

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 10 December 2019

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall  
London SW1A 2AS

#### **Decision (including any steps ordered)**

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1. The complainant has requested certain files related to the Spycatcher case. The Cabinet Office refused to provide them citing section 14(1) (vexatious request) as its basis for doing so on the grounds that it would incur considerable burden upon its resources. It upheld this at internal review.
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 14 as its basis for refusing to comply with the request.
3. No steps are required.

#### **Request and response**

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4. On 15 April 2019 the complainant requested information of the following description:

"I write to make a Freedom of Information Act request for the series of Cabinet Office files relating to the 'Spycatcher'/Peter Wright case between 1986 and 1987. The files, as listed on the National Archives website, are as follows:

CAB 164/1870 – 1901: "Peter Wright case ('Spycatcher' case)"

The National Archives lists these files as "closed or retained document[s]". It cites Lord Chancellor's Instrument LCI 126 as the reason for their withholding, and states that this will be reconsidered in 2019 (no month or date is shown).

I now request that these files are released to the National Archives on the following basis.

- The events to which they refer are now more than 20 years in the past
- The chief protagonist, Peter Wright, died in 1995 and therefore has no claim on privacy
- The book, Spycatcher, which contained the information H.M. Government wished to suppress was published more than 20 years ago and remains available today. There is therefore no likely national security justification for withholding these Cabinet Office files.”

5. On 17 May 2019, the Cabinet Office responded. It refused to provide the requested information. It cited the following exemption as its basis for doing so:
  - section 14(1) (Vexatious request).
6. The complainant requested an internal review on 17 May 2019 and chased a response on 8 July 2019. The Cabinet Office sent him the outcome of its internal review on 11 July 2019. It upheld its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 5 August 2019 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the Cabinet Office is entitled to rely on section 14(1) as its basis for refusing to comply with the request.

### **Reasons for decision**

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9. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
10. 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.

11. 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.
12. 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*

13. The Cabinet Office argued that all three criteria are met in the circumstances of this case. It explained that there were 32 files.<sup>1</sup> It explained the process involved in evaluating each of the files whereby it could not readily extract sections for relevant departments to consider simultaneously and in isolation because of the interwoven nature of the material. Each file would therefore need to be evaluated by each relevant department separately and in turn "to ensure a thorough review of sensitivities is undertaken".
14. As the Cabinet Office explained "due to the organisation the late Mr Wright worked for, matters of security are likely to be interwoven into the material making extrapolation of non-sensitive material across the files problematic".
15. It also explained the average size of each file and said that, in total, it would need to review 11,000 pages. It said that if it allowed three minutes per page (and explained why this was likely to be below the amount actually needed) it would take 550 hours of Cabinet Office time to complete this. It then explained which other departments it would need to consult and that each would likely require an equivalent amount of time. It asserted that the total time for review by all relevant parties

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[https://discovery.nationalarchives.gov.uk/results/r?\\_q=Spycatcher&\\_ser=CAB%20164&id=C3971](https://discovery.nationalarchives.gov.uk/results/r?_q=Spycatcher&_ser=CAB%20164&id=C3971)

would therefore exceed 3,800 hours costing in the order of £0.75 million. It added that this was before taking into account the cost of redaction which "given the sensitivity of the information, is also likely to be high".

16. The Cabinet Office also provided information to evidence its argument that this was based on recent experience. The Commissioner does not propose to set out the detail of this on the face of this notice to avoid inadvertent disclosure of sensitive information.

*The Commissioner's position*

17. With regard to the first criterion, the Commissioner accepts that given the breadth of the request, seeking as it does all 32 files, constitutes a substantial amount of information.
18. With regard to the second criterion, given the subject matter of the request, namely information relating to the Spycatcher case, the Commissioner accepts that the Cabinet Office's concerns about potentially exempt information being caught by the request are legitimate ones. The Commissioner would observe that while the national security exemption at section 24 is subject to a public interest test, the security bodies exemption at section 23 is not. It is a class based exemption and any information which is supplied directly or indirectly by one of the security bodies or which relates to them is caught by this exemption. Given that Peter Wright worked for one of the security bodies, it is reasonable to conclude that the requested information includes information caught by section 23.<sup>2</sup>
19. With regard to the third criterion, the Commissioner is satisfied that the Cabinet Office has demonstrated that it would have real difficulties in identifying the exempt information and preparing the residual information for publication. The Commissioner has not only taken into account the detail set out in this decision notice (which is persuasive in and of itself), she has also taken into account other detail provided by the Cabinet Office.
20. The Commissioner is therefore satisfied that the Cabinet Office has demonstrated that the three criteria are met and consequently that the Cabinet Office has provided compelling evidence to demonstrate that complying with the request would place a grossly excessive burden on it.

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<sup>2</sup> <https://www.independent.co.uk/news/people/obituary-peter-wright-1617351.html>

21. Nevertheless, the Commissioner has considered whether the purpose and value of the request are enough to justify the impact on the public authority.
22. The Commissioner acknowledges that the information requested concerns a serious matter, namely the Spycatcher case. The Commissioner also accepts, as the complainant points out, that Peter Wright is dead and the Spycatcher case is over 20 years old. There is serious purpose in understanding how public authorities and key individuals in them reacted to the publication of the book "Spycatcher". There is also a serious purpose in reflecting on lessons that were learned and what, if any, relevance such lessons have had or continue to have with respect to the work of relevant public authorities.
23. However, the Commissioner recognises the significant resources that the Cabinet Office and other public authorities would need to expend in order to comply with this request. She also notes that the Cabinet Office asked the complainant to consider reducing considerably the number of files within the scope of the request so that it could undertake consideration of other applicable exemptions more readily. The complainant did not agree to this. The Commissioner accepts that without knowing the content of the files it would be difficult for the complainant to know which files to select under such an arrangement.
24. Despite the benefits of disclosure, given the significant burden which complying with the request would place on the Cabinet Office, the Commissioner is satisfied that the Cabinet Office is entitled to rely on section 14(1) as its basis for refusing to comply with the request.

## Right of appeal

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25. 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@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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 .....**

**Elizabeth Hogan**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**