

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

### **Decision notice**

**Date:** 25 October 2022

**Public Authority:** Foreign, Commonwealth & Development Office  
**Address:** King Charles Street  
London  
SW1A 2AH

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

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1. The complainant submitted a request to the Foreign, Commonwealth & Development Office (FCDO) seeking a copy of the Secretary of State's ministerial diary for the period December 2019 to March 2021. The FCDO refused the request on the basis of section 14(1) (vexatious) of FOIA given the burden in complying with it.
2. The Commissioner's decision is that the FCDO is entitled to rely on section 14(1) of FOIA to refuse to comply with the request.
3. No steps are required.

#### **Request and response**

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4. The complainant submitted the following request to the FCDO on 29 March 2021:

'I would like to request the following information:

From 1st December 2019 to the day this request is processed, please provide a copy of Secretary of State for Foreign, Commonwealth and Development Affairs/First Secretary of State Dominic Raab's ministerial diaries.

Please note, I am making this request out of the public interest. It is absolutely essential for the public to know - in full detail - the calls, events and meetings that took place across the year when the pandemic gripped the UK and beyond.'

5. The FCDO responded on 28 April 2021. It refused the request on the basis of section 14(1) of FOIA because of the significant and disproportionate burden it considered that would be placed on it by answering the request. The FCDO suggested that she considered amending her request, for example, by reducing the timeframe to three months.
6. The complainant contacted the FCDO on 14 May 2021 and asked it to conduct an internal review of its response. She set out why in her view section 14(1) did not apply to her request, focusing on what she considered to be the public interest in the disclosure of the requested information.
7. The FCDO informed her of the outcome of the internal review on 24 June 2021. The review upheld the application of section 14(1).

### **Scope of the case**

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8. The complainant contacted the Commissioner on 8 September 2021 to complain about the FCDO's reliance on section 14(1) to refuse her request. The complainant's submissions to support her complaint are set out below.

### **Reasons for decision**

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#### **Section 14(1) – vexatious**

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 FCDO 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.<sup>1</sup>

### The FCDO's position

13. In order to understand the FCDO's basis for relying on section 14(1) of FOIA in the circumstances of this request the Commissioner asked it to respond to a number of questions. The Commissioner has set out these questions below and summarised the FCDO's response to each.
14. **Question:** Please confirm how much information falls within the scope of the request.

**Response:** The FCDO explained that it carried out a sampling exercise based on one calendar month, September 2021. The FCDO explained that there were around 500 entries in the Foreign Secretary's calendar for the whole of the month, excluding any appointments that were carried out at weekends. As a result the FCDO calculated that there were therefore around 125 entries per week and on average 25 for each day.

Based on this exercise, the FCDO estimated that it would take 30 seconds to open and view each calendar entry individually. However, it explained that further checks were necessary to ensure that staff who process the request would fully understand the acronyms and topics contained in the entries in addition to further checks to understand what some entries actually referred to. The FCDO explained that as result the exercise took significantly longer than 30 seconds per entry.

The FCDO therefore estimated that it would take at least 72 hours to

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<sup>1</sup> This approach is set out in the Commissioner's guidance on section 14(1) of FOIA <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/how-do-we-deal-with-a-single-burdensome-request/#section-12>

carry out the initial work of opening and carrying out an initial review of each entry. The FCDO noted that this level of work is significantly over the cost limit contained at section 12 of FOIA.

The FCDO explained that the calendar for this period is held on two different systems which would both need to be searched which would add time and complexity to the process.

The FCDO explained that after carrying out this initial exercise, it would then need to review the entries for release. This would involve considering the sensitivity of the information, any applicable exemptions including whether the entry contained personal information, ascertain the meaning of acronyms which might not be obvious to someone not closely involved with the diary and then apply redactions. In addition the FCDO explained that it would need to engage stakeholders and seek all relevant clearances.

15. **Question:** When previous requests for ministerial diaries have been processed by government departments, the departments in question have exported the information contained in Microsoft Outlook to an Excel spreadsheet to assist with the processing of the request. Please confirm that this method – as opposed to simply reviewing the information within Outlook – has been considered by the FCDO.

