

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

### **Decision notice**

**Date:** 8 March 2023

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

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

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1. The complainant has requested copies of direct correspondence and communications between Boris Johnson and Evgeny Lebedev, during the period between 1 May 2020 and 1 August 2020.
2. The Commissioner's decision is that, on balance of probabilities, the public authority did not hold any information falling within the scope of the request.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 17 March 2022, the complainant wrote to the Cabinet Office and requested information in the following terms:

'I would like to request the following information via the Freedom of Information Act and the Environmental Information Regulations. I understand my request will take 20 working days to process but I would be grateful if you could acknowledge receipt via [email address redacted]

Please note that I am only interested in information generated between 1 May 2020 and 1 August 2020.

My request concerns the correspondence and communications of Boris Johnson and Evgeny Lebedev, who is now also known as Baron Lebedev of Hampton in the London borough of Richmond upon Thames and of Siberia in the Russian Federation.

Please note that the reference to correspondence and communications in the emails below should include all traditional forms of correspondence and communication such as letters and faxes, all emails irrespective of whether they were sent and or received through private and or official accounts, all telephone conversations, any meetings and conversations held over communication systems including Zoom (and or similar), all telephone text messages, all Gmail messages and all messages sent through encrypted messaging services including but not limited to WhatsApp.

Please note that I am only interested in correspondence and communications involving the two men directly. I am not interested in the correspondence and communication of anyone acting on their behalf.

Please note that I am only interested in correspondence and communication which mentions and or refers to any and or all the issues listed (a to f) below. If any other information is included in the correspondence and communication, please feel free to redact and or remove it.

- (a)....Evgeny Lebedev's proposed and actual membership of the House of Lords.
- (b)....Opposition to Mr Lebedev's proposed and or actual membership of the House of Lords and or Mr Lebedev's attitudes towards and or concern about that opposition.
- (c)....Mr Johnson's support for Mr Lebedev's proposed and or actual peerage and or what Mr Johnson might be able to do to overcome any opposition to the proposed and or actual peerage.
- (d)....Mr Lebedev's father Alexander and or his father's former links to the KGB.
- (e)....Mr Lebedev's media and newspaper interests and the extent to which they have and or can still offer support to Boris Johnson and or the Conservative party.
- (f)....Mr Lebedev's views on and or attitudes towards President Putin and or the Russian Federation.

Please note that in each case I am seeking actual copies of correspondence and communication rather than mere excerpts from this correspondence and communication. In the case of any letters, I would like to receive an actual copy of the letter together with any letter headings and or other design features and or signatures. In the case of emails and or text messages and or encrypted messages the date and timing of the messages should be clear. In the case of all

copies of correspondence and or communications they should stick to the original paragraph structure. Providing copies of actual correspondence and communication does not prevent the Cabinet Office from redacting material which is not relevant to the request. It does mean, however, that I should be able to judge the actual location and extent of any redaction.

Can I request the following.

1...During the aforementioned period did Boris Johnson meet with and or dine with and or socialise with Evgeny Lebedev to discuss any of the issues outlined above. I am only interested in pre-arranged meetings and or social events involving the two individuals including but not limited to those meetings and or social events detailed in the prime minister's official diary. I am not interested in any chance meetings at social events

2...If the answer to question one is yes can you provide the following information. In the case of each meeting and or get together can you state the date and time of the meeting and or get together. Can you identify the venue for the meeting and or get together. Were the two men alone? If not, are you able to identify anyone else present at the meeting and or get together. Can you identify these individuals? In the case of each meeting and or social event and or get together can you state what issues the two men discussed. If an agenda (informal or formal) and or any briefing notes were prepared for the prime minister, can you provide copies of these agendas and briefing notes.

3...During the aforementioned period did Boris Johnson write to and or communicate with Evgeny Lebedev about any of the issues outlined above.

4...If the answer to question three is yes can you please provide copies of this correspondence and or communication. If the two men spoke by telephone and or zoom (and or similar) can you, please provide a transcript and or a recording of the conversations. In the case of all correspondence and communication please feel free to redact any information not relevant to the request.

5...During the aforementioned period did Evgeny Lebedev write to and or communicate with Boris Johnson about any of the issues outlined above.

