

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

### **Decision notice**

**Date:** 3 October 2023

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

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

---

1. The complainant submitted a request to the Cabinet Office seeking a copy of the former Prime Minister, Boris Johnson's, ministerial diary for the period 1 March 2020 to 16 April 2020.
2. The Cabinet Office refused the request, citing section 14(1) (vexatious requests) FOIA, based on the grossly oppressive burden that complying with the request would impose.
3. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 14(1) FOIA to refuse to comply with the request.
4. No further steps are required.

## Background to the request

---

5. In 2021 the complainant submitted a request to the Cabinet Office for copies of the former Prime Minister's ministerial diaries spanning a period of almost 13 months. The Cabinet Office refused the request citing section 14(1), and the Commissioner upheld this position in his decision under reference IC-152161-T4L8<sup>1</sup>.

## Request and response

---

6. The complainant submitted the following request to the Cabinet Office on 21 April 2022:

"This is a request for information under the Freedom of Information Act. I would like to request the following information:

From 1st March 2020 to 16th April 2020, please provide a copy of Prime Minister Boris Johnson'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 when the pandemic gripped the UK.

I would like to highlight that I recently received the ministerial diaries of Dominic Raab (request sent to the FCDO, FOI reference: FOI2021/27787). This did not engage section 12 or 14, and I had asked for more than six weeks' worth of diaries. There is a clear precedent of government departments releasing ministerial diaries."

7. The Cabinet Office responded on 20 May 2022 and refused to comply with the request on the basis of section 14(1) of FOIA. In support of its reliance on section 14(1), the Cabinet Office argued that the request would place a disproportionate burden on its resources and that, given the sensitive nature of the Prime Minister's diary, it will engage one or more exemptions.

---

<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4023414/ic-152161-t4l8.pdf>

8. The complainant contacted the Cabinet Office on 31 May 2022 and asked it to conduct an internal review simply saying: "I would like to request an internal review."
9. The Cabinet Office provided the outcome of the internal review on 4 August 2022. It upheld the application of section 14(1) of FOIA maintaining its original position because of the burden placed on the Cabinet Office in complying with the request and adding that the request was a 'fishing expedition'.

### **Scope of the case**

---

10. The complainant contacted the Commissioner on 4 November 2022 to complain about the Cabinet Office's refusal of their request.
11. That same day, the Commissioner wrote to the Cabinet Office advising that allocation of the case to an investigating case officer was forthcoming. In the meantime, it asked the Cabinet Office to provide its final reasoning why its handling of the request was compliant with FOIA.
12. On 26 January 2023, the Cabinet Office responded to the Commissioner providing submissions. It maintained that the exemption at section 14(1) FOIA was properly applied.
13. The Cabinet Office advised that the time period of the request needed to be shortened because on 5 April 2020 the Prime Minister was admitted to hospital after testing positive for COVID-19 and the Deputy Prime Minister then undertook official engagements on the Prime Minister's behalf. Therefore, the dates 5 April to 16 April 2020 of the original request were excluded by the Cabinet Office and the request was reduced to five weeks (from six weeks and four days) of the Prime Minister's diary or 35 days. It said: " During this period, the diary reflects the Deputy Prime Minister's engagements which are considered to be out of scope for this request.... [From] 5 April 2020, ...the Deputy Prime Minister undertook official engagements. These 11 dates have therefore not been considered in the above estimate."
14. More detail was provided by the Cabinet Office about the burden imposed by the request. It explained that the former Prime Minister's diary for the five week period was 33 pages containing an estimated 650 entries. The Cabinet Office advised that its estimate was calculated using a sample day which contained 18 entries and multiplied by 35.
15. The Cabinet Office set out that a sample exercise was conducted using a single diary entry from the first date in scope of the request, 1 March 2020. It was estimated it would take an average of 10 minutes to

review, consider the background and liaise with relevant colleagues for each entry in order to redact relevant entries in accordance with the exemptions under the FOIA. It accepted that clearly some would be easier to consider, but others much more complicated. The Cabinet Office therefore stated that it would take approximately 105 hours to review, consider and appropriately redact five-weeks' worth of entries.