**Response:** The FCDO explained that it did not consider that using Excel provided a practical solution to processing this request.

16. **Question:** Please state the exemptions you consider will apply to parts of the requested information and provide a short justification as to which sort of material within the diary is likely to engage the relevant exemption and why.

**Response:** The FCDO explained that in its view there is a large amount of the information caught by this request which is potentially exempt, due to the nature and sensitivities of the Foreign Secretary's calendar. It explained that such information is scattered through the requested material and is not easily isolated. It explained that based on its sampling exercise for September 2021 it considered the following exemptions were likely to apply to some information:

- Section 23 – Security Bodies. The Foreign Secretary meets with Section 23 bodies regularly.
- Section 24 – National Security. The Foreign Secretary has regular meetings on security issues, and release of details of these meetings could impact on national security.

- Section 27 – International Relations. Although meetings and visits that the Foreign Secretary makes are often released, release of certain events and meetings could impact on international relations.
- Section 35 – Policy Formulation. The information requested covers the Covid-19 pandemic when there were a lot of meetings covering policy development-related issues.
- Section 38 – Health and Safety. Release of regular meetings or use of venues might need to be withheld to protect the Foreign Secretary's safety so that a regular pattern of movement is not released.
- Section 40 – Personal Information. Private appointments.

The FCDO explained that based on its sampling exercise it found that for 4 out of 5 days sampled, all of the above entries were engaged by some of the entries contained in that day. For the other day, at least some of the above exemptions applied to some of the calendar entries.

17. **Question:** What methods have you considered to remove (or at least substantially reduce) exempt material (for example using a 'Find & Replace' function to remove phone numbers)? How effective have these methods been and why?

**Response:** The FCDO explained that it had considered this function however each diary entry is unique and from the sampling exercise it conducted, it noted that reoccurring appointments comprise of only a very small number of entries in the diary. As a result, in the FCDO's view this type of process would not create any efficiencies and potentially allow for a mistake to be made.

18. **Question:** What sampling exercises did the FCDO carry out to determine the time needed to redact individual entries? Please provide details.

**Response:** The FCDO explained that it did not carry out a sampling exercise to redact individual entries. This was because the sampling it had done to collate and review the information and the sampling it had done to consider the applicability of exemptions had established that gathering and reviewing the information, and then applying relevant exemptions, would impose a grossly oppressive burden on FCDO.

19. **Question:** Are there any other arguments the FCDO wishes to put forward to explain why, in all the circumstances, it believed that complying with the request would incur a grossly oppressive burden – bearing in mind the resources available to the FCDO and the public value of the information within scope.

**Response:** The FCDO emphasised that the request covered a significant period of time and contains a very high number of meetings and content for extraction, review and consideration against the exemptions contained in FOIA. The FCDO noted that this would involve significant third party engagement for many entries and potentially legal advice.

The FCDO noted that no particular subject matter or topic is identified in the request. It suggested that the reference to the pandemic in the complainant's public interest arguments was significantly limited in light of the fact that the request goes far beyond any interest in meetings related to Covid-19 and as a result the requests appears to lack any genuine line of inquiry or coherent purpose. The FCDO also argued that the request failed to acknowledge that many ministerial meetings are published in transparency data.

The FCDO argued that taking the above into account, in its view the request imposes a grossly oppressive burden due to the breadth of information sought and the time it would take to respond, and that weighed against its value or purpose the request is vexatious.

Finally, the FCDO noted that it had provided the complainant with advice and assistance under section 16 of FOIA when it had refused her request in respect of how she could refine her request. The complainant has then submitted a refined request for the period July to September 2021 which the FCDO had processed under FOIA.