6...IF the answer to question five is yes can you please provide a copy of this correspondence and communication. If the two men spoke by telephone and or zoom (and or similar) can you please provide a transcript and or a recording of the conversations. In the case of all

correspondence and communication please feel free to redact any information not relevant to the request.

7...Since 1 August 2020 has any correspondence and or communication relevant to questions 1 to 6 of this request been destroyed and or deleted and or wiped. If the answer is yes, can you identify what correspondence and or communication has been destroyed and or deleted and or wiped. For instance, was it a letter and or a text message and or a telephone conversation and or a WhatsApp message and or an email. Can you please specify. In the case of any correspondence and or communications which have been destroyed and or deleted and or wiped can you identify the author and or the recipient and or participants and the date the correspondence and or communication was originally generated. In the case of all correspondence and communication which has been destroyed and or deleted and or wiped can you state when it was destroyed and or deleted and or wiped and why. In the case of any correspondence and communications which have been destroyed and or deleted and or wiped can you state on whose instructions they were destroyed and or deleted and or wiped. In the case of each item of correspondence and communication which has been destroyed and or deleted and or wiped can you provide a brief outline of its contents. If destroyed and or deleted and or wiped correspondence and or communication continues to be held in another form, can you, please provide a copy of that correspondence and communication.'

5. The Cabinet Office responded on 14 April 2022 and confirmed that the requested information was held. It further indicated that the requested information was exempt under section 37, and that time extension was needed for the Cabinet Office to apply the public interest test under section 10(3) to decide whether the information requested can be disclosed. It then stated that it hoped to provide the response by 17 May 2022.
6. On 17 May 2022 the Cabinet Office provided its response where it denied holding the requested information, following searches of official records to identify official information that was within the scope of the request.
7. On 18 May 2022 the complainant made a request to the Cabinet Office for an internal review, which the Cabinet Office provided on 17 August 2022 and where it maintained its position that it did not hold any information falling within the scope of the request.

## Scope of the case

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8. The complainant contacted the Commissioner on 6 August 2022 to complain about the way his request for information had been handled.
9. Specifically, the complainant expressed dissatisfaction with the conflicting answers to his request, when on 14 April 2022 the Cabinet Office confirmed that it held the requested information but needed more time to consider the public interest test under section 37 of FOIA, and then, on 17 May 2022 it denied that it held information within the scope of the request.
10. The complainant also raised a concern about the Cabinet Office referring to only 'official communication' in its response to the internal review of 17 August 2022 as that requested by the complainant, and therefore excluding any other communication, when in fact, the complainant requested all relevant communication, whether sent through private or official accounts.
11. The complainant therefore believes that it was highly likely that the Cabinet Office held the requested information.
12. The Commissioner has considered whether, on the balance of probabilities, the Cabinet Office holds or has held at the time the request was made, recorded information within scope of the complainant's request and whether it has complied with section 1(1) of FOIA.

## Reasons for decision

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### Section 1 of FOIA – Information held / not held

13. Section 1 of FOIA states that:
  - '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.'
14. If a public authority does not hold recorded information that falls within the scope of the request, the Commissioner cannot require the authority to take any further action.

15. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-Tier Tribunal decisions, and the civil standard of proof based on the balance of probabilities, must decide whether the public authority holds any information which falls within the scope of the request (or was held at the time the request was made).
16. In this case the complainant contended that the Cabinet Office held information within the scope of his request. This was because of the Cabinet Office's conflicting responses to whether the requested information was held, and also the complainant's belief that, given the 'longstanding friendship' between the then Prime Minister Boris Johnson and Lord Lebedev, it was 'highly likely that the two men met and or communicated with each other during the relevant period'.
17. In respect to its conflicting responses to whether the requested information was held, the Cabinet Office explained that, following the original request for information, it mistakenly considered a submission to Her Majesty the Queen from the former Prime Minister as in scope of the request. However, upon further consideration, the Cabinet Office concluded that the request fell outside the scope of the request. The Cabinet Office acknowledged that this may have caused confusion and it would have been helpful if the response of 17 May 2022 had explained this to the complainant.
18. The Cabinet Office further explained the searches that were conducted to ascertain whether any information within the scope of the request would be found. These included digital searches made by the Prime Minister's Private Office Support Team (PMPOST), which has access to any official documents, briefings, letters and readouts issued by or passed to the PMPOST for filing for records. The Cabinet Office confirmed that PMPOST searched for any relevant correspondence, within the period specified by the complainant in his request, using specific key words on topics raised by the complainant, however, no information within the scope of the request was found.