16. The Cabinet Office went on to say that the UK Covid 19 Inquiry would in due course provide the public with detailed insight into the decisions taken and management of the pandemic. It said:

"The department believes that it is arguable that greater detail will be explored and disclosed during the course of the Inquiry, in contrast to the complainant's request which would lack vital explanation and will only provide a partial snapshot of what was occurring over the five weeks specified (covering all matters, not just the pandemic). The Inquiry will examine the preparations and response to the pandemic up to 28 June 2022 when it was established, covering a wider time frame than the request too. The coverage of the Inquiry will serve the public interest greater with its thorough independent scrutiny and analysis."

17. Further, the Cabinet Office noted that a portion of the information that the complainant has requested has been published in transparency data (and links were provided to entries of meetings that took place from January to June 2020<sup>2</sup>).
18. The Cabinet Office concluded by saying that the complainant's request was a 'fishing expedition' as it lacked a genuine line of inquiry.
19. During the course of his investigation the Commissioner informed the Cabinet Office on 2 March 2023 that, in his view, on the basis of the limited sampling information provided to date, that section 14(1) did not provide a basis upon which to refuse the request.

---

2

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/905097/Rt-Hon-Boris-Johnson-MP-meetings-January-to-March-2020.csv/preview](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/905097/Rt-Hon-Boris-Johnson-MP-meetings-January-to-March-2020.csv/preview);  
<https://www.gov.uk/government/publications/cabinet-office-ministerial-gifts-hospitality-travel-and-meetings-january-to-march-2020>;  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/930220/Rt-Hon-Boris-Johnson-MP-meetings-April-to-June-2020.csv/preview](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/930220/Rt-Hon-Boris-Johnson-MP-meetings-April-to-June-2020.csv/preview);  
<https://www.gov.uk/government/publications/cabinet-office-ministerial-gifts-hospitality-travel-and-meetings-april-to-june-2020>;

20. The Commissioner noted that, in contrast to other public authorities dealing with similar requests for ministerial diaries, the Cabinet Office had only based their sample on one diary entry and provided no specific information about its sampling process beyond "it would take time for officials to give proper consideration as to which exemptions may apply." Without further cogent information, the Commissioner considered that 10 mins per diary entry was higher than some of the estimates per diary entry provided by other public authorities in recent ministerial diary cases.
21. In relation the Covid Inquiry and its scrutiny of the government's response, the Commissioner's view was that it was by no means clear at the time of the request in April 2022 if the then Prime Minister's diary would be made available to the Inquiry or when any Inquiry report may be published. In addition, in the Commissioner's view, the request was not a 'fishing expedition;' rather it was a refinement of the complainant's previous broader, request.
22. On 2 March 2023, the Commissioner informed the Cabinet Office that if it wished to maintain its position, it would need to answer a range of further questions in order that he may reach a final decision.
23. In response, the Cabinet Office provided the Commissioner with further submissions on 26 April 2023. The content of these are discussed further below.
24. The Commissioner therefore considers that the scope of this case is whether the Cabinet Office is entitled to rely on section 14(1) to refuse the request.

## **Reasons for decision**

---

### **Section 14(1) – vexatious requests**

25. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
26. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
27. A public authority may apply section 14(1) FOIA where it can make a case that the request is vexatious as the amount of time required to review and prepare the information for disclosure would impose a

grossly oppressive burden on the organisation. This is the Cabinet Office's rationale for relying on section 14(1) in this case.

28. The Commissioner considers that there is a high threshold for refusing a request on such grounds. There must be a significant amount of information falling in the scope of the request, the public authority must demonstrate that it contains exempt information scattered throughout and the task of redaction would be burdensome.
29. In circumstances where a public authority wishes to apply section 14(1) based on the grossly oppressive burden that compliance with a request would cause, it must balance the impact of the request against its purpose and value to determine whether the effect on the authority would be disproportionate.
30. As he has already found that the Cabinet Office were entitled to refuse the complainant's prior request for over 13 months of material, the decision facing the Commissioner is whether the Cabinet Office's estimation of the time it would take to prepare the information, over a significantly reduced timeframe, continues to support the application of section 14(1).

