

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 30 January 2024

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

Decision (including any steps ordered)

1. The complainant has requested information from the Cabinet Office relating to the All In, All Together campaign. The Cabinet Office has refused to disclose the requested information on the basis of section 12(1) of FOIA (cost of compliance exceeds appropriate limit). The complainant has argued that the request is for environmental information and that the EIR is the appropriate access regime.
2. The Commissioner's decision is that FOIA is the appropriate access regime, and that the Cabinet Office has correctly applied section 12 to withhold the information. However, he considers that the Cabinet Office failed to issue the complainant with a refusal notice in accordance with its obligation under section 17(1) of FOIA.
3. No steps are required.

Request and response

4. On 16 May 2022, the complainant wrote to the Cabinet Office and requested information in the following terms:

"Please treat this matter as URGENT

Pursuant to any and all of the Complex UK Environment legislation re UNECE Aarhus Convention & UNECE Aarhus Convention please forward to me a list of any and all correspondence and other information, including but not limited to reports, meetings both in-person and e-meetings, emails, minutes, WhatsApp and SMS messages, that in any way or in all ways concern the project known as *the All In, All Together campaign* between the 1st of February 2020 and 30th June 2020 inclusive. Please give a meaningful description of the information listed as required by the legislation which underpins the convention.

PLEASE NOTE:

THIS IS NOT A FREEDOM OF INFORMATION REQUEST. DO NOT TREAT IT AS A FREEDOM OF INFORMATION REQUEST. I Require this information URGENTLY, and before 18th June 2022."

5. The Cabinet Office Correspondence Team responded on 13 June 2022 and explained that the complainant's request is a FOIA request, and that the correspondence department could only help with policy related questions and encouraged the complainant to send in such questions.
6. The complainant then submitted an internal review on 14 June 2022 arguing that their request is not a FOIA request. They stated that they were looking for a proper response to their valid request for information on the environment.
7. Following an internal review, the Cabinet Office apologised for mishandling the complainant's information request and admitted that the complainant's original request should have been identified and treated as a request for recorded information. It confirmed that it was correcting this in its internal review response. However, it argued that although the complainant had asked that the Cabinet Office do not handle their request for information under FOIA, it concluded that FOIA is the correct regime applicable to the complainant's request.
8. Therefore, the Cabinet Office considered the complainant's request under the FOIA regime and refused to provide the requested information by virtue of section 12(1) of FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 14 June 2022 to complain about the mishandling of their request for information by the Cabinet Office Correspondence Team. The complainant also challenged the access regime applicable to their request as well as the Cabinet

Office's failure to provide a response in accordance with the statutory requirements.

10. The Commissioner considers that the scope of his investigation to firstly determine whether the Cabinet Office considered the complainant's request under the correct access regime. If the Cabinet Office considered the complainant's request under the correct regime, then he must determine if the Cabinet Office has correctly cited section 12(1) of FOIA in response to the request. The Commissioner must also consider whether the Cabinet Office met its obligation to offer advice and assistance.

Reasons for decision

Access regime

11. The Commissioner has considered whether the request must be considered under FOIA, or the EIR.
12. The Commissioner notes that the Cabinet Office maintains the position that the complainant's request falls under the FOIA regime whilst the complainant contends that their request must be considered under the EIR regime.
13. Information that is environmental information falls to be considered under the EIR rather than FOIA. Regulation 2(1) of the EIR defines environmental information as being information on:
 - "(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape, and natural sites including wetlands, coastal and marine areas, biological diversity, and its components, including genetically modified organisms, and the interaction among these elements.
 - (b) factors, such as substances, energy, noise, radiation, or waste, including radioactive waste, emissions, discharges, and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a).
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;"
 - (d) reports on the implementation of environmental legislation.

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).

14. The Commissioner has published guidance to assist public authorities in identifying environmental information.¹
15. In this case, the request refers to any and all correspondence relating to the All In, All Together campaign which was a collaboration between the Government and the newspaper industry to deliver communications on the response to COVID 19.

