

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

### **Decision notice**

**Date:** 20 March 2024

**Public Authority:** Cabinet Office  
**Address:** 1 Horse Guards Road  
London  
SW1A 2HG

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

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1. The complainant requested unpublished digital photographs taken at a named individual's 'leaving do'. The Cabinet Office neither confirmed nor denied holding the requested information, citing sections 31(3) (law enforcement) and 40(5B) (personal information) of FOIA.
2. The Commissioner's decision is that the Cabinet Office is not entitled to refuse to confirm or deny holding the requested information under sections 31(3) and 40(5) of FOIA.
3. The Cabinet Office is required to confirm or deny whether or not it holds recorded information of the nature specified in the request in accordance with section 1(1)(a) of FOIA. It is also required to comply with section 1(1)(b) of FOIA unless it does not hold any recorded information or considers some or all of it is exempt from disclosure under FOIA. If it is the latter, the Cabinet Office is then required to issue an appropriate refusal notice in accordance with section 17 of FOIA.
4. The Cabinet Office must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

#### **Background**

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5. The date of the request in this case is 15 January 2022.

6. The 'Findings of Second Permanent Secretary's investigation into alleged gatherings on government premises during covid restrictions'<sup>1</sup>, the Sue Gray report, was published on 22 May 2022.

7. At paragraph 4 of that report, the author states:

"On 31 January 2022 I published an update (appended to this report and including the detailed terms of reference and the timeline of regulations) which set out the methodology of the investigation; the 16 gatherings within its scope; and a number of limited, general findings. It also confirmed that the Metropolitan Police Service [MPS] had decided to investigate events on the following dates:....".

8. Events that were in scope of the Second Permanent Secretary's investigation, and that were to be investigated by the MPS, included the following:

"16 April 2021;

- A gathering in No 10 Downing Street on the departure of a senior No 10 official;

- A gathering in No 10 Downing Street on the departure of another No 10 official".

9. On 31 January 2022 the MPS confirmed<sup>2</sup> that it would be investigating eight of the 12 dates considered by the Cabinet Office as part of their own investigation into alleged gatherings on Government premises during Covid restrictions. One of those dates was the date specified in the request in this case, namely 16 April 2021.

10. The MPS statement also explained:

"Having received the documentation from the Cabinet Office on Friday 28 January, we are now reviewing it at pace to confirm which

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1078404/2022-05-25\\_FINAL\\_FINDINGS\\_OF\\_SECOND\\_PERMANENT\\_SECRETARY\\_INTO\\_ALLEGED\\_GATHERINGS.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1078404/2022-05-25_FINAL_FINDINGS_OF_SECOND_PERMANENT_SECRETARY_INTO_ALLEGED_GATHERINGS.pdf)

<sup>2</sup> <https://news.met.police.uk/news/update-investigation-into-alleged-covid-breaches-in-downing-street-and-whitehall-441571>

individuals will need to be contacted for their account. This prioritisation will include reviewing all the material from the Cabinet Office, which includes more than 300 images and over 500 pages of information”.

11. Paragraph 20 of the Sue Gray report states:

“Photographs

My team and I have been provided with photographs of some of the events that took place, some official and others taken on personal devices”.

## **Request and response**

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12. On 15 January 2022, the complainant wrote to the Cabinet Office and requested information in the following terms:

“I would like to submit a freedom of information request for all unpublished digital photographs taken by official photographers from James Slack’s leaving do on or around the 16th April 2021 as detailed below in The Times.

[...]

One of the prime minister’s official photographers took professional pictures of the event, which were circulated on WhatsApp groups afterwards. In one of the pictures staff can be seen drinking in the background. The groups included a setting that deleted the pictures after seven days”.

13. The Cabinet Office wrote to the complainant on 20 April 2022. While it confirmed that it held information relevant to the request, it advised that it needed more time to consider the public interest test. It cited section 31 (law enforcement) of FOIA in that regard.

14. When the Cabinet Office provided its substantive response on 18 May 2022, it neither confirmed nor denied holding the requested information, citing sections 31(3) and 40(5) (personal information) of FOIA.

