

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2024

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

Decision (including any steps ordered)

1. The complainant requested a copy of the then Minister for the Cabinet Office/Chancellor of the Duchy of Lancaster, Michael Gove's, ministerial diaries for the period 1 February 2020 to 1 July 2020. The Cabinet Office refused the request under section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 14(1) of FOIA to refuse to provide the requested information.
3. The Commissioner does not require the Cabinet Office to take any steps.

Background

4. In 2021 the complainant submitted a request to the Cabinet Office for copies of Michael Gove's ministerial diaries spanning a period of 16

months. The Cabinet Office refused the request citing section 14(1), and the Commissioner upheld this position in his decision under reference IC-148715-F9L8.¹

5. In 2022 the complainant submitted a request to the Cabinet Office for copies of Michael Gove's ministerial diaries spanning a period of 6 weeks. The Cabinet Office refused the request citing section 14(1), and the Commissioner upheld this position in his decision notice issued today under reference IC-173754-Q7K2.

Request and response

6. On 9 December 2021 the complainant requested the following information:

"From 1st February 2020 to 1st July 2020, please provide a copy of the Minister for the Cabinet Office/Chancellor of the Duchy of Lancaster Michael Gove's ministerial diaries."

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

Reasons for decision

8. The Commissioner considers that the scope of his investigation is to determine whether the Cabinet Office is entitled to rely on section 14(1) of FOIA to refuse to provide the requested information for a period of 5 months of Michael Gove's ministerial diaries.

Section 14(1) - vexatious

9. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
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¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4023413/ic-148715-f9l8.pdf>

10. In the Commissioner's view, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
11. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is the position adopted by the Cabinet Office in this case.
12. In reaching his decision in this case the Commissioner has considered the submissions provided by the Cabinet Office and the arguments presented by the complainant. He has also referred to a decision issued today under reference IC-173754-Q7K2 and other notices he has issued in relation to similarly constructed requests submitted by the same complainant².
13. The Commissioner appreciates that the complainant has made a detailed case for why, in her view, there is a compelling interest in the disclosure of the requested information. The Commissioner is also sympathetic to the complainant's argument given that this request covers an unprecedented time, i.e. the Covid 19 pandemic. For these reasons, the Commissioner accepts that the complainant's request does have a clear purpose and value.

² See, for example, the following: <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022384/ic-129067-f2l3.pdf>, <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022827/ic-148740-m6d1.pdf>, <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022381/ic-128331-r7h1.pdf>, <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022383/ic-129066-d1g1.pdf>; <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4025034/ic-195648-s6z4.pdf>; <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4026993/ic-200771-l6z8.pdf>; <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4023325/ic-194756-n1f9.pdf>

14. However, because of the volume of information in the scope of the request, the Commissioner accepts that the burden placed on the Cabinet Office in complying with it will be a grossly oppressive one. In the Commissioner's opinion despite the clear value in the disclosure of this requested information, he does not accept that this is sufficient to justify placing such a burden on the Cabinet Office.
15. Having considered the relevant facts the Commissioner is satisfied that the request, the Cabinet Office's position, the complainant's arguments, the scope of information captured and the burden that compliance would impose are sufficiently similar to the scenario addressed in the decision notice issued today in case reference IC-173754-Q7K2 for copies of Michael Gove's ministerial diaries spanning a much shorter period of just over 6 weeks. He, therefore, transposes the arguments and conclusions reached in these decision notices to this decision notice where the request is for a significantly longer time span (5 months).
16. In light of the above, the Commissioner's decision is that the request is vexatious. Therefore, the Cabinet Office is entitled to rely on section 14(1) of FOIA to refuse to comply with the request.
17. The Commissioner requires no further action to be taken by the Cabinet Office in relation to the request.

Right of appeal

18. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. 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.

20. 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
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Wilmslow
Cheshire
SK9 5AF**