### The complainant's position

20. The complainant provided the Commissioner with submissions to support her view that section 14(1) of FOIA did not apply. The Commissioner has summarised these submissions below.
21. The complainant explained argued that she was concerned about the generic response of the FCDO. She suggested that if there are data protection concerns then presumably it would be quite straightforward to redact, for example the names of junior officials. She also argued that it was unlikely that lots of other exemptions would be relevant. She highlighted a decision notice issued by the Commissioner which concerned ministerial diaries which found:

'The Commissioner's decision is that the diary extracts for the period specified above do not engage section 35(1)(a) and 35(1)(b) of the

FOIA, and whilst the extracts do engage section 35(1)(d), the public interest favours the disclosure of much of the withheld information'<sup>2</sup>

22. The complainant also cited case of the Andrew Lansley diaries, which covered around a year and were about 200 pages long, and were eventually released without the public authority in question (the then Department of Health) citing section 14(1) of FOIA.
23. Furthermore, the complainant argued that even if the processing of this request did involve the application of numerous exemptions, then in her view there was a significant public interest in the disclosure of the information. She acknowledged that she had asked for information covering an unprecedented time period, but in her view this provided even more reason for the information to be disclosed.
24. She noted that although section 14(1) was not subject to a traditional public interest test, consideration of this provision did require consideration of whether the request had a value or serious purpose in terms of the objective public interest in the information sought. She argued that this request did and provided detailed submissions to support this position which the Commissioner has summarised below.
25. Firstly, she argued that disclosure of the requested information would provide a greater insight into international relations and how the FCDO engages with other countries. In support of the public interest in disclosure of such information, the complainant noted that in March 2021, the Huffington Post reported on how Dominic Raab told officials in a leaked video call that Britain will seek trade deals with countries around the world that violate international standards on human rights.<sup>3</sup> She suggested that disclosure of the information may also shed light on cuts in foreign aid.
26. Secondly, she argued that disclosure of the information would provide a greater insight into lobbying by external parties. She argued that this was particularly important given both the deficit of transparency information regarding lobbying and in light of recent lobbying scandals.
27. The complainant cited a number of examples to support this latter point including David Cameron having a "private drink" with health secretary

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<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014731/fs50629605.pdf>

<sup>3</sup> [https://www.huffingtonpost.co.uk/entry/raab-trade-deals-human-rights\\_uk\\_6050d75bc5b605256ebeaca6](https://www.huffingtonpost.co.uk/entry/raab-trade-deals-human-rights_uk_6050d75bc5b605256ebeaca6)



Matt Hancock and Lex Greensill in 2019.<sup>4</sup> The complainant noted that according to the Times, “There are no minutes of Hancock’s meeting with Cameron and Greensill. It is not logged in transparency releases and civil servants did not attend.”<sup>5</sup> The complainant argued that it is possible that a ministerial diary would have included a reference to a private drink or meeting. She argued that if ministerial diaries were released, the public could compare them to what is actually logged in transparency releases, and identify ones that are missing.

28. Thirdly, the complainant argued that there was a deficit of transparency information in regard to lobbying. She argued that disclosure of ministerial diaries would help rectify the situation, and would go some way in enabling the public and journalists to assess which minister has been lobbied by whom. Not only do ministerial diaries include meetings, but also information on telephone calls arranged.
29. Fourthly, the complainant argued that the government’s publication of transparency data has often been criticised for its incompleteness and lack of quality. She suggested that over the years there have been many examples where transparency data had purposefully or accidentally excluded ministerial meetings.
30. By way of examples, she cited amongst others, newspaper reports that health minister Lord Bethell failed to declare 27 of his meetings, which were left off official transparency disclosures for more than a year. Health secretary Matt Hancock also failed to publicly declare meetings with testing firms that later secured millions of pounds worth of Covid contracts.<sup>6</sup> She also highlighted that in September 2020, Reuters reported how Secretary of State for Trade Liz Truss had reversed a decision to remove meetings she had with the think tank, the Institute of Economic Affairs (IEA).<sup>7</sup> The complainant explained that Ms Truss had two meetings and a dinner with the IEA, which was originally declared in government transparency data, but was then deleted by the department

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<sup>4</sup> <https://www.channel4.com/news/factcheck/factcheck-qa-the-gaps-in-britains-lobbying-laws> and <https://www.thetimes.co.uk/article/matt-hancock-dragged-into-david-cameron-lobbying-scandal-zq7j60dxk>