15. Following the Commissioner’s intervention regarding the lack of response to the complainant’s request for an internal review, the Cabinet Office wrote to the complainant on 24 October 2022 maintaining its position.

## Scope of the case

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16. The complainant first contacted the Commissioner on 20 April 2022 to complain about the Cabinet Office's refusal to disclose the requested information. They told the Commissioner that they believe it is firmly in the public interest "to see photographs captured by a tax payer funded official photographer of a party that is prominently featured in the news at the moment".
17. Following the outcome of the internal review, the complainant confirmed that they remained dissatisfied with the Cabinet Office's handling of the request.
18. When considering a 'neither confirm nor deny' (NCND) response, as in this case, the single issue the Commissioner must determine is whether the public authority was correct to neither to confirm nor deny whether it holds the requested information.
19. During the Commissioner's investigation, the Cabinet Office clarified its application of section 31(3), explaining that it considers the information is exempt under 31(3) by virtue of section 31(1)(g).
20. This notice considers whether the Cabinet Office is entitled, on the basis of section 31(3) or section 40(5) of FOIA, to neither confirm nor deny whether it holds the requested information. The Commissioner has not considered whether the requested information – if held – should be disclosed.
21. The Commissioner has considered the complainant's concern about the time taken to conduct an internal review in 'Other matters' below.

## Reasons for decision

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### Section 31 law enforcement

22. Section 31(3) states:

"The duty to confirm or deny does not arise if, or to the extent that compliance with section 1(1)(a) would or would be likely to, prejudice any of the matters mentioned in subsection (1)".

23. In this case, the Cabinet Office is citing section 31(3) by virtue of 31(1)(g) (the exercise by any public authority of its functions for any of the purposes specified in subsection (2)) and 2(b) (the purpose of ascertaining whether any person is responsible for any conduct which is improper).

24. In correspondence with the complainant, the Cabinet Office relied to a large degree on the requested material being self-evidently exempt, without making extensive effort to provide supporting material or penetrating analysis.

25. However, with regard to its reliance on sections 31(1)(g) and 31(2)(b), the Cabinet Office told the Commissioner:

“The relevant parts of section 31 exempt information if its disclosure would prejudice the exercise by any public authority of its functions for the purposes specified in section 31(2)(b). The purposes in question at section 31(2)(b) of the Act are that of ascertaining whether any person is responsible for any conduct that is improper. This includes conduct which falls below standards of proper conduct set for public office holders, MPs, ministers or civil servants as set out by the ministerial, special adviser and civil service codes”.

26. In that respect, the Cabinet Office told the Commissioner:

“The Prime Minister, as the Minister for the Civil Service, has the power to manage the Civil Service (excluding the diplomatic service), which is codified in statute in the Constitutional Reform and Governance Act 2010”.

27. Regarding the likelihood of prejudice being caused if it was to confirm or deny if information is held, the Cabinet Office variously cited ‘would’ and ‘would be likely to’ in its correspondence with the complainant. For example, it told the complainant confirming or denying whether it holds the requested information “would be likely to prejudice ongoing investigations”. It also said that the confirmation of whether this information is held in connection with an internal investigation “would have a serious impact on this and all future investigations across Government”.

28. In its submission to the Commissioner, the Cabinet Office argued that confirmation or denial at the time of the original response to the request (18 May 2022) would have confirmed the identity of an individual subject to an ongoing investigation, and that this, in turn, would clearly have had a negative impact on the former Second Permanent Secretary’s investigation which was ongoing at the time.

29. It confirmed that it is relying on the higher threshold that confirmation or denial ‘would’ have a prejudicial effect.

30. It told the Commissioner that, at the point of the response to the original request, 18 May 2022:

"..., the former Second Permanent Secretary's report had not yet been published and those involved in the investigation were unnamed. While references to [...]s leaving do were being circulated in the media, this had not been confirmed by the government".

31. In support of its position, the Cabinet Office explained that it has overall responsibility for the Civil Service and for the Civil Service Code, as well as the Special Adviser Code of Conduct, and has a clear function in respect of investigating alleged breaches of these codes.