#### Private communication

19. The complainant raised a concern about Cabinet Office referring to *only* official communication, as the type of communication within the scope of the complainant's request.
20. In response to the Commissioner's request, the Cabinet Office addressed this through explaining its approach to communications conducted via private communication channels. It explained its usual

adherence to the Code of Practice on Management of Records under section 46<sup>1</sup>, in particular paragraph 2.7.3, which states:

'Authorities should ensure that staff are aware that there is no need to keep ephemeral material, and this may be destroyed on a routine basis. For example, by deleting trivial emails and messages after they have been read and discouraging staff from keeping multiple or personal copies of documents.'

21. The Cabinet Office also referred to its own policy on 'Messaging Applications and Web Services', which states:  
  
'(...) staff are required to ensure that any important conversations (such as those that need to remain part of the official record) are saved'.
22. The Cabinet Office confirmed that this is also consistent with the retention and disposal policy of the Prime Minister's Office (PMO). This allows the capture of pertinent information and ensure that trivial information is not retained. It then explained further that when information is to be preserved, then the PMO does this in accordance with the guidance of the Cabinet Office and The National Archives, as well as the Public Records Act 1958.
23. Therefore, to identify any relevant information within the scope of the request, officials would need to search the PMO's records, which, as explained by the Cabinet Office previously, has been carried out in this case. The Cabinet Office also added that the system allows for transfers of information to official records as textual content but does not identify the medium by which the information was transmitted. This means that even if the relevant information was identified, it would not be necessarily possible to identify the communication channel that was used.
24. Finally, the Cabinet Office pointed out that although various social meetings between the then Prime Minister and Mr Lebedev are a matter of fact based on public records, the Government does not hold any official information in relation to such meetings.

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<sup>1</sup> [section-46-code-of-practice-records-management-foia-and-eir.pdf \(ico.org.uk\)](https://ico.org.uk/section-46-code-of-practice-records-management-foia-and-eir.pdf)



25. Following the above, the Cabinet Office confirmed that the requested information is not, and was not, at the time of the request, held by the PMO.
26. Based on the evidence available in this case, the Commissioner is satisfied that on the balance of probabilities, the public authority does not and did not, at the time the request was made, hold recorded information within the scope of the request.
27. This is because the explanation provided by the Cabinet Office regarding steps taken to identify the relevant information, suggests that the searches conducted were sufficiently targeted and reasonable and would have located the requested information, should it have existed on the records.
28. The Commissioner is also satisfied with the explanation about the interpretation of the 'private communication' term in the context of 'official communication' that the Cabinet Office referred to in its internal review response to the complainant. The Commissioner understands that the communication related to official business but conducted using private communication channels, is required and is expected to be transferred, by those using such media, for preservation to official records in accordance with the relevant policies and procedures and thus becoming official communication.
29. The Commissioner also noted the complainant's belief in the likelihood of the existence of the information he requested, based on the alleged longstanding friendship between the then Prime Minister and Lord Lebedev and their social meetings, also mentioned in the Cabinet Office's submission. However, the Commissioner does not consider there to be sufficient evidence to support the probability of the existence of the information requested by the complainant.

## **Other matters**

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### Insufficient initial searches following request for information

30. The Commissioner considers that, when processing FOIA requests it is fundamental for public authorities to consider them in sufficient detail to be able to determine whether the requested information falling within the scope of that particular request is actually held, before responding to the requester.



Internal review response – time limit

31. FOIA does not contain a time limit within which public authorities have to complete internal reviews. However, the Commissioner's guidance<sup>2</sup> explains that 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 18 May 2022 and the Cabinet Office did not respond until 18 August 2022, following the Commissioner's intervention.

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

## Right of appeal

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32. 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)

33. 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.
34. 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**