

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 December 2022

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

Decision

1. The complainant requested a copy of the then Prime Minister, Boris Johnson's ministerial diaries. The Cabinet Office refused the request under section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 14(1) of FOIA to refuse to provide the requested information.
3. The Commissioner does not require the Cabinet Office to take any steps.

Request and response

4. On 29 March 2021 the complainant made the following request for information to the Cabinet Office:

“From 1st December 2019 to the day this request is processed, please provide a copy of the Prime Minister Boris Johnson’s ministerial diaries.”

5. The Cabinet Office’s final position was that complying with the request would impose a significant burden and that it considered that section 14(1) was applicable.

Reasons for decision

6. This reasoning covers whether the Cabinet Office is entitled to rely on section 14(1) of FOIA to refuse to provide the requested information.

Section 14(1) - vexatious

7. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
8. 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.
9. 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.
10. In reaching a decision in this case the Commissioner has considered the submissions provided by the Cabinet Office and the arguments presented by the complainant. He has also referred to recent decision

notices he has issued in relation to similarly constructed requests submitted by the same complainant¹.

11. 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. The Commissioner is also sympathetic to the complainant's argument given that this request covers an unprecedented time, ie the Covid 19 pandemic. For these reasons, the Commissioner accepts that the complainant's request does have a clear purpose and value.
12. However, because of the volume of information in the scope of the request, the Commissioner accepts that the burden placed on the Cabinet Office in complying with it will be 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 Cabinet Office.
13. Having considered the relevant facts the Commissioner is satisfied that the request, the Cabinet Office's position, the complainant's arguments, the scope of information captured and the burden that compliance would impose are sufficiently similar to the scenarios addressed in the recent decision notices cited in paragraph 10. He, therefore, transposes the arguments and conclusions reached in these decision notices to this decision notice.
14. In light of the above, the Commissioner's decision is that the request is vexatious. Therefore, the Cabinet Office is entitled to rely on section 14(1) of FOIA to refuse to comply with the request. The Commissioner requires no further action to be taken by the Cabinet Office in relation to the request.

¹ See, for example, the following: <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022384/ic-129067-f2l3.pdf>, <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022827/ic-148740-m6d1.pdf>, <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022381/ic-128331-r7h1.pdf>, <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022383/ic-129066-d1g1.pdf>

Other Matters

15. FOIA does not contain a time limit within which public authorities have to complete internal reviews. However, the Commissioner's guidance² explains that in most cases an internal review should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances. In this case, the internal review was requested on 14 May 2021 but the Cabinet Office did not respond until 5 October 2021. The Commissioner notes that the Cabinet Office included an apology for the delay in its internal review. The Commissioner is also aware from submissions he has received from the Cabinet Office on an unrelated case that between August 2021 and February 2022 its FOI Team was leading on a short-term recovery project to generally clear a large number of outstanding internal reviews in the department, which in part had built up due to, and during, the Covid-19 pandemic. The Cabinet Office explained that it reduced this number by more than half over the period. Nevertheless, the Commissioner considers the internal review delay in this case to be unacceptable. He has recorded this delay for his own purposes of monitoring the Cabinet Office.
16. The Commissioner notes that the complainant has also complained about the Cabinet Office responding to two requests for information in the same internal review response – in this case for Boris Johnson's diary and for Micheal Gove's diary – see ICO case reference IC-148715-F9L8. As the requests for information are sufficiently similar, with a view to proportionality and prioritising Cabinet Office FOI resources, the Commissioner is content for the Cabinet Office to take the approach it has in these cases by providing a joint internal review response.

² <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/#20>

Right of appeal

17. 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

18. 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.
19. 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
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