32. It also told the Commissioner:

"Such investigations largely rely on the voluntary participation of those involved to provide evidence and cooperate with the investigation. Evidence collected by the investigation is by its very nature likely to be sensitive and personal. If a precedent were set that such evidence would be disclosed via confirming or denying information in scope of an FOI request while an investigation was ongoing, we contend that there would be a severe and long-lasting negative impact on the willingness of people to participate in such investigations".

33. It also told the Commissioner, albeit in relation to the PIT:

"The Cabinet Office would be severely hampered in conducting future investigations if individuals feared that their involvement would be confirmed via FOIA and without following due process".

34. The Commissioner has considered the arguments the Cabinet Office has put forward with regard to harm to its function in relation to investigating breaches of the codes it is responsible for. He notes its view that that such investigations largely rely on the voluntary participation of those involved to provide evidence and cooperate with the investigation. He also recognises that it considers that individuals who participated in the investigation did so on the basis of confidentiality.

35. The Commissioner has taken into account the Cabinet Office view that confirming whether or not it held information in scope of this request would have confirmed that a named individual was subject to an ongoing investigation before publication of the final report.

36. He also acknowledges the Cabinet Office's reference to the wording of the request, particularly the emphasis it places on the request being not just for photographs taken by official photographers, but for photographs taken by official photographers at a named individual's leaving do.

37. The Commissioner understands that Downing Street does employ tax funded photographers<sup>3</sup>.
38. In the circumstances of this case, the Commissioner has taken into account that on 14 January 2022, ie prior to the date of the request, James Slack, the individual named in the request, issued a public apology that the event had taken place and that this apology was widely reported.
39. He has also taken into account that the MPS confirmed publicly on 31 January 2022 that it received over 300 images from the Cabinet Office for the purposes of its own enquiries.
40. The Commissioner considers that the prejudice test is not a weak test. In his view, an evidential burden rests with public authorities to be able to show that some causal relationship exists between the potential disclosure and the prejudice and that the prejudice is, real, actual or of substance. If a public authority is unable to discharge this burden satisfactorily the exemption is not engaged.
41. While the Commissioner accepts that the Cabinet Office has put forward relevant arguments regarding the interests to be protected, he considers that they are insufficient to demonstrate an actual causal relationship in the circumstances of this case.
42. The requested information, if held, comprises photographs taken by an official photographer, not personal photographs. In the Commissioner's view, the existence or otherwise of official photographs within the scope of the request does not rely on the voluntary participation and co-operation of individuals.
43. The Commissioner would stress that he does not know if any information of the nature specified in the request is held or not. The above comments and reasoning are based on the submissions received from the Cabinet Office and what is, or is said to be, in the public domain.
44. From the evidence he has seen, the Commissioner is not satisfied that the Cabinet Office has demonstrated that there would be any actual harm from the disclosure of this particular information, by way of confirmation or denial, to the attributable interests or that there is a

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<sup>3</sup> <https://hansard.parliament.uk/commons/2022-02-24/debates/31E7EDE3-6038-40AB-86C3-BF794D21FA50/OfficialPhotographerToThePrimeMinister>



causal relationship between release and the prejudice which the exemption is designed to protect.

45. In light of the above, the Commissioner is not satisfied that section 31 (3), in conjunction with 31(1)(g) and 31(2)(b), is engaged in respect of any information within the scope of the request which may be held by the Cabinet Office.
46. The Commissioner has next considered the Cabinet Office's application of section 40(5).

### **Section 40 personal information**

47. Section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny whether information is held does not arise if it would contravene any of the principles relating to the processing of personal data set out in Article 5 of the UK General Data Protection Regulation (UK GDPR) to provide that confirmation or denial.
48. Therefore, for the Cabinet Office to be entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny whether it holds information falling within the scope of the request, the following two criteria must be met:
  - confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data; and
  - providing this confirmation or denial would contravene one of the data protection principles.

