

DRAFT - PROTECT

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 May 2024

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

Decision (including any steps ordered)

1. The complainant has requested information relating to 'swipe' records for the Sanctuary Buildings office from 3 December 2020 to 11 December 2020.
2. The Commissioner's decision is that section 24(1) – national security, is not engaged and the Cabinet Office was not entitled to withhold the requested information.
 - The Commissioner requires the Cabinet Office to disclose the requested information, subject to any redactions for personal data.
3. The public authority must take these steps within 30 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

4. Allegations have been made of inappropriate gatherings during a period of lockdown. It is relevant that a gathering was held by the Department for Education on 10 December 2020, details of which are included in the Final Findings of the Second Permanent Secretary's Investigation. The report set out that "Approximately 20-30 staff gathered in the canteen

DRAFT - PROTECT

at around 17.00 on 10 December 2020...The event lasted around 60 minutes.”

5. Detailed information has already been made available to the public about the event in the Department for Education on 10 December 2020 in the Second Permanent Secretary’s report.

Request and response

6. On 23 June 2023, the complainant wrote to the Cabinet Office and requested information in the following terms:

“Please could you provide me with access swipe records for people *leaving* the Sanctuary Buildings office for each working day from Thursday December 3 2020, to Friday December 11 2020.

Please break down the number of swipes in each hour, starting with 00.00 – 01.00 and up to 23.00 – 00.00.”

7. The Cabinet Office responded on 24 August 2023 and refused to provide the information citing section 24(1) as its basis for doing so.
8. Following an internal review the Cabinet Office wrote to the complainant on 24 October 2023 and maintained its position.

Scope of the case

9. The complainant contacted the Commissioner on 4 November 2023 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of his investigation is to determine if the Cabinet Office is entitled to rely on section 24 to withhold the requested information.

Reasons for decision

Section 24 – National Security

11. Section 24(1) provides that information which does not fall within section 23(1) of FOIA is exempt information, if exemption from section 1(1)(b) is required for the purposes of safeguarding national security.

DRAFT - PROTECT

12. In broad terms section 24(1) allows a public authority not to disclose information if it considers that releasing the information would make the UK or its citizens more vulnerable to a national security threat.
13. Although there is no definitive definition of national security, the Information Tribunal for Norman Baker v the Information Commissioner and the Cabinet Office (EA/2006/0045 4 April 2007) provided the following:
 - “national security” means the security of the United Kingdom and its people;
 - the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
 - the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
 - action against a foreign state may be capable indirectly of affecting the security of the UK ; and
 - reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom’s national security.
14. Furthermore, in this context the Commissioner interprets ‘required for the purpose of’ to mean ‘reasonably necessary’. Although there has to be a real possibility that the disclosure of requested information would undermine national security, the impact does not need to be direct or immediate.
15. The exemption applies where withholding the information is “required for the purposes of safeguarding national security”. Required is taken to mean that the use of the exemption is reasonably necessary.
16. Safeguarding national security also includes protecting potential targets even if there is no evidence that an attack is imminent.
17. The Commissioner also recognises that terrorists can be highly motivated and may go to great lengths to gather intelligence. This means there may be grounds for withholding seemingly harmless information on the basis that it may assist terrorists when pieced together with other information they may obtain.
18. In its submissions to the Commissioner the Cabinet Office argued that information relating to the security arrangements for government buildings is treated extremely carefully by the Government. It has been

DRAFT - PROTECT

the longstanding practice of successive administrations not to comment on the security arrangements for Government buildings.

19. It considered that the specific information requested in this case would enable a hostile actor to determine patterns of movement by staff in and out of the building. Knowing when a building is at capacity or even when it is busy presents a greater risk of effective attacks by threat actors.
20. Having considered these submissions, the Commissioner is not persuaded that withholding the information on the basis of section 24(1) is reasonably necessary for the purposes of national security.
21. The number (of swipes) in isolation can barely be considered to be a security arrangement. Even taking account of any mosaic arguments, which the Cabinet Office has not made, it would be difficult to see how this specific information could be of any benefit.
22. Furthermore in December 2020, the world was in the midst of the Covid-19 pandemic. The Government had announced a second national lockdown on 5 November 2020 and 'Tier 4' restrictions (stay at home) were implemented in London and the South West on 21 December 2020. A third lockdown was announced on 6 January 2021.
23. In these circumstances, of restrictions on freedom of movement and people working from home, the likelihood of anyone being able to determine patterns of movement or when a building may be busy at the present time are so remote as to be irrelevant.
24. As the Commissioner finds the exemption is not engaged, it is not necessary to consider the public interest test.

DRAFT - PROTECT

Right of appeal

25. 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

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Susan Duffy
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