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

31. The Cabinet Office provided the Commissioner with a second set of submissions on 26 April 2023. The Cabinet Office strongly maintained its reliance on section 14(1) and provided the Commissioner with more supporting information as summarised below.
32. The Cabinet Office explained to the Commissioner that the information that the Cabinet Office holds within scope of this request is the definitive diary for the former Prime Minister covering five weeks. They noted that the diary captures every aspect of the Prime Minister's life, whether official, political or personal because, "unlike other Ministers, the Prime Minister is effectively 'on duty' 24 hours a day, 365 days a year and must be contactable at all times". During the beginning months of the Government's response to the COVID-19 pandemic to which the request refers, the Cabinet Office advised that the Prime Minister held a large number of meetings with officials, including on weekends. The Cabinet Office noted that the pressures on a Prime Minister's time are significantly greater than the pressures on other Ministers.
33. The submissions reiterated that details of official engagements held by the Prime Minister are proactively published by the Prime Minister's Office as part of the Government's overall commitment to transparency. That includes official meetings with external organisations and individuals, overseas travel, UK official travel, official receptions and

official hospitality. The process for identifying official information in the diary that will form part of the transparency release is undertaken by a member of the Prime Minister's Private Office Support Team (PMPOST) and significant time and resource is already deployed for this work.

34. However, the Cabinet Office made clear that the proactively released information does not provide granular information contained in the Prime Minister's diary, and "as such, the diaries must be reviewed afresh as part of any FOI request asking for them in full."
35. The Cabinet Office explained (in its 26 January 2023 submissions) that the entries in scope would attract a variety of exemptions and it would take time for officials to give proper consideration as to which exemptions may apply to certain entries in the circumstances. It listed the following exemptions that could be applicable:
- Section 27 International relations
  - Section 31 Law enforcement
  - Section 38 Health and safety
  - Section 35(1)(a) The formulation or development of government policy
  - Section 35(1)(b) Ministerial communications
  - Section 35(1)(c) The provision of advice by any of the Law Officers or any request for the provision of such advice
  - Section 35(1)(d) The operation of any Ministerial private office
  - Section 40 Personal Information
36. The Commissioner asked the Cabinet Office what methods they had considered to speed up the processing of the request (for example exporting the information contained in the diary to an Excel spreadsheet) or to remove/substantially reduce exempt material (for example, using a 'Find & Replace' function to remove phone numbers) and how effective these methods had been. The Cabinet Office did not directly respond to the Commissioner's questions about this but instead advised that the entries within the diary would need to be checked one by one. The Cabinet Office advised that this would involve the FOI team consulting with individuals in the Prime Minister's Private Office with the relevant policy knowledge of the subject, it would also be necessary for the FOI team to research online to understand whether or not any information has been previously published, consultation with other third parties may also be required, such as with the No 10 Security team, the

Prime Minister's close protection team in the Metropolitan Police and the National Security Liaison Group.

37. The Commissioner asked the Cabinet Office to detail what sampling exercises it had carried out to determine the time needed to redact individual entries. The Cabinet Office responded that:

"You explain in your letter of 2 March that the DWP and DfT in similar FOI responses have estimated each diary entry would take two and three minutes to assess respectively. We note that Ministers in those Departments are not engaged in the highest level of statecraft that the Prime Minister is. Along with information about routine meetings, the Prime Minister's diary contains information about highly classified domestic and international issues. Nor do Ministers in those Departments receive Parliamentary and Diplomatic Protection. The Prime Minister's diary contains information about his or her travel (and his or her family). Therefore, while the FOI teams in those Departments may unilaterally be able to make assessments at pace about entries in their respective Ministerial diaries, that would not be the case for the FOI team in the Prime Minister's Office when considering release of information from the Prime Minister's diary that potentially engage a wide range of exemptions in the Act. Indeed, given the sensitive nature of the Prime Minister's diary, the people who can access it are very limited. That does not include the FOI team. That would further complicate and add more time to the process of accessing, reviewing and referring for consultation the information in scope."

38. The Cabinet Office noted that the Commissioner had previously upheld section 14 refusals for other government departments for similar requests, specifically citing the Commissioner's decision in a case involving the Attorney General's Office (AGO) IC-129067-F2L3<sup>3</sup> - estimate of five -10 minutes per diary entry, and the Department for Environment Food and Rural Affairs' (Defra) estimate of 10 minutes per entry (IC-199129-V7V7<sup>4</sup>). The Cabinet Office strongly argued that the

---

<sup>3</sup> <https://icosearch.ico.org.uk/s/search.html?collection=ico-meta&profile=decisions&query&query=129067>

<sup>4</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4024172/ic-199129-v7v7.pdf>



reasoning and estimates per diary entry which they had described were "certainly more applicable to the Prime Minister's diary."

