

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

### **Decision notice**

**Date:** 5 May 2023

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

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

---

1. The complainant has requested information regarding the refurbishment of the Prime Minister's Downing Street residence. The Cabinet Office maintained that it did not hold the requested information.
2. The Commissioner's decision is that the Cabinet Office does not hold the requested information. The Commissioner does not require any steps to be taken.

#### **Request and response**

---

3. On 28 April 2021 the complainant requested the following information from the Cabinet Office:
  - a) Copies of the schedules of work or plans for the renovation, refurbishing or refitting of the flat at 11 Downing Street that took place in 2020 – including costings, photographs or other material.
  - b) Any photographs of the flat or details within the flat held by the department or on its behalf taken since the start of 2020.
4. The Cabinet Office responded on 28 May 2021, denying that it held the requested information.
5. The complainant requested an internal review on 3 June 2021.
6. The Cabinet Office issued the outcome of the internal review on 21 September 2021, maintaining its position that it did not hold the requested information.

7. The complainant wrote to the Cabinet Office on 18 October 2021 to complain about the outcome of the internal review. He argued that the Annual Report published by the Independent Adviser on Ministers' Interests<sup>1</sup> had referred to material having been collated by the Cabinet Office.
8. The complainant did not receive a response to this correspondence.<sup>2</sup>

## Scope of the case

---

9. The complainant contacted the Commissioner on 4 November 2021 to complain about the way their request for information had been handled.
10. The Commissioner recently issued a decision notice<sup>3</sup> involving a request for different information relating to the refurbishment of the Downing Street flat. During the course of his investigation the Cabinet Office provided background and contextual information which is also relevant to this case. The Commissioner has included that information in this decision notice for reference.

## Reasons for decision

---

### Section 1: information not held

### Section 3: information held by or on behalf of a public authority

11. Section 1 of FOIA says that public authorities are required to respond to requests for information. The authority is required to disclose information in response to a request, unless an exemption or exclusion applies. If a public authority does not hold recorded information that would answer a request, the Commissioner cannot require the authority to take any further action.

---

1

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/990394/Report\\_by\\_the\\_Independent\\_Adviser\\_May\\_2021\\_1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/990394/Report_by_the_Independent_Adviser_May_2021_1.pdf)

<sup>2</sup> The Commissioner observes that the Cabinet Office had already advised the complainant of the outcome of the internal review, therefore there was no requirement under FOIA to respond to further correspondence.

<sup>3</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4024874/ic-145101-17n7.pdf>

12. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, ie the balance of probabilities. Accordingly his investigation will consider the public authority's reasons for stating that it does not hold the information in question, as well as the extent and reasonableness of any search conducted. The Commissioner will also consider any arguments put forward by the complainant as to why the information is held (as opposed to why it ought to be held). Finally, the Commissioner will consider whether there are any further steps he could require the public authority to take if the complaint were upheld.
13. Section 3(2) of FOIA states that information is held by a public authority if:
  - “(a) it is held by the authority, otherwise than on behalf of another person, or
  - (b) it is held by another person on behalf of the authority.”
14. The Commissioner has also had regard to relevant case law, in particular the test set out by the Court of Appeal in *Department of Health v Information Commissioner* [2017] EWCA Civ 374.<sup>4</sup> The Court of Appeal commented that
  - “...there must be an appropriate connection between the information and the Department, so that it can properly be said that that the information is held by the Department.” [54].

### **The Cabinet Office's position**

15. The Commissioner understands that the freehold of the Downing Street estate is legally held in the name of the Secretary of State for Levelling Up, Housing and Communities (LUHC). Whilst the Government Property Agency is responsible for paying business rates, the occupier of the Downing Street flat is personally liable for council tax.
16. The Cabinet Office has explained that Downing Street has been the official residence of the Prime Minister since 1735. It referred the Commissioner to explanatory information contained within a Parliamentary Question answered in April 2021.<sup>5</sup> This confirmed that the Government is legally required to maintain the Downing Street buildings owing to their listed status, but that Prime Ministers have received an

---

<sup>4</sup> <https://www.bailii.org/ew/cases/EWCA/Civ/2017/374.html>

<sup>5</sup> <https://questions-statements.parliament.uk/written-questions/detail/2021-03-12/HL14191>

annual allowance of public funding of up to £30,000 towards furnishing their Downing Street residence.

17. In light of the above the Cabinet Office maintains that the Downing Street flat is considered a private rather than public dwelling.
18. The Cabinet Office has advised the complainant that the works undertaken which are the subject of the request were limited to redecoration. Accordingly Listed Building Consent was not required. The Cabinet Office stated that there was no reason why official plans would be necessary for either the officially or personally funded work.

### **The Commissioner's findings**

19. The Commissioner understands that the Downing Street flat is legally held in the name of the Secretary of State for LUHC. However, in the Commissioner's opinion it does not necessarily follow that information relating to the Downing Street flat, to the extent that it exists, would necessarily be held on behalf of the Cabinet Office, or indeed on behalf of the Secretary of State.
20. The Commissioner accepts that the Cabinet Office is responsible for administering the public money spent on maintenance and renovations relating to the listed status of the Downing Street properties. He also accepts that this responsibility does not extend to personal expenditure on the part of the Prime Minister, even if it relates to renovations or furnishing of the Downing Street flat.
21. The Commissioner observes that the requested information in this case comprises details of the work carried out during the refurbishment of the Downing Street flat. The complainant has not provided the Commissioner with any particular reasons why he believes that the Cabinet Office holds this information.
22. As set out at paragraph 7 above, the complainant referred the Cabinet Office to the report produced by the Independent Adviser on Ministers' Interests. The Commissioner has examined this report and notes that it contains narrative information about the funding of the refurbishment. However the report does not contain anything to indicate that the Cabinet Office holds particulars of the refurbishments, ie the specific requested information.
23. The Commissioner also observes that the Cabinet Office has provided an explanation as to how it is satisfied that it does not hold the requested information (see paragraph 18 above). The Commissioner accepts this explanation as reasonable and has not seen any evidence to the contrary.

24. With reference to the Court of Appeal case set out at paragraph 14 above, the Commissioner accepts that there is no “appropriate connection” between the requested information and the Cabinet Office in this case.
25. In addition, the Commissioner is unable to identify any further action that the Cabinet Office could reasonably be expected to take in order to comply with the request. As has been set out above, if information is not held then it cannot be disclosed in response to a request.
26. Consequently the Commissioner concludes that the Cabinet Office was entitled to deny that it held the requested information, and furthermore he is satisfied that it would not be caught by section 3(2) of FOIA.

## Right of appeal

---

27. 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)

28. 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.
29. 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 .....**

**Sarah O’Cathain**  
**Senior Case Officer**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**