

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 March 2020

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant requested information about two alleged breaches of the ministerial code by the Rt Hon Priti Patel MP. The Cabinet Office had failed to issue a substantive response at the date of this notice.
2. The Commissioner's decision is that the Cabinet Office has failed to complete its deliberations on the balance of the public interest within a reasonable timeframe. She therefore finds that the Cabinet Office has breached section 17(3) of the FOIA.
3. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA, to the request.
4. The Cabinet Office must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Background

5. On 3 August 2019, the complainant sent a tweet, including the Cabinet Office's twitter handle, in the following terms:

"[#PritiPatel](#) accused of breaching [#MinisterialCode](#) for second time

Code adds: 'Retrospective applications will not normally be accepted.' Again, she falls below 'high standards' of a current and former SoS.

[??@cabinetofficeuk??](#) Will this go to ACOBA? #FOIA"

6. The tweet references a link (which was embedded in the tweet itself) to an article in the Guardian newspaper. The article alleges that the Rt Hon Priti Patel MP took on a paid role, after she was removed as Secretary of State for the Department for International Development in November 2017, but before she had received approval from the Advisory Committee on Business Appointments (ACOBA). The Ministerial Code requires ministers to consult ACOBA before taking on paid work for a certain period after they leave office.

Request and response

7. On 3 August 2019, the complainant sent an email addressed to both the Cabinet Office and ACOBA, complaining about Ms Patel and alleging that she had breached the Ministerial Code. The email also contained a specific request for information, referring to the earlier tweet and couched in the following terms:

"I am making, separately by this email, a freedom of information request about Ms Patel's original breach of the Code and this apparent new breach of the Code. Please provide all relevant information held by the Cabinet Office that is not covered by an exemption under the Act. If an exemption applies, please still provide what information you can and explain the use of the exemption."

8. The complainant received an automated acknowledgement from the Cabinet Office on the same day. He then received a further acknowledgement from the Cabinet Office on 2 September 2019 – this time informing him that his original request had been "received" on 23 August 2019.
9. The complainant responded to this correspondence to point out that he had sent his request on 3 August 2019 and not the 23 August.
10. The Cabinet Office contacted the complainant again on 3 September 2019. It stated that it had "no record of receiving an FOI request from

you directly at all." It argued that the FOI request it had received had been transferred to it from ACOBA¹ and that had not occurred until 23 August 2019.

11. The Cabinet Office issued a further response on 11 October 2019. It confirmed that it held information within the scope of the request but that it considered that the information would be covered by the exemption at section 36 of the FOIA (prejudice to the effective conduct of public affairs). The Cabinet Office stated that it needed further time to consider whether the balance of the public interest lay in favour of disclosure or in maintaining the exemption.
12. The Cabinet Office had yet to provide a substantive response at the date of this notice.

Scope of the case

13. The complainant contacted the Commissioner on 31 January 2020 to complain about the failure, by the Cabinet Office, to respond to the request.
14. In line with her usual practice, the Commissioner contacted the Cabinet Office on 10 February 2020 to highlight the outstanding response. She requested that the Cabinet Office issue a substantive response to the request within 10 working days. The correspondence was neither acknowledged nor responded to.
15. The complainant contacted the Commissioner on 25 February 2020 to request a decision notice considering the Cabinet Office's compliance with the FOIA.
16. The scope of this notice is to determine whether the delay in responding to the request is reasonable in the circumstances.

Reasons for decision

17. Section 1(1) of the FOIA states that:
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¹ ACOBA is a separate public authority for the purposes of the FOIA.

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.*

18. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

19. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

20. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

21. Section 10(3) of the Act states that, where a public authority is considering the balance of public interest, it can extend the 20 working day deadline "*until such time as is reasonable in the circumstances.*"

22. Under Section 17(3) a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest. The Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days, which would allow a public authority 40 working days in total. The Commissioner considers that any extension beyond 40 working days should be exceptional and requires the public authority to justify the time taken fully.

23. The Cabinet Office has not provided any explanation, to either the complainant or the Commissioner, as to the prevailing circumstances which have rendered it unable to complete its deliberations on the balance of the public interest.

24. The Commissioner considers that the Cabinet Office received the request on 3 August 2019. The request was clearly directed at an email address carrying the Cabinet Office's domain name and the fact that he received

an automated response shows that the email must have been delivered. For the avoidance of doubt, the Commissioner's decision would have been in the same, even if she had accepted the later date of receipt.

25. The Commissioner's guidance states that a "reasonable" extension will normally be an additional 20 working days. The Cabinet Office has had an additional six months to consider this request. The Commissioner is not aware of any circumstances which would be likely to justify such a lengthy delay and the Cabinet Office has been unable to offer any justification of its own.
26. In the Commissioner's opinion the Cabinet Office has failed to complete its public interest test considerations within a reasonable timeframe and therefore she has concluded that the Cabinet Office has not complied with Section 17(3) of the Act.

Other matters

27. The Commissioner notes her guidance which states that it is possible to submit a valid FOIA request via twitter.² In this particular case, she does not consider the complainant's tweet to have been a valid request for information held in recorded form. Rather, it is seeking an opinion, from the Cabinet Office, as to whether Ms Patel's actions were a breach of the code and whether the matter would be referred to ACOBA. However, in this case, the matter is academic as both the email and the tweet were sent on the same day.

² <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

Right of appeal

28. 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

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

29. 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.
30. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
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SK9 5AF