39. The Cabinet Office, without explanation, reduced its estimate of the number of diary entries in scope of the request from 650 (the figure provided to the Commissioner in January 2023) to 522 (the figure provided to the Commissioner in April 2023). However, it still maintained it would take an "on average conservative 10 minutes" to assess each entry, totalling 5220 minutes, or 87 hours. The Cabinet Office also noted this did not include the time that would be needed to consider the additional mosaic security arguments - see below.
40. In summary, the reason the Cabinet Office said it would take 10 minutes on average to assess each diary entry was as follows (as set out in its 26 April 2023 submissions):
  - while it was accepted that 10 mins per entry was higher than estimates per diary entry provided for other Ministers, the Cabinet Office noted that other Ministers are not engaged "in the highest level of statecraft that the Prime Minister is";
  - along with information about routine meetings, the Prime Minister's diary contains information about highly classified domestic and international issues that potentially engage a wide range of exemptions;
  - for each diary entry, consultation would therefore be required with a range of senior officials even where there might be seemingly anodyne entries contained in the diary at first glance. For example, the Cabinet Office explained that where sections 23 (security bodies) and 24 (national security) might be engaged, the National Security Liaison Group would need to be consulted. Entries may also include details on sensitive sites and meetings with individuals from sensitive backgrounds, for example from the military or the UK intelligence agencies. Given the nature of the Prime Minister's role, it was more likely that such meetings will be in his diary when compared to the majority of other Ministers;
  - the Prime Minister's Office would also have to consider how any particular disclosure might be interpreted, given the events at the time. This includes, for instance, consideration of international, national and local events and the consideration of whether disclosure could cause offence to communities or cause diplomatic offence - section 27 (international relations). The Cabinet Office suggested that if a significant event occurs but the diary shows the Prime Minister was busy with something completely unrelated (even evidenced by

unrelated redactions) offence could be caused to communities or countries;

- the Cabinet Office further explained that the Prime Minister's Office does not lead on policy in a way other Government Departments do, therefore a cross Government exercise would need to be undertaken to determine which policy issues remain under development in relation to e.g. the application of section 35(1)(a) (formulation or development of government policy). The Cabinet Office noted that this was recognised by the Commissioner in the AGO case.
- given the sensitive nature of the Prime Minister's diary, the people who can access it are very limited. That does not include the Cabinet Office FOI team. In order to assess diary entries against FOI exemptions it would, therefore, first be necessary for the FOI team to consult individuals in the Prime Minister's Private Office with the relevant policy knowledge. The Cabinet Office argued that this would further complicate and add more time to the process of accessing, reviewing and referring for consultation the information in scope. To this end, the Cabinet Office noted that in the AGO case (IC-129067-F2L3<sup>5</sup>) the Commissioner acknowledged that only a limited number of individuals would have sufficient clearance to process the request;
- it was noted that the seniority of the named individuals that appear on the diary entries would need to be assessed to determine whether their names should be withheld under Section 40(2) (personal data);
- the Cabinet Office stated that the effort and the considerable amount of time to review and then consider any applicable exemptions and redactions in the requested information was therefore oppressive in terms of the strain on time and resources, and it cannot reasonably be expected to comply, despite the subject matter or intentions of the requester. It contended that there would also be very minimal public interest in the limited disclosure of any remaining information that is not redacted.

---

<sup>5</sup> See para 42 <https://icosearch.ico.org.uk/s/search.html?collection=ico-meta&profile=decisions&query&query=129067>

41. The Commissioner notes he was provided with two example unredacted diary entries to illustrate the points made above. For reasons of confidentiality they cannot be replicated here.
42. In addition to needing to consider the various diary entries based on the topics of the discussions and attendance, the Cabinet Office advised that the Prime Minister's Office "must also give very significant consideration to more mosaic matters to the diary."
43. The Cabinet Office argued that when considering the potential disclosure of any information contained within the diary, significant consideration must be given to the Prime Minister's security - section 38 (health and safety). This was because any discernible pattern of movement and routine of the Prime Minister might be of use to anyone that might wish to cause harm to the Prime Minister or to undermine his security generally (including cyber security, national security, information security). When combined with other information publicly available, someone with hostile intent could build up a useful picture of the pattern of the Prime Minister's official, political and personal life.
44. Potential disclosure of diary entries would therefore require consultation with the No 10 Security Team, who would in turn likely need to consult with the Metropolitan Police Service and other partners. The Cabinet Office argue that consideration of this would be time consuming and burdensome. As noted above, the Cabinet Office stressed that time that would be needed to consider the additional mosaic security arguments has not been included in the 87 hour figure and would therefore be additional to it.

