cabinet Office explained that the public messages contained a blend of discussion on personal and business topics weighed heavily in respect of the former category. It argued that to filter and review each of the public messages concerned in order to determine if they were official information would be extremely burdensome. It would then have to consider the application of exemptions to any messages which it accepted were held for the purposes of FOIA. In relation to the potentially applicable exemptions, the Cabinet Office emphasised that much of the information would be exempt from disclosure on the basis of section 40(2) of FOIA given that it relates to personal rather than business topics. The Cabinet Office also suggested that information may attract the application of sections 35 (formulation and development of government policy), 31 (law enforcement) and 24 (national security) of FOIA.

Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material

27. The Cabinet explained that the vast majority of the messages are not concerned with official business and that any information that was considered to be official business is scattered throughout the messages. It emphasised that there is no way to automate the process of identifying what might be considered to be official business without reading and considering all of the messages. The Cabinet Office noted that whilst the names of some channels may suggest that they only consider social matters, it could be the case that they potentially include official material. Furthermore, the Cabinet Office explained that the process of redacting personal names and details would take some time because names and personal details, as well as appearing before each message, may also be referenced in the message.

The complainant's position

28. The complainant raised a number of concerns in relation to the Cabinet Office's reliance on section 14(1).
29. The complainant argued that in his view *all* of the information held on ukgovernmentdigital.slack.com was held by the Cabinet Office for the purposes of FOIA. He argued that the Commissioner's guidance referred to above was an inappropriate reference point given that Slack is more akin to a business email server of reply-all threads the entire contents of which would ordinarily be held for the purposes of FOIA. The complainant also rejected the Cabinet Office's position that just because some messages are irreverent or chatty in nature does not mean that they are not held for the purposes of FOIA.

30. The complainant therefore rejected the Cabinet Office's view that a disproportionate amount of time would be needed to filter the messages to determine which are held for the purposes of FOIA precisely because in his view all of the messages on Ukgovernmentdigital.slack.com are held by the Cabinet Office for the purposes of FOIA. Rather, in the complainant's view the only processes necessary in order to fulfil this request was the extraction of the messages from Slack and redaction of them to apply any FOIA exemptions that might apply.
31. The complainant also suggested that the Cabinet Office's position that the version of Slack it was using did not allow for the extraction of private messages implied that its position was that such information was not held for the purposes of FOIA. The complainant disputed this position and argued that the information contained in the private messages was clearly held by the Cabinet Office for the purposes of FOIA, in the same way as business emails would be held. Furthermore, the complainant suggested that the Cabinet Office's inability to access the private messages suggested that its records management and procedures are completely insufficient to comply with their FOIA, Environmental Information Regulations and Data Protection Act obligations as well as its archiving requirements.
32. The complainant suggested that if there were genuine grounds for refusing this request the Cabinet Office should have cited section 12(1) of FOIA rather than section 14(1).

The Commissioner's position

33. The Commissioner recognises that the complainant and Cabinet Office fundamentally disagree about the extent to which the public messages contained on Ukgovernmentdigital.slack.com are held for the purposes of FOIA. Furthermore, the Commissioner recognises that the two parties have a different view in respect of whether the private messages contained on Ukgovernmentdigital.slack.com are subject to FOIA.
34. However, for the purposes of this decision notice, and for the reasons explained below, in the Commissioner's view it makes no difference in respect of the application of section 14(1) to this request as to whether one favours the Cabinet Office's approach in respect of the public messages or that advocated by the complainant. Similarly, given the volume of public messages falling within the scope of the request, the inclusion or otherwise of the private messages as being in the scope of the request would not affect the Commissioner's findings in respect of section 14(1). The Commissioner has commented on these broader issues in the Other Matters section of this notice.