The complainant's arguments

16. It is the complainant's view that the information which they requested for, falls within the definition of EIR because, it relates to public health information campaign around COVID 19 virus, which they consider to be present in an element of the environment. They contend that the communications were related to factors on how the virus spreads and how to better safeguard the public.
17. The complainant argues that the COVID 19 virus is a living organism and therefore an element of the environment in its own right. They state that the virus has its own interaction with other elements of the environment, with other species and its own evolution. They contend that the definition of environmental information within the Aarhus Convention² is nearly identical to the definitions within the EIR for regulations 2(1)(a), 2(1)(b) and 2(1)(c) and that those definitions are not definitive but indicative by the inclusion of the clause- "such as". The complainant contends that COVID 19 is a biohazard and hence an

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/regulation-2-1-what-is-environmental-information/>

² The Aarhus Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters, <https://unece.org/DAM/env/pp/documents/cep43e.pdf>

example of factors that fall within the definition of regulation 2(1)(b) of the EIR.

18. To elaborate this point, the complainant argued that:

“In truth my simple reasoning, ie {sic} that to argue that the covid19 virus is not an element of the environment would be to argue that Covid19 was not present in the environment holds true, and the reality is that Covid19 is still very much present in the environment with further details between how the virus infects (interacts with) humans and other species, evolves, and lives in air and on surfaces being discovered all the time, while measures to combat the spread (limit those interactions) are also well known and being further researched. The information I’m looking for concerns a public health information campaign which talked about ‘social distancing’, ‘washing ones hands’, {sic} ‘masking’ and how to prevent spread of the virus in the environment (whether that environment be a hospital, a home, a workplace, or a public space)”.

The Cabinet Office’s arguments

19. The Cabinet Office argues that the campaign which is the subject of the request was not one which related to the environment and was a UK Government partnership with the newspaper industry to deliver Government communication on the response to COVID 19. It contends that information relating to the delivery of communications on COVID 19 through a media partnership would not be about, concern or relate to any of the factors and elements of the environment or a measure which had an impact on them. In its view, it is unlikely that any of the requested information, if held, would constitute environmental information under the EIR.

The Commissioner’s findings

20. The Commissioner accepts that a viral pandemic such as COVID 19 clearly relates to human health and safety. However, it is not the case that any request for information relating to Covid 19 would necessarily be a request for environmental information. The request in this case is a generalised request for any and all correspondence and communications between the Government and the newspaper industry to deliver communications on the response to COVID 19.

21. Regulation 2(1)(f) of the EIR includes the state of human health and safety but only inasmuch as it is, or may be, affected by the state of the elements of the environment referred to in regulation 2(1)(a), or, through those elements, by any of the matters referred to in regulations 2(1)(b) and (c).

22. The information requested by the complainant relates to a collaboration between the government and the newspaper industry about COVID 19 communications. In the Commissioner's opinion it would not necessarily show how the state of human health and safety in respect of Covid 19 is or may be affected by the state of the elements referred to in regulation 2(1)(a) or, that through those elements, human health may be affected by the factors in regulation 2(1)(b) or measures or activities in regulation 2(1)(c).
23. Whilst the Commissioner acknowledges the complainant's position surrounding the COVID 19 virus, he considers that the information requested by the complainant lacks the required specificity. Given that the complainant argues that COVID 19 is a biohazard and therefore falls within the definition of regulation 2(1)(b) then the requested information would need to be about the hazardous nature of the virus within the environment or to public health. However, the complainant's request is clearly broader in scope, and would potentially cover a much wider range of information.
24. The Commissioner considers that the Cabinet Office was correct to find (in its internal review) that the information requested does not constitute environmental information and therefore the complainant's request fell to be processed under FOIA and not the EIR.
25. The Commissioner would emphasise that his finding in this particular case does not mean that a request for information which relates to Covid-19 could never be a request for environmental information under the EIR. It is entirely possible that a request for information could be framed in such a way, and for specific enough information within regulation 2(1) of the EIR so as to constitute a request for environmental information.
26. Having found that the information requested in this case is not environmental information under regulation 2 of the EIR, the Commissioner has proceeded to consider whether the Cabinet Office was correct to refuse the request under section 12(1) of FOIA.

Section 12: Cost of Compliance

27. Section 12(1) of 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").³

28. The appropriate limit is set in the Fees Regulations 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. 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.
29. 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.
30. 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.
31. 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. 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.