### **The complainant's position**

45. In relation to a previous wider request on this subject matter<sup>6</sup> the complainant said:

"I specifically mentioned that 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. It is of absolute interest to disclose the ministerial diaries in order for the public to

---

<sup>6</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4023414/ic-152161-t418.pdf>

scrutinise how ministers handled the pandemic on a day to day level. The pandemic has had a huge impact on people's lives, and it is of vital interest to see what internal and external ministerial meetings took place, as well as the telephone and Zoom calls taken by ministers."

46. In a letter to the Commissioner, the complainant argued that the published transparency data already available on the government's website had often been criticised for incompleteness and lack of quality. They stated that disclosure of ministerial diaries would greatly aid the public in comparing to what extent government transparency data is missing ministerial meetings, particularly in regards to the handling of the coronavirus.
47. The complainant also argued that disclosure would allow greater insight into lobbying. In light of recent lobbying scandals surrounding government Covid contracts, the complainant states that release of the diaries would enable 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.
48. The complainant stated in the original request that they recently received disclosure of the ministerial diaries of Dominic Raab so there was a clear precedent of government departments releasing ministerial diaries. In a letter to the Commissioner, the complainant also specifically referenced the Commissioner's decision relating to the diary of James Wharton, formerly Minister for the Northern Powerhouse.

### **The Commissioner's view**

49. As has been acknowledged by the Commissioner in a recent decision notice IC-154554-P3N2<sup>7</sup>, there is no special protection or exemption afforded to the Prime Minister's diary when compared to other Ministerial diaries. However, it is the Commissioner's view that certain considerations which apply to the Prime Minister's diary will be different and more onerous in some respects to those which apply to other Ministers.
50. The Commissioner notes that the request seeks information from the Prime Minister's ministerial diary for a six week, four day period (1

---

<sup>7</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4026809/ic-154554-p3n2.pdf>

March 2020 to 16 April 2020). As mentioned above, the Cabinet Office reduced the timeframe of the request in its submissions dated 26 January 2023 to five weeks due to the Prime Minister's admission to hospital after testing positive for COVID-19. It removed the dates 5 April to 16 April 2020 from the scope of the request as it said that the Deputy Prime Minister undertook engagement's on behalf of the Prime Minister.

51. The Commissioner's view is that the request timeframe cannot be refined by the public authority itself in the way that it has done so. It is accepted that the Prime Minister's meetings during 5 April to 16 April 2020 were either cancelled, carried out by the Deputy Prime Minister or that the diary entries were simply wiped following Mr Johnson's hospital admission. Nonetheless, the request timeframe remains the entire 6 week, four day period. Even if the diary entries for some days after 5 April are completely blank, the request timeframe itself cannot be reduced. However, the Commissioner accepts that, in practical terms, this does not affect his overall decision, he simply makes this point for completeness in this decision notice. This is because, if the diary entries were not wiped for 5 to 16 April 2020, there are 20% more diary entries to consider and if they were wiped, the estimate provided by the Cabinet Office to the Commissioner stays the same.
52. The Commissioner notes that the Cabinet Office have advised that there are 522 diary entries falling within the scope of the request and the Commissioner accepts it is reasonable to proceed on the basis of this figure. The Commissioner is satisfied that the complainant has requested a relatively large volume of information.
53. The Commissioner is not convinced that the Cabinet Office's estimate of 10 minutes per entry to comply with this request, is one that can be considered particularly robust. When providing an estimate as to how long compliance with the request would take, the Commissioner expects this estimate to be based on cogent evidence which usually involves the public authority conducting an adequate sampling exercise. In this case, the Cabinet Office has not provided the Commissioner with sufficient details of a timed sampling exercise nor of the specific actions and steps that would need to be undertaken for each diary entry to solidify the estimation of 10 minutes per diary entry.
54. The Cabinet Office noted in support of its position that the Commissioner had previously upheld section 14 refusals for other government departments for similar requests, specifically citing the Commissioner's decision in a case involving the Attorney General's Office (AGO) IC-129067-F2L3, and an identical time frame case involving Defra IC-199129-V7V7.