### **Would the confirmation or denial that the requested information is held constitute the disclosure of a third party's personal data?**

49. Section 3(2) of the Data Protection Act 2018 (the DPA 2018) defines personal data as:

"any information relating to an identified or identifiable living individual."
50. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
51. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
52. The request in this case is for official photographs taken at a specified event.
53. In their request for information, the complainant names an individual, asking for photographs from their 'leaving do'.



54. Therefore, disclosing whether or not any information was held would reveal something about that individual, (ie it would reveal whether or not they had a leaving do where official photographs were taken).
55. For the reasons set out above, the Commissioner is satisfied that if the Cabinet Office confirmed whether or not it held the requested information this would result in the disclosure of a third party's personal data. The first criterion set out above is therefore met.
56. The Cabinet Office has also argued that confirming or denying whether it holds the requested information would result in the disclosure of information relating to the criminal convictions and offences of a third party.
57. Information relating to criminal convictions and offences is given special status in the UK GDPR. Article 10 of UK GDPR defines 'criminal offence data' as being personal data relating to criminal convictions and offences. Under section 11(2) of the DPA 2018, personal data relating to criminal convictions and offences includes personal data relating to-:
  - (a) The alleged commission of offences by the data subject; or
  - (b) Proceedings for an offence committed or alleged to have been committed by the data subject or the disposal of such proceedings including sentencing.
58. The context of the request in this case is a leaving do 'on or around 16 April 2021' during the period of coronavirus restrictions.
59. The fact that two Downing Street events on 16 April 2021 were to be investigated is recorded by the MPS in its statement dated 31 January 2022. It is also recorded in the Second Permanent Secretary's update dated 31 January 2022.
60. In its submission, the Cabinet Office argued that:

"Knowledge of an individual being subject to a police investigation would clearly constitute criminal offence data that would be revelatory about a named, natural person - in this case, [the individual named in the request]."
61. It also accepted that photographs collected by the former Second Permanent Secretary's investigation were sent to the MPS for the purposes of their investigation.

62. In his guidance<sup>4</sup>, the Commissioner accepts that criminal offence data:

“... includes not just data which is obviously about a specific criminal conviction or trial, but also any other personal data ‘relating to’ criminal convictions and offences. For example, it can also cover suspicion or allegations of criminal activity”.

63. In light of the above the Commissioner is satisfied that confirming or denying whether the requested information is held would result in the disclosure of information relating to criminal convictions and offences of a third party.

64. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes confirming or denying whether the information is held in response to an FOIA request, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA 2018 can be met.

65. The Cabinet Office considers that none of the conditions can be met.

66. The Commissioner considers that the only Schedule 1 conditions that could be relevant to a disclosure under FOIA are the conditions at Part 3 paragraph 29 (consent from the data subject) or Part 3 paragraph 32 (data made manifestly public by the data subject).

67. In the context of the request in this case, the Commissioner finds that the requested information, if held, does include criminal offence data. He has reached this conclusion on the basis that it relates to an event at Downing Street that was investigated by the MPS.

68. However, having regard to the Schedule 1, Part 1 to 3 conditions, the Commissioner is mindful that it was widely reported, on 14 January 2022, that the individual named in the request issued a public apology in relation to the event being held.

69. As there is a Schedule 1 condition for processing this criminal offence data, the Commissioner has gone on to consider whether there is also an Article 6 basis for processing.

70. The fact that confirming or denying whether the requested information is held would reveal the personal data of a third party does not automatically prevent the Cabinet Office from refusing to confirm

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<sup>4</sup> <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/lawful-basis/criminal-offence-data/what-is-criminal-offence-data/>

whether or not it holds this information. The second element of the test is to determine whether such a confirmation or denial would contravene any of the data protection principles.

71. The most relevant data protection principle in this case is principle (a).

**Would the confirmation or denial that the requested information is held contravene one of the data protection principles?**

72. Article 5(1)(a) UK GDPR states that:-

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

73. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed – or, as in this case, the public authority can only confirm whether or not it holds the requested information - if to do so would be lawful (i.e. it would meet one of the conditions of lawful processing listed in Article 6(1) UK GDPR), be fair, and be transparent.

