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FOI/EIR   EIR   Section/Regulation   reg 12(4)(e)   Issue   Email chains as 'internal communications'
Line to take:

This CWAN provides advice to case officers on how to investigate whether email chains are 'internal' for the purposes of regulation 12(4)(e).

We will expect a public authority claiming the exception to provide confirmation that all recipients at each stage of an email chain were internal.

Further Information:

NOTE: This CWAN is intended to provide detailed guidance to help in difficult cases involving lengthy email chains with a large number of recipients. In many straightforward cases it will not be necessary to refer to this in any detail.

A significant proportion of business communication is now done via email. Public authorities will therefore often claim the internal communications exception (regulation 12(4)(e)) for emails. However, they do not always distinguish between internal and external emails.

Unlike other forms of communication, emails will often be part of a 'chain' or 'string' of replies, forwards etc, which also include the text of all earlier emails. There may be different recipients at each stage of the chain. This raises particular issues when considering whether an email chain should be seen as an 'internal communication' for the purposes of regulation 12(4)(e) – it is possible that a single email chain may contain both internal and external sections.

Starting point - guidance

Case officers should first read our guidance: Internal communications (regulation 12(4)(e).

The guidance makes clear that if an internal email has been deliberately sent, copied or forwarded to someone outside the public authority, it is not an internal communication. This means that, to accept the exception is engaged, we need to establish that **all** of the recipients of an email were internal (including the sender and those in cc and bcc fields). If any of the recipients to an individual email are external, the email is not an internal communication.

For email chains, we need to establish that **all** of the recipients of **every** email in the chain were internal in order to find that the whole chain is an internal communication. If any of the recipients at any stage in the chain were external, this changes the outcome for the chain up to that point. In brief, this means there are three possible outcomes for an email chain:

- If the final email in the chain was sent or copied to someone outside the PA: the whole chain has been sent externally and none of it is an internal communication.

- If the final email (or emails) were purely internal, but an earlier email in the chain was sent or copied to someone outside the PA: the final email (or emails) are internal communications, but the chain up to that point is not.

- If all recipients of every email in the chain were internal: the whole chain is an internal communication.

Investigating whether recipients were internal

To uphold the exception we need to establish that all email recipients are internal. However, it is possible that the withheld information may run to hundreds of emails with multiple recipients. It is not practical for case officers to independently research and confirm the status of every individual recipient of each email.

Our starting point is that if a public authority wishes to claim the exception, it must demonstrate to our satisfaction that the exception is engaged. It cannot expect the ICO to do this work for it. Our primary source of evidence will therefore be a statement from the public authority, unless anything else clearly contradicts this. In most cases the statement will be all we need.

We will also consider the following:

- Any full email addresses listed in the emails.

- The content and context of the emails (there is no need for case officers to proactively search the content for indications of third party involvement, but if we become aware that it obviously points one way or another we will take it into account).

- Any arguments specifically raised by the complainant that the emails were not internal (we will then seek the PA's response and choose the more likely explanation).

Obtaining a statement from the PA

Case officers should refer PAs to our guidance, and highlight that the exception only covers purely internal emails that have not been forwarded or copied outside the PA. In order for an email to be an internal communication, every recipient must be internal. Case officers should then ask PAs the following:

- Can you confirm that everyone named in the 'from', 'to', 'cc' and 'bcc' fields of each email was an employee or official of the PA?
- Can you confirm that the email chain has not at any point been sent or copied to a third party (including contractors or external advisers)?

In many cases we anticipate that obtaining this statement will be enough to justify a finding that the exception is engaged.

Note that we are **not** asking the PA to go through every email and justify each individual name to us in detail. We are simply asking for a global confirmation. It is up to the PA to satisfy itself that the emails were internal in order to provide the confirmation – eg someone involved in the original email chain may be able to simply confirm from memory that the emails were not circulated to anyone outside the PA. We are simply asking the PA to provide us with a confirmation backed up by some sort of evidence. Whether it chooses to rely on fresh checks or the recollection of someone involved is up to the PA.

Case officers should also briefly scan through the names in the from/to/cc/bcc fields of the withheld emails to ensure there are no obvious external email addresses listed (ie name@another-organisation). This should be a quick scanning exercise - there is no need to consider the contact names in any detail, compile a list of names, or drill down to recipient properties. (We appreciate a quick glance will not uncover all or even many external contacts, as full email addresses are not always visible. However, the idea here is just to rule out clear evidence of external email addresses.)

Work backwards, from the latest emails to the earliest. This is because once any single email in a chain has been sent or copied externally, the whole chain up to that point becomes external and there will be no need to consider the earlier emails individually.

