

## Freedom of Information Act 2000

### Decision notice

**Date:** 1 September 2014

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

#### Decision (including any steps ordered)

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1. The complainant requested information about civil servants raising concerns to the Cabinet Office under the Public Interest Disclosure Act 1998 (PIDA). The Commissioner's decision is that on the balance of probabilities the Cabinet Office does not hold the requested information. No further action is required.

#### Request and response

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2. Full details of the complainant's request can be found online.<sup>1</sup>
3. On 18 November 2013, the complainant wrote to the Cabinet Office and requested information in the following terms:

*"Can you tell me how many civil servants have raised concerns under the the [sic] Public Interest Disclosure Act 1998, between 2007 and 2013?"*

*What concerns did they raise?*

*What department did they work under when they raised them?*

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[https://www.whatdotheyknow.com/request/civil\\_servants\\_and\\_the\\_public\\_in](https://www.whatdotheyknow.com/request/civil_servants_and_the_public_in)

*How many faced disciplinary procedures for doing so?"*

4. The Cabinet Office responded on 6 December 2013. It stated that it had searched its paper and electronic records and had established that no information relevant to the request was held.
5. The complainant appealed on 4 January 2014 as he considered that information was held. The Cabinet Office reviewed its decision, and on 10 February 2014 upheld the decision that no information was held.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 2 March 2014 to complain about the way his request for information had been handled.
7. The Commissioner considers the scope of the case to be whether the Cabinet Office holds information relevant to the complainant's request.

### **Reasons for decision**

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8. Section 1 of the Act states that:

*"(1) 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. In cases where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner, in accordance with a number of First-Tier Tribunal decisions, applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely or unlikely that the Cabinet Office holds information relevant to the complainant's request based on the information provided.

10. The Commissioner has previously handled a case involving this complainant and the Cabinet Office.<sup>2</sup> This decision is of relevance to the Commissioner's investigation as there was some cross over about concerns raised under PIDA. In the previous decision, the Commissioner found that the Cabinet Office held an email from the complainant addressed to Sir Bob Kerslake raising concerns and citing PIDA, but no other individual concerns had been raised.
11. In response to the Commissioner's investigation the Cabinet Office explained that it still retained this email from the complainant. It also holds a copy of its response and also other correspondence it has sent to the complainant about PIDA. However, the Cabinet Office maintains that this information does not come within the scope of the complainant's request. The request specifically asks for concerns raised by civil servants under PIDA. The correspondence from the complainant does not show he was employed as a civil servant at the time the email was written.
12. The Cabinet Office explained to the Commissioner that concerns are not raised with an employer under PIDA. Instead, a concern is raised under the Civil Service Code<sup>3</sup>. PIDA is there to protect the rights of whistleblowers should they suffer untoward consequences as a result of raising concerns. The Cabinet Office provided the Commissioner with a link to a directory of civil service guidance, which contains a section on whistleblowing. This guidance makes it clear what the purpose of PIDA is to provide certain rights for whistleblowers:

*"The Public Interest Disclosure Act 1998 came into force in July 1999. It enables workers who blow the whistle about wrongdoing to complain to an employment tribunal if they are dismissed or suffer any other form of detriment for doing so."*<sup>4</sup>

13. In its submissions the Cabinet Office stated that no information would likely be held, and the idea that information would be held only came

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[http://ico.org.uk/~media/documents/decisionnotices/2013/fs\\_50460533.aspx](http://ico.org.uk/~media/documents/decisionnotices/2013/fs_50460533.aspx)

<sup>3</sup> <http://resources.civilservice.gov.uk/wp-content/uploads/2011/09/civil-service-code-2010.pdf>

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/60997/guide-civil-service-guidance-volume-2\\_0.pdf#page=54](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60997/guide-civil-service-guidance-volume-2_0.pdf#page=54)

about as a result of the complainant's confusion about how the process works. As the Cabinet Office had previously responded to the complainant's requests and correspondence about PIDA, and that its role in the whistleblowing process had not altered, it decided not to carry out "any detailed searches".

14. The Commissioner accepts this argument as reasonable. Whilst there is the chance that someone might attempt to raise concerns and cite PIDA – as the complainant did – it is not considered to be something that is likely to happen. The Commissioner would expect any civil servant who decides to undertake the serious and possibly onerous task of raising concerns to have considered the process involved. Citing PIDA in correspondence would not have any impact on the outcome nor provide the whistleblower with any additional rights, so it is not considered to be something that a reasonable individual would likely do. Therefore, the Commissioner's view is that it is not necessary to search for information which would only be provided through a distinct misunderstanding of how the whistleblowing procedure for civil servants works.
15. The Cabinet Office also made it clear that there was no formal procedure in place through which it receives notification of concerns relating to PIDA from other public authorities. Given that concerns should be raised through the Civil Service Code and not under PIDA, the Commissioner cannot see any reason why the Cabinet Office would need to record such information. The Commissioner considers this argument is valid and adds further weight to the arguments that it is unlikely any relevant information is held.
16. The Commissioner did consider whether there would have been merit in the Cabinet Office providing an explanation of this sort to the complainant in its refusal notice or internal review. This would appear to be an area where it would be reasonable to provide advice and assistance to the complainant, which would meet its obligation under section 16 of the Act. The Cabinet Office stated that it has been in lengthy correspondence with the complainant on this subject and has made its reasons clear previously. Despite this, the complainant maintains that the Cabinet Office has a central record of concerns raised under PIDA and believes that relevant information is held.
17. The complainant stated to the Commissioner over the phone that other information was sent by him to the Cabinet Office about this subject which would come within the scope of his request. Unfortunately, he had recently moved and did not have copies that he could provide to the Commissioner. Whilst the Commissioner considers that the complainant might have done so, without evidence to confirm this happened he cannot categorically state that it did. As mentioned previously the Cabinet Office has confirmed it corresponded with the complainant on

this subject but for the aforementioned reasons this correspondence does not come within the scope of the complainant's request.

18. Therefore the Commissioner's decision is that on the balance of probabilities there is no relevant information held. The Cabinet Office has addressed the complainant's concerns about PIDA and whistleblowing in the past and has made valid arguments to show why it is likely no information relevant to the complainant's request is held. In the absence of any evidence to the contrary the Commissioner cannot say it is likely that any relevant information is held.

## **Other matters**

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19. There are two matters that the Commissioner wishes to address about the way the Cabinet Office handled this case: firstly, the potential dangers of relying on standard wording when responding to requests; and secondly, the length of time in providing responses to the Commissioner.
20. First, the Cabinet Office's refusal notice of 6 December 2013 states plainly that:  
  
*"I am writing to advise you that following a search of our paper and electronic records, I have established that the information you requested is not held by the Cabinet Office."*
21. The Cabinet Office made it clear in its submissions to the Commissioner that no detailed searches were carried out. This would appear to contradict the statement in its refusal notice, which gives the impression that these searches were carried out. The Commissioner asks that the Cabinet Office takes care to make sure it does not give the wrong impression about the level of work that has gone into handling a request.
22. Second, the Commissioner has experienced several lengthy delays in this case waiting for correspondence from the Cabinet Office. Similar concerns have been raised by the Commissioner in previous Decision Notices regarding the Cabinet Office. The Commissioner therefore emphasises the importance of such delays being avoided in future.

## Right of appeal

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23. 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 123 4504

Fax: 0870 739 5836

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

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

24. 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.
25. 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 .....**

**Alexander Ganotis**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**