<sup>5</sup> <https://www.thetimes.co.uk/article/matt-hancock-dragged-into-david-cameron-lobbying-scandal-zq7j60dxk>

<sup>6</sup> <https://www.mirror.co.uk/news/politics/matt-hancock-attended-more-missing-24439919>

<sup>7</sup> <https://www.reuters.com/article/britain-politics-truss/exclusive-uk-trade-minister-reverses-decision-to-remove-think-tank-meetings-from-public-register-idINKBN25U2S2>



in August, arguing that the meetings were held in a 'personal' capacity. The complainant noted that Labour has accused the Minister of circumventing rules designed to stop "secret lobbying" of ministers.

31. The complainant argued that disclosure of the ministerial diaries would greatly help journalists to compare to what extent government transparency data is missing ministerial meetings, particularly in regards to the handling of the coronavirus.
32. Fifthly, the complainant argued that disclosure of the information would help provide a greater insight into how ministers had handled the coronavirus pandemic. This is because a disclosure of the ministerial diaries will enable the public to know who exactly ministers have been communicating with, especially in regards to the awarding of Covid contracts and decisions taken by ministers when handling the crisis. The complainant noted that there have been lots of accusations over cronyism<sup>8</sup> and that a release of ministerial diaries will inform the public of interactions between ministers and firms who received contracts.
33. In relation to the specific information sought by this request, the complainant emphasised that Dominic Rabb had a very central role in the way the crisis was handled and stood in for the Prime Minister when he was in hospital.
34. The complainant also argued that such a disclosure of information would provide very useful information for a Covid inquiry. The complainant noted that in May 2021 there was an announcement of an inquiry into the government's handling of the pandemic.<sup>9</sup> She argued that by having ministerial diaries to hand, it will enable the public to scrutinise in full detail who ministers were meeting at the time - whether internally or externally - and what calls were taking place. The complainant argued that this will help build up a very detailed timeline of events and will also help inform those that are organising the inquiry and those who plan to give evidence to the inquiry.
35. Finally, the complainant argued that the Commissioner had previously concluded that there was a significant public interest in the disclosure of ministerial diaries. She cited the case seeking the diaries of a Department for Communities and Local Government minister and noted that the decision notice, in considering the application of qualified exemptions, had concluded:

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<sup>8</sup> <https://www.bbc.co.uk/news/uk-56319927>

<sup>9</sup> <https://www.bbc.co.uk/news/explainers-57085964>

'70. In the Commissioner's opinion there is a legitimate and strong public interest in the public having knowledge of how Ministers use their time, particularly in the context of carrying out their official duties. Such knowledge has a positive effect by assisting the public in understanding of how public money is spent and whether that spending is both justified and effective.

71. Likewise, the Commissioner considers that the level of transparency gained by disclosing the Minister's diary merits a significantly high weighting in terms of the public interest.

72. What it [the diary of information] does offer, is significant in terms of the public's understanding of how government works and most certainly in how a minister spends his time: It is informative in terms of how the Minister operated and it may assist the public in identifying the focus and weight the Minister or his Department has given particular issues over the time period covered by the particular entries'<sup>10</sup>

36. The complainant argued that such arguments were also relevant to her request.

#### The Commissioner's position

37. With regard to the three criteria set out above at paragraph 12, the Commissioner accepts that the first one is met. While individual diary entries may be short or brief, there are still 8000 such entries falling within the scope of this request. In the Commissioner's view this clearly represents a very significant volume of information.