³ <https://www.legislation.gov.uk/uksi/2004/3244/contents/made>

Would the cost of compliance exceed the appropriate limit?

32. During his investigations, the Commissioner requested further explanation as well as a detailed estimate of the time and cost it would take to provide the information falling within the scope of this request. The Cabinet Office has explained the nature of the searches carried out and why it considers that the appropriate cost limit will be exceeded should it comply with the complainant's request. Following an original search, the Commissioner requested additional information on the estimates originally provided by the Cabinet Office.
33. In its response, the Cabinet Office stated that the request submitted by the complainant was very broad in scope, in that it asked for "a list of any and all correspondence" spanning a period of five months. It stated that information relating to the All In, All Together campaign, would be held within the records of the Press Partnership. It explained that the All In, All Together campaign was a unique collaboration between the Government and over 600 national, regional, and local titles reaching communities throughout England, Scotland, Wales, and Northern Ireland and includes over 25 multicultural titles. It stated that the campaign ran for a period of 23 months from April 2020 to March 2022.
34. The Cabinet Office explained that it had conducted a search using the search terms 'All In, All Together' and 'Press Partnership'. This search revealed a total of 153,410 results for both search terms.
35. While the Cabinet Office was unable to include time limits in the searches it carried out, it said that it had extrapolated some data from the search to give an estimate of the nature of documents that are likely to fall within the time frame of the complainant's request. In light of the total search result, it estimated an average of 6670 documents per month. It said that around 33,000 documents would be dated within the five-month period for which the complainant's request refers to. It says that, as the complainant's request asked for 'all information', there were no additional search terms that would have enabled the scope to be narrowed down. Therefore, it argued that all 33,000 documents would need to be reviewed in order to ascertain whether they contained information falling within the scope of the complainant's request.
36. The Cabinet Office further explained that each document would need to be opened and reviewed to determine if relevant information is held, before extracting any relevant information for the purposes of the request. It estimated an average of 30 seconds per document, which would give a total of around 275 hours to search for and extract the information from the documents pertaining to the five-month period.
37. The Cabinet Office stated that it also carried out searches using the same keywords on an archived inbox for a former Director of

Communications. It said that these searches revealed a total of 1528 emails. In order to interrogate those emails, the Cabinet Office would need to unarchive the mailbox and extract the results into a separate folder. The Cabinet Office argued that it would need to use a separate application to review each email to determine if relevant information is held and for that information to be extracted. The Cabinet Office estimated an average of 30 seconds per email which would take over 12 hours for that particular inbox.

38. The Cabinet Office stated that there are six other key officials whose inboxes would need to be searched. It also said that during the campaign there was in excess of 50 people working on COVID 19 communications and many of them would have had some interaction with the campaign. It argues that searches would need to be carried out on each of those email accounts in order to ascertain whether information falling within the scope of the complainant's request was held.

The Commissioner's conclusion

39. The Commissioner considers that the wording of the complainant's request, their reference to 'any and all correspondence and other information,' demonstrates that it is extremely broad in scope. It has the potential to include reports, meetings both in-person and e-meetings, emails, minutes, WhatsApp, and SMS messages. The five-month time period specified by the complainant further increases the volume of information that would need to be searched in order to identify relevant information. The Commissioner accepts that the Cabinet Office has provided a reasoned and appropriate estimate of the time required to comply with the request.
40. Consequently, the Commissioner accepts that compliance with the complainant's request would exceed the appropriate cost limit of 24 hours. He therefore finds that section 12(1) is engaged, and the Cabinet Office was not obliged to comply with the request.

Section 16: advice and assistance

41. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request, so far as it would be reasonable to expect it to do so. In general, where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.

42. The Commissioner notes that in line with its obligations under section 16 of FOIA, the Cabinet Office provided the complainant with advice and assistance in its internal review response, as to how they might be able to bring their request within the cost limit. Specifically, the Cabinet Office recommended that the complainant reduce the time period covered, or identify particular areas of interest, types of correspondence, or any particular aspect of the campaign.
43. The Commissioner accepts that this advice was appropriate in the circumstances of this case. He is therefore satisfied that the Cabinet Office complied with its obligations under section 16 of FOIA.

Right of appeal

44. 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

45. 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.
46. 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

Esi Mensah
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