Once we have the PA's response, our position should be as follows:

- If the PA confirms that all recipients are internal, there are no obvious external email addresses, and there is no other obvious reason to doubt the PA, we will accept the PA's confirmation as sufficient evidence that the exception is engaged. This is not foolproof, but the standard of proof is the balance of probabilities (more likely than not). We consider this is a proportionate approach to establishing the facts on the balance of probabilities, in the absence of any other contradictory evidence.

- If the PA confirms that all recipients are internal, but the case officer becomes aware of potentially contradictory evidence (eg there is an apparently external email address, or the complainant raises specific allegations that a particular email was sent externally, or the content/context of the emails

suggest third parties must have been involved), the case officer should put this to the PA and ask it to explain the discrepancy. The case officer must then make a judgement on the facts as to which explanation is more likely. The exception is only engaged if the case officer is satisfied that on the balance of probabilities (ie more likely than not) all recipients are internal.

- If the PA states that an email was sent or copied to an external recipient, or the case officer is satisfied that an external email address is clearly listed, or it is clear that a third party was involved from the content of the information, that email (and any email chain up to that point) is not an internal communication.

- If the PA refuses to engage and give the confirmation (eg because it is not confident that all recipients were internal, or because it disagrees with our guidance and argues there is no need to confirm that every single recipient was internal), case officers should obtain signatory input via the CR07 form. However, we anticipate that such cases should be rare as it will be in the PA's interests to provide the confirmation to support their case.

Multiple copies of emails / emails in multiple chains

The nature of email chains means that the requested information could include multiple copies of the same email – eg the individual email, the same email in a chain of replies, and the same email in a separate chain of forwards and replies.

However, case officers do **not** need to compare the content of email chains and emails to identify any crossover or duplication. It is acceptable to simply consider each email or email chain on its own merits, ignoring any possible duplication. If there are multiple versions, this may mean, for example, that the original individual email is accepted as an internal communication, even though the same email within a later chain that was forwarded to a third party would not engage the exception.

Our position that each email or chain can be considered on its own merits (ignoring the existence of the same email in other chains) is for the following reasons:

- In effect, we are thinking of an email chain as multiple documents duplicating some of the same information. Each email in a chain is a separate document or communication, even if it includes some of the same text (ie the text of any preceding emails). The question is simply whether the particular email(s) caught by the request are internal communications. If the only version of the information within the scope of the request is contained in an individual internal email or internal chain, this is technically and factually part of an internal communication and so engages the exception. The later external email forwarding the same information would not engage the exception, but it is not caught by the request and so does not need to be considered.

- Practically speaking, it would be very difficult to establish that an individual email has definitely not been forwarded outside a PA later in another context. We are only likely to be able to consider the information actually falling within the scope of the request. The only practical position is therefore to limit the analysis to the actual emails caught by the request.

- If the request catches multiple versions of an email, some of which are internal and some of which are not, the requester will not be disadvantaged by accepting that some are internal. The same text will also be contained within any external email chain, and so all of the information from the original email would still be released to the requester.

- If the request catches the full email chain, our position (as set out above) is to work backwards through the chain. This ensures that each email is considered in its own right. If any of the emails have been sent outside, all of the information contained in that email (ie the text of the full chain up to that point) is part of an external communication and the exception is not engaged for that information. We do not need to go on to consider the status of the earlier emails individually, as there is no additional information contained in them.

Attachments to emails

Where there have been multiple documents attached at different stages of an email chain, it may be particularly difficult to establish which document (or version) was attached to which email.

See CWAN 006 for general advice on how to identify email attachments.

Note that documents attached to internal emails are not automatically internal communications. Nonetheless, it may be necessary to establish whether a document was attached to an internal or external email, as this can affect the outcome. See the guidance for more information on our position on attachments. In summary:

Email	Attached document	Is 12(4)(e) engaged?
Internal email	Internal document	Yes
Internal email	External document	No - if request would catch document in its own right. Yes - if request only catches document because it was attached to the email.
External email	Internal document	No
External email	External document	No

*Internal = created and circulated only within the PA

*External = received from or shared with a third party

If it is clear that several documents are within the scope of the request, but some of them were attached to external emails, and the PA cannot satisfactorily confirm which attachments were which: the PA has not established that the exception applies to any of the documents. We should find that the exception is not engaged for any of the documents.

Source		Details			
Policy Delivery					
Related Lines to Take					
CWAN 006 (email attachments)					
Related Documents					
Guidance: Internal communications (regulation 12(4)(e))					
Contact				LS	
Date		13/11/2012	Policy Reference		**CWAN 005**

- Information Commissioner's Office intranet