The requester has asked for a substantial volume of information

35. Turning to the three criteria which must be met in order for section 14(1) to apply, the Commissioner notes that in February 2017 there were approximately 85,000 public messages on ukgovernmentdigital.slack.com. This had risen to approximately 99,000 by April 2017. It is important to remember that the role of the Commissioner is limited to considering the circumstances of the request at the point it was submitted. In August 2016, when the request was first submitted, there would obviously not have been as many public messages held on ukgovernmentdigital.slack.com.
36. The Commissioner notes that the Cabinet Office estimated that approximately 400 new messages are added to ukgovernmentdigital.slack.com each day. Based on the breakdown of the 308,000 messages contained on the site in April 2017, approximately two-thirds were either direct messages or sent in private channels with the remaining third being public messages. Assuming a similar ratio applied to the 400 new messages added each day, the Commissioner estimates that approximately 130 new public messages would be added each day. This suggests that there were likely to be around 65,000 public messages on Ukgovernmentdigital.slack.com in August 2016.
37. Whilst the messages themselves are often quite short, the Commissioner accepts that this is clearly a significant volume of information.

The authority has real concerns about potentially exempt information

38. The Commissioner has reviewed a sample of the messages contained in the channels on ukgovernmentdigital.slack.com. It is clear to the Commissioner that many of the messages contain information that would be exempt from disclosure, primarily because they contain significant amounts of the personal data of junior civil servants (including names and details of where they work) which the Commissioner would generally accept is exempt from disclosure on the basis of section 40(2). Furthermore, having examined the sample of messages provided to him, the Commissioner also accepts that the Cabinet Office's concerns that some parts of the information may attract the other exemptions cited above are legitimate.

Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material

39. Clearly, in the Cabinet Office's opinion, before it is able to redact any exempt information from the 65,000 public messages it would first need to determine what information held within these messages is in fact held for the purposes of FOIA. The complainant obviously does not accept that this stage is necessary; rather it is simply a case of redacting the exempt information from all of the 65,000 public messages.
40. In the Commissioner's opinion, if one took the position that all of the 65,000 public messages were held by the Cabinet Office for the purposes of FOIA then it is very clear that the process of identifying potentially exempt information would take a very significant period of time. In part this is due to the sheer volume of information in scope of the request, ie 65,000 messages, but also because the Commissioner accepts the Cabinet Office's position that it has no mechanism for filtering, analysing or identifying potentially exempt material short of reading each individual message. On this approach to the request, the Commissioner accepts that the third criterion is met.
41. Alternatively, if one adopted the Cabinet Office's approach to this request, then before it could consider the application of any exemptions to the requested information it did accept was held for the purposes of FOIA, it would first have to actually identify this information. Again, given the way the 65,000 messages are held the Commissioner accepts that the Cabinet Office has no mechanism for identifying information it would accept as relating to official business, and thus held for the purposes of FOIA – short of reading each message. Only having conducted this process could the Cabinet Office then begin to consider how exemptions should be applied to the information.
42. As the above makes clear, whether one favours the Cabinet Office's, or the complainant's position, in both scenarios locating any potentially

exempt information is still going to necessitate manually reviewing each of the 65,000 messages which in the Commissioner's view means that the potentially exempt information cannot be easily isolated. The third criterion is therefore met.

43. The Commissioner is therefore satisfied that the Cabinet Office has demonstrated that the three criteria are met and complying with the request would place a grossly excessive burden on the Cabinet Office. The Commissioner has therefore concluded that the Cabinet Office can rely on section 14(1) to refuse to comply with this request.
44. In reaching this conclusion the Commissioner wishes to emphasise that she has taken into account the purpose and value of the request. She recognises that technological changes, such as the advent of cloud based communication tools like Slack, have impacted on the way in which public servants communicate with each other. Disclosure of all of the information falling within the scope of this request would provide the public with a detailed insight into how the Slack channel Ukgovernmentdigital.slack is used as a means of communication within the civil service and the public interest in terms of the contribution such a disclosure would make to transparency should not be underestimated. However, the Commissioner is satisfied that despite the benefits of disclosure, given the very significant burden which complying with the request would place on the Cabinet Office, section 14(1) should be upheld.
45. Finally, with regard to the complainant's suggestion that the Cabinet Office should have applied section 12(1) to this request rather than section 14(1), the Commissioner recognises that her own guidance on vexatious requests stresses that, where possible, any public authority whose main concern in responding to a request is the cost of finding and extracting the information should consider refusing the request under section 12 of FOIA.
46. Based upon the Cabinet Office's approach to this request, ie that only some of the 65,000 public messages are held by it for the purposes of FOIA, but in order to locate such information it would have to read all of the messages, the Commissioner accepts that the Cabinet Office could potentially have refused this request under section 12. However, the Commissioner recognises that a significant aspect of the burden of complying with this request would *also* involve the process of redacting considerable amounts of exempt information, a process which can only be correctly taken into account in respect of section 14(1). The Commissioner is therefore satisfied that the Cabinet Office was correct in its approach to consider section 14(1) to this request, and moreover, for the reasons set out above is satisfied that section 14(1) does in fact apply.