55. In the AGO case, the request was for the then Attorney General, Suella Braverman's ministerial diary for the period February 2020 to March 2021, a 12 month period of time which is considerably longer than diary entries requested in the present case. In the Defra case, the request was for the then Secretary of State for Environment, Food and Rural Affairs, George Eustice's, diary for between 1 March 2020 and 16 April 2020, a period of time identical to the present case.
56. However, in both of the above two cases, the government departments each undertook appropriate and expected sampling exercises to evidence the grossly oppressive burden which complying with the requests would impose. Defra undertook a sampling exercise and obtained entries from a 5 day period of Mr Eustice's ministerial diary, which contained 66 entries. It also carried out a timed sampling exercise on some of the actions that would be needed to check each diary entry. In that decision notice the Commissioner was satisfied that Defra had provided sufficient evidence, based on the detailed sampling exercises, to justify that it would take 10 minutes per diary entry.
57. The AGO considered a sample of two weeks from the Attorney General's diary and reviewed a two month period of diary entries as part of their consideration of the level of burden which complying with the request would impose. The AGO advised the Commissioner that they estimated that it would take an average of 5 to 10 minutes per entry to consider whether an exemption applies to each entry, although, importantly, they acknowledged that some entries would take considerably less time where it is immediately obvious that an exemption applies.
58. By contrast, in the present case the Cabinet Office carried out no such detailed sampling exercise and the Commissioner finds that this is unsatisfactory. In addition, the Commissioner does not consider that the Cabinet Office's estimate that it would take an, "on average conservative ten minutes" to assess each entry in the Prime Minister's diary to be reasonable or robust.
59. The Commissioner considers the Cabinet Office may be including in the estimate activities that he does not consider are necessary. As set out above, when previous requests for ministerial diaries have been processed by government departments, the departments have exported the information contained to an Excel spreadsheet or PDF to assist with the processing of the request. The Commissioner asked if this method, as opposed to simply reviewing the information, had been considered by the Cabinet Office. The Cabinet Office has provided no evidence that it has fully explored the potential for automating its review of individual entries which would allow individual entries to be scanned electronically for regularly recurring items such as names, email addresses or appointments. Recurring entries may not need reviewing line by line.

Whilst the Commissioner accepts that not all entries in the diary follow a standard format, there will be certain key words, personal details, or staff names that the Cabinet Office could search for to find entries that would need redacting. This would represent a reduction in the average amount of time the Cabinet Office would need to review each individual line.

60. The Commissioner accepts that the entries in the Prime Minister's diary will (given the nature of the Prime Minister's role) attract a wide range of FOIA exemptions, and consideration of the respective public interest considerations may take some time.
61. However, given the high level nature of the Prime Minister's role and daily diary, the Commissioner considers that in many cases (as the AGO recognised) it will be immediately obvious from the entry which exemption or exemptions applies. The Commissioner is therefore sceptical of the Cabinet Office's contention that for each entry it would need to consult the Prime Minister's Private Office and a range of other third parties to consider whether any exemptions apply (and then do the necessary redactions). While the Commissioner does accept that the Cabinet Office has valid concerns about exempt information within the diary, he notes that, as he found in another Decision Notice involving Boris Johnson's diary<sup>8</sup>, Cabinet Office officials have significant expertise regarding the application of FOIA exemptions to requested information. Consequently, the Cabinet Office would be expected to be able to quickly recognise whether certain information would be exempt under a particular exemption(s) and so it would not be required to carry out exhaustive checks for each diary entry to decide whether a particular exemption(s) applied.
62. Nevertheless, the Commissioner recognises that not every entry in the Prime Minister's diary would lend itself to such immediate exemption recognition due to the wide ranging responsibilities of the former Prime Minister.
63. Despite the Commissioner's reservations with the 10 minute per entry estimate provided by the Cabinet Office in this case, he recognises and accepts, however, that information recorded in the Prime Minister's diary will attract additional considerations to those which will apply in requests

---

<sup>8</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4026809/ico-154554-p3n2.pdf>

for copies of other ministerial diaries. The Commissioner considers that, in their submissions, the Cabinet Office have advanced reasonable arguments on these points.