38. With regard to the second criterion, the Commissioner notes the exemptions that the FCDO has suggested would need to be considered in relation to information falling within the scope of the request. The Commissioner is conscious of the findings in the decision notice referred to by the complainant at paragraph 21 above. However, in the Commissioner's view it is important to remember that each case needs to be considered on its own merits and therefore although the Commissioner concluded that sections 35(1)(a) and (b) did not apply to the information in the scope of that request, this does not automatically mean that they do not apply to the information in this case. In any event, the Commissioner notes that this previous decision notice did accept that section 35(1)(d) was engaged but required an assessment of

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<sup>10</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014731/fs50629605.pdf>

the balance of the public interest test. Furthermore, the Commissioner notes that the FCDO has identified a number of further exemptions that are likely to apply and this assessment is based on a direct examination of a sample of diary entries. Taking into account the volume and range of information falling within the scope of the request the Commissioner is satisfied that the FCDO's concerns that the requested information may contain potentially exempt information are clearly legitimate ones.

39. With regard to the third criterion, based on the FCDO's submissions the Commissioner is satisfied that the potentially exempt information cannot be easily isolated. In reaching this conclusion the Commissioner accepts that using a 'find and replace' function would not significantly aid the process of locating and redacting exempt information given the variance between entries that need to be redacted and the process of checking any redactions. Similarly, the Commissioner accepts for the reasons set out in submissions provided to him by the FCDO (and which are supported by submissions received from other government departments dealing within similar complaints) that exporting the diary into Excel would not reduce the burden of processing the request. Moreover, given the nature of a diary, with numerous entries covering a variety of topics over a considerable period of time, the Commissioner accepts that the exempt information is very likely to be scattered throughout the information.
40. In respect of the estimate of work involved in processing the request, the Commissioner accepts that the FCDO's estimate of 30 seconds per diary entry is a reasonable one. In reaching this finding the Commissioner has placed weight on the fact that the FCDO arrived at this figure as a result of a sampling exercise, which in his view adds to the credibility of the figure. The Commissioner notes that this figure is the minimum amount of time that the FCDO estimates it would take to process the request and that further additional work would be likely to be needed which meant that the figure of 30 seconds per entry would be exceeded. The Commissioner therefore accepts that the FCDO's estimate of 72 hours to process the request is a cogent one, and one which is supported by evidence.
41. Furthermore, in the Commissioner's opinion this represents a significant volume of work and one which would place a grossly excessive burden on the FCDO to undertake. The Commissioner considers this burden is arguably amplified by the fact that only a limited number of individuals would have the experience/knowledge of the information, and sufficient clearances, to process the request.
42. Whilst the Commissioner is satisfied that the FCDO have demonstrated that the three criteria are met and consequently that as result complying with the request would place a grossly excessive burden on it, the

Commissioner has considered whether the purpose and value of the request are enough to justify the impact on the public authority.

43. The Commissioner appreciates that the complainant has made a detailed case for why, in her view, there is a compelling interest in the disclosure of the requested information. Furthermore, the Commissioner acknowledges, as he has done in previous cases, that there is a public interest in the disclosure of ministerial diaries. Disclosure of the information would provide a direct insight into the day to day activities of the Secretary of State of the FCDO. However, it could also potentially shed light on some of the issues highlighted by the complainant, including most obviously how decisions were taken during the period covered by the request but also potentially wider issues such as matters of lobbying. In respect of the existing transparency disclosures made by the government the Commissioner accepts that disclosure of ministerial diaries would represent a greater level of transparency and openness than such existing arrangements already provide for. The Commissioner is also sympathetic to the complainant's argument that given that this request covers an unprecedented time, ie the Covid 19 pandemic, there is arguably a particular public interest in understanding how government ministers organised their time and the meetings, contacts and appointments they had during this period. Disclosure of 16 months worth of such data, and such a volume of information, could prove to be particularly illuminating in this regard. For these reasons, the Commissioner accepts that the complainant's request does have a clear purpose and value and that this should not be underestimated.
44. However, it is precisely because of the volume information in the scope of the request which has led the Commissioner to accept that the burden placed on the FCDO in complying with it is a grossly oppressive one. In the Commissioner's opinion despite the clear value in the disclosure of this requested information, he does not accept that this is sufficient to justify placing such a burden on the FCDO and expect it to undertake at least 13 days work to process this request. As result the Commissioner has concluded that the FCDO were entitled to refuse to comply with the request on the basis of section 14(1) of FOIA.

## Right of appeal

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

46. 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.
47. 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 .....**

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