**Lawful processing: Article 6(1)(f) UK GDPR**

74. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that “processing shall be lawful only if and to the extent that at least one of the” conditions listed in the Article applies. One of the conditions in Article 6(1) must therefore be met before disclosure of the information in response to the request would be considered lawful.

75. The Commissioner considers that the condition most applicable on the facts of this case would be that contained in Article 6(1)(f) UK GDPR which provides as follows:-

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”<sup>5</sup>.

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<sup>5</sup> Article 6(1) goes on to state that:-

*“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.*

76. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether confirmation as to whether the requested information is held (or not) is necessary to meet the legitimate interest in question;
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

77. The Commissioner considers that the test of “necessity” under stage (ii) must be met before the balancing test under stage (iii) is applied.

*(i) Legitimate interests*

78. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester’s own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

79. The Cabinet Office acknowledged that there is an interest in confirmation or denial in this case. It told the Commissioner:

“At the time of the request, there was significant public and Parliamentary interest in alleged gatherings on government

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However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA 2018) and by Schedule 3, Part 2, paragraph 20 the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019)

provides that:-

*“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.*

premises during Covid restrictions. Confirmation or denial of information in scope of the request would have confirmed the involvement of a senior official in those gatherings”.

80. The Commissioner recognises that there is a legitimate interest in providing confirmation or denial in this case.

*(ii) Is confirming whether or not the requested information is held necessary?*

81. ‘Necessary’ means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves the consideration of alternative measures, and so confirming whether or not the requested information is held would not be necessary if the legitimate aim could be achieved by something less. Confirmation or denial under FOIA as to whether the requested information is held must therefore be the least intrusive means of achieving the legitimate aim in question.

82. The Commissioner accepts that it is in the public domain that the MPS were investigating events on 16 April 2021 and that it is also in the public domain that it had been provided with information including photographs. However, knowledge of an event being investigated, and of photographs being provided to the MPS, provides no information about whether or not official photographs were taken at the event specified in the request. The Commissioner is therefore satisfied that confirmation or denial would be necessary in order to meet the legitimate interest.

83. The Commissioner is satisfied in this case that there are no less intrusive means of achieving the legitimate aims identified.

*iii) Balance between legitimate interests and the data subject’s interests or fundamental rights and freedoms*

84. It is necessary to balance the legitimate interests in confirming whether or not the requested information is held against the data subject’s interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of the confirmation or denial. For example, if the data subject would not reasonably expect the public authority to confirm whether or not it held the requested information in response to a FOI request, or if such a confirmation or denial would cause unjustified harm, their interests or rights are likely to override legitimate interests in confirming or denying whether information is held.

85. The Cabinet Office told the Commissioner:

"..., even putting aside the criminal offence data considerations, our conclusions are that the rights and freedoms of the data subjects in this case clearly outweigh the legitimate interests of the public in accessing this information".

86. It added:

"In summary, this is because:

- Disclosure by confirmation or denial would almost certainly be against the wishes of the data subjects;
- Disclosure by confirmation or denial would cause distress and significant impacts on wellbeing; and
- There was a clear commitment to publishing material in relation to the investigation at the time of the request, which has since been fulfilled - justifying neither confirming nor denying whether information was held at the time".

87. In considering the balancing test, the Commissioner has taken into account the following factors:

- the potential harm or distress that confirmation or denial may cause;
- whether the information is already in the public domain;
- whether the information is already known to some individuals;
- whether the individual expressed concern to the confirmation or denial; and
- the reasonable expectations of the individual.

88. In the Commissioner's view, a key issue is whether the individual concerned has a reasonable expectation that the public authority will not confirm whether or not it holds their personal data. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.

89. It is also important to consider whether disclosure (or confirmation or denial) would be likely to result in unwarranted damage or distress to that individual.

90. Due to the information that is currently publicly available regarding the apology issued by the named individual, the Commissioner considers that the data subject would have a reasonable expectation that the Cabinet Office may confirm or deny whether the information requested

in this case is held. Furthermore, due to the publicly available information, any damage or distress caused by confirmation or denial would be significantly limited.