64. It is acknowledged by the Commissioner that there is concern about the safety of high profile individuals, such as the Prime Minister (and his family). Whilst the Commissioner recognises that the information within the diary shows where former Prime Minister was, as opposed to where he will be in future, he nevertheless accepts that disclosure of the entries would reveal patterns of behaviour that might allow a malicious individual to predict where the former Prime Minister (or his family) might be at a particular time of day (bearing in mind that Boris Johnson was still Prime Minister at the point the request was responded to).
65. Therefore, the Commissioner accepts that the Cabinet Office would need to review diary entries to determine whether their disclosure would present a risk to the Prime Minister's safety (and potentially that of his family) and would therefore require consultation with the No 10 Security Team, who would in turn likely need to consult with the Metropolitan Police Service and other partners. Appropriate redactions would be required (e.g. not disclosing the exact time, duration or location of a particular meeting or attendance) and such processes would add to the expenditure of time and resources. It is noted by the Commissioner that this additional consultation time about security issues has not been specifically included in the estimate of 87 hours and so would be additional to it.
66. The Commissioner also recognises, as he did in the AGO case, that as the Prime Minister's Office does not lead on policy in a way which other Government departments do, an amount of cross Government consultation would need to be undertaken to determine for some (but not all) diary entries which exemption applies and which policy issues remain under development.
67. In addition, the Commissioner accepts that it is a satisfactory argument that the burden in this case is amplified by the fact that limited individuals have the experience/knowledge of the information, and sufficient clearances, to process the request. The Commissioner notes the very limited number of people who have access to the Prime Minister's diary and that this does not include the FOI team. The Commissioner therefore accepts that this restriction will inevitably add more time to the process of accessing, reviewing and referring for consultation the information in scope.
68. As previously mentioned, the Cabinet Office provided the Commissioner with two example diary entries to illustrate the consultations which would need to take place. The Commissioner considers that these



examples and the consultations which they detail, demonstrate the points made above. However, the Commissioner, notes that, in line with his comments made above, that he expects public authorities to undertake appropriate and expected timed sampling exercises – and the Cabinet Office did not do so here. For example, in a case involving an identical timeframe, Defra undertook a detailed sampling exercise and obtained entries from a 5 day period of Mr Eustice's ministerial diary.

69. In conclusion, whilst the Commissioner considers that the Cabinet Office's estimate of 87 hours may be inflated and that it did not carry out an adequately detailed sampling exercise, given the breadth of the information involved and the limited individuals available to review the entries, he remains unconvinced that the burden of responding to this request could realistically be brought down to a reasonable size. The burden will require a diversion of resources that no public authority could easily accommodate even given the size and resources available to the Cabinet Office.
70. Whilst the limit laid down by The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 is not directly relevant to the application of section 14 FOIA, these give a clear indication of what Parliament considered to be a reasonable charge for staff time. The limit prescribed for central government authorities applying section 12 of FOIA is 24 hours, and this provides a useful starting point for assessing the burden of complying with a request, however it is important to note that the threshold is high for refusal of a request under section 14 based on the time needed for processing.
71. On its face, the 87 hour estimate is grossly above the 24 hour limit. Even if the Cabinet Office were able to review each entry in half the time (5 minutes on average), complying with the request would still take in excess of 43 hours of staff time. While the Commissioner considers that 43 hours work for information of such historical significance cannot be considered unduly burdensome, when the time which would be needed for appropriate and necessary consultation and consideration of mosaic matters is added to this, the Commissioner considers that, although the matter is very finely balanced, the burden which would be imposed upon the Cabinet Office to comply with the complainant's request would be an oppressive one.
72. In assessing the burden of complying with the request the Commissioner has referred to his decision in respect of a similar request

for the former Prime Minister's diary in which he estimated the time required to comply with the request to be 56 hours.<sup>9</sup>

73. The Commissioner's next step is to go on to consider whether there might be any mitigating factors. Even where it is established that compliance with a request would impose a grossly oppressive burden, the public authority must still balance the impact of the request against its purpose and value to determine if the request is vexatious or not.
74. The complainant has submitted valid arguments for disclosure as set out above. The Commissioner disagrees with the Cabinet Office's claim that the request is a fishing expedition, or that it lacks purpose or focus. The Commissioner acknowledges the serious purpose of the request, and that it could potentially shed light on the issues raised by the complainant, such as lobbying.
75. The Commissioner recognises that the period covered by the request is one that is historically significant. The Commissioner is therefore sympathetic to the complainant's argument that given that this request covers an unprecedented time, ie the early days of the Covid 19 pandemic, there is arguably a particular public interest in understanding how the Prime Minister organised his time and the meetings, contacts and appointments they had during this period.
76. The Commissioner acknowledges the public interest in the disclosure of ministerial diaries. The Commissioner would note, however, that compliance with the request would not provide the 'full detail' of the events and meetings that took place. The diary entries do not contain details of what occurred during a specific call or meeting but rather what took place at what time. The entries will therefore be brief rather than detailed.
77. The Commissioner notes that the UK Covid 19 Inquiry began to hear evidence in June 2023 and it is now public knowledge that the Inquiry panel is to be provided with an unredacted copy of the former Prime Minister's diaries covering the period 1 January 2020 to 24 February 2022<sup>10</sup>. However, at the time the request was made in April 2022 (and