Section 16

47. Section 16 of FOIA states that:

'(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.'

48. The Code of Practice specifically states that a public authority is not expected to provide advice and assistance to requesters whose requests are vexatious within the meaning of section 14(1). In light of the Commissioner's findings in respect of section 14(1), she does not believe that the Cabinet Office was under a statutory duty on the basis of section 16(1) to provide the complainant with advice and assistance so that he could submit a request that would prove less burdensome.

49. However, as the Commissioner's guidance on section 16 explains, whilst the application of section 14(1) means there is no positive duty to provide advice and assistance, she believes that reliance on section 14(1) does not prevent the public authority from proactively offering advice and assistance.³ The Commissioner has commented on this point further in the Other Matters section of this decision notice.

Other matters

50. The complainant also raised concerns with the Commissioner about the Cabinet Office's delays in completing the internal review. FOIA does not provide for a statutory time limit within which such reviews must be completed. These matters are, however, addressed in the Code of Practice, issued under section 45 of FOIA and in the Commissioner's guidance. In the Commissioner's view most internal reviews should be completed within 20 working days or 40 working days in complex cases.

³ <https://ico.org.uk/media/for-organisations/documents/1624140/duty-to-provide-advice-and-assistance-foia-section-16.pdf> see paragraphs 51 and 52.

51. In the circumstances of this case the complainant requested an internal review on 20 September 2016. The Cabinet Office informed him of the outcome of the internal review on 1 February 2017. It therefore took the Cabinet Office 93 working days to complete its internal review. The Commissioner considers this to be an excessive period of time and she would remind the Cabinet Office of its responsibilities in relation to responding to requests promptly and dealing with any internal reviews in a timely manner.
52. As noted above, the Commissioner has concluded that the Cabinet Office is not under a duty under section 16(1) to provide advice and assistance to the complainant in relation to this request. However, the Commissioner recognises that when submitting his original request the complainant explained that he would be happy to discuss with the Cabinet Office potential refinements to the request if complying with it was likely to be too costly or burdensome. The Commissioner also understands that the complainant has submitted refined versions of his original request.
53. In the Commissioner's opinion the complainant's initial offer to enter into a discussion with the Cabinet Office so that he can frame a request on this subject matter which does not place an undue burden on the Cabinet Office is a reasonable one. Whilst the Cabinet Office is under no statutory obligation to do so at this stage, the Commissioner would encourage it to work with the complainant so that he can submit a request on this subject matter which does not attract either section 12(1) or section 14(1) of FOIA. In making this recommendation the Commissioner has taken into account the time it took the Cabinet Office to complete its internal review response.
54. Finally, the Commissioner wishes to note that this is the first section 50 complaint she has been asked to consider in relation to a request for information held on Slack. As the content of the notice suggests, the Commissioner recognises that public authorities' use of cloud based communication tools, such as Slack, raise a number of complicated and novel issues in respect of compliance with the requirements of FOIA, including wider issues related to records management. Although for the purposes of this decision notice it has not been necessary for the Commissioner to take a definitive position in respect of the extent to which information on Slack is held by the Cabinet Office for the purposes of FOIA, she will be liaising with the Cabinet Office about its use of Slack and the challenges and issues it presents in respect of the compliance with the legislation. The Commissioner will also consider any wider implications for Government and the public sector more generally, and whether further guidance is required. She may also consult with the National Archives about the records management issues arising.

Right of appeal

55. 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

56. 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.
57. 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

Steve Wood
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