91. Based on the above factors, the Commissioner has determined that there is sufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms, and that confirming whether or not the requested information is held would be lawful.

### **Fairness and transparency**

92. Even if it has been demonstrated that confirming or denying whether the withheld information is held under FOIA would meet the condition for lawful processing under Article 6(1)(f) UK GDPR, it is still necessary to show that such a confirmation or denial would be fair and transparent under principle (a).
93. Under principle (a), the provision of confirmation or denial must be fair to the data subject, but assessing fairness involves balancing their rights and freedoms against the legitimate interest in the provision of confirmation or denial to the public.
94. In considering whether confirming whether or not the requested information is held is fair the Commissioner takes into account the following factors:
- The data subject(s) reasonable expectations of what would happen to their information;
  - The consequences of providing confirmation or denial (if it would cause any unnecessary or unjustified damage or distress to the individual(s) concerned); and
  - The balance between the rights and freedoms of the data subject(s) and the legitimate interests of the public.

### *Reasonable expectations*

95. In the Commissioner's view, a key issue to consider in assessing fairness is whether the individual concerned has a reasonable expectation that the Cabinet Office will not confirm whether or not it holds their personal data. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information (if held) relates to an employee in their professional role or to them as individuals and the purpose for which they may have provided their personal data.
96. The Commissioner accepts that the individual concerned may have a reasonable expectation that the Cabinet Office would not confirm or



deny the existence of a leaving do where there is no other information in the public domain regarding such an event. However, in this case, in light of their public apology, the Commissioner considers that they would have a reasonable expectation that the Cabinet Office would confirm or deny whether it holds the requested information.

*Consequences of providing confirmation or denial*

97. With regard to the consequences of providing confirmation or denial that the requested information is held upon a data subject, the question – in respect of fairness – is whether such provision would be likely to result in unwarranted damage or distress to that individual.
98. As explained above, any damage or distress that would be caused by confirmation or denial would be limited in this case due to the information in the public domain regarding the event.

*The balance between the rights and freedoms of the data subjects and the legitimate interests of the public*

99. Under principle (a), confirming or denying whether third party personal data is held must be fair to the data subject, but assessing fairness involves balancing their rights and freedoms against the legitimate interest in providing confirmation or denial to the public.
100. Despite the reasonable expectation of individuals and the fact that damage or distress may result from the provision of confirmation or denial, it may still be fair to provide confirmation or denial that the requested information is held if it can be argued that there is a more compelling public interest in doing so.
101. In considering any legitimate interest in the public having confirmation or denial that the requested information is held, the Commissioner recognises that such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
102. In this case, given there would be a reasonable expectation on the part of the data subject that the Cabinet Office may confirm or deny whether it holds the requested information and the fact this would be unlikely to cause damage and distress under these particular circumstances, the legitimate interests surrounding whether or not the information is held are compelling.
103. Based on the above factors, the Commissioner has determined that confirming whether or not the requested information is held would be fair.

**Would confirming whether or not the information is held be transparent?**

104. Under principle (a), confirming or denying whether the requested information is held must be transparent to the data subject.

105. As the Commissioner has determined that disclosure would not be unlawful and would be fair for the reasons given, the Commissioner is satisfied that confirming whether or not the requested information is held would be transparent.

**Commissioner's view**

106. In this instance, the Commissioner has decided that the Cabinet Office has failed to demonstrate that section 40(5B)(a)(i) is engaged.

**Other matters**

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107. Internal reviews are not subject to statutory timescales. However, the Commissioner's guidance is clear, and well established, in that he expects most internal reviews to be completed within 20 working days, with a maximum of 40 working days in exceptional circumstances.

108. In this case, the internal review that the complainant requested on 18 May 2022 was not completed in accordance with that guidance.

109. The Commissioner expects the Cabinet Office to ensure that the internal reviews it handles in the future adhere to the timescales he has set out in his guidance.

## **Right of appeal**

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110. 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)

111. 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.

112. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Michael Lea**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**