---

<sup>9</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4026809/ico-154554-p3n2.pdf>

<sup>10</sup> [https://www.theguardian.com/uk-news/2023/jul/06/ministers-lose-legal-challenge-over-boris-johnson-whatsapps-covid-inquiry?CMP=Share\\_iOSApp\\_Other](https://www.theguardian.com/uk-news/2023/jul/06/ministers-lose-legal-challenge-over-boris-johnson-whatsapps-covid-inquiry?CMP=Share_iOSApp_Other); <https://covid19.public->

even now at this later date), it was and is by no means clear if the Prime Minister's diary was to be made publicly available as part of any Inquiry or when any Inquiry report would be published.

78. The Commissioner also notes that the complainant has raised some valid concerns about the limitations of the Cabinet Office's transparency returns. The Commissioner accepts that disclosure of ministerial diaries would represent a greater level of transparency and openness than such existing arrangements already provide for. Whilst the complainant has previously argued that the quarterly transparency reports are minimal, the Commissioner is of the view that this information does go some way to meeting the public interest in information regarding ministerial day to day working during this time.
79. The complainant argues that its receipt of the ministerial diaries in a previous case IC-182571-T1T5<sup>11</sup> demonstrates that the Cabinet Office is prevented from relying on s14 in this case. This case concerned a request to the FCDO for the diary of Dominic Raab, formerly Foreign Secretary, between 1 June 2021 to 15 September 2021. The FCDO disclosed a redacted version of the information requested. The Commissioner would note that each request for information must be considered and assessed on its own facts and circumstances, including, in the context of section 14, the particular strength and weight of the serious legitimate purpose or interests which lie behind the request.
80. When making their complaint to the Commissioner, the complainant also specifically referenced the Commissioner's decision in FS50629605<sup>12</sup> (August 2017), a case which concerned a request to the DCLG for the diary of James Wharton, formerly Minister for the Northern Powerhouse, between 1 January to 15 April 2016. In that case the Commissioner found that the estimate provided by DCLG was not sufficiently adequate

---

[inquiry.uk/wp-content/uploads/2023/07/06144102/2023-07-06-UK-Covid-19-Inquiry-Notice-1.pdf](https://www.inquiry.uk/wp-content/uploads/2023/07/06144102/2023-07-06-UK-Covid-19-Inquiry-Notice-1.pdf)

<sup>11</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4025633/ic-182571-t1t5.pdf>

<sup>12</sup> [fs50629605.pdf \(ico.org.uk\)](https://ico.org.uk/media/action-weve-taken/decision-notices/2017/4025633/fs50629605.pdf)

for the Commissioner to agree with the department's arguments. The Commissioner therefore found that DCLG were not entitled to rely on section 14.

81. By contrast, in the present case, whilst the Commissioner considers that the estimates provided by the Cabinet Office to substantiate the burden which would be imposed by complying with the complainant's request are inflated in some respects, most notably in the average 10 minutes which the Cabinet Office contends they would need to check each individual diary entry, he accepts, that although the decision in this case is finely balanced, that the actual burden which would be imposed would still be considerable.
82. Keeping in mind the strain on the Cabinet Office's resources, and its vital role during the pandemic, the Commissioner is satisfied that compliance with the request at the time it was made, would be vexatious. The Cabinet Office was therefore entitled to rely on section 14(1) of FOIA to refuse it.

### **Other Matters**

---

83. FOIA does not contain a time limit within which public authorities have to complete internal reviews. However, the Commissioner's guidance 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 took more than 40 working days to be provided - the internal review was requested on 31 May 2022 but the Cabinet Office did not respond until 4 August 2022.

## Right of appeal

---

84. 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)

85. 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.
86. 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 .....**

**Gerrard Tracey**  
**Principal Adviser FOI**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**