

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

### **Decision notice**

**Date:** 20 August 2019

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall

London

SW1A 2AS

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

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1. The complainant requested information from the Cabinet Office concerning the Cabinet Office and Hoveton Parish Council. The Cabinet Office responded to say that it held information relevant to the request, but that it would need to extend the time taken to complete its public interest test considerations in relation to the citing of section 42(1) (legal professional privilege).
2. The Commissioner's decision is that the Cabinet Office breached section 17(3) of the FOIA by failing to complete its public interest test considerations within a reasonable timeframe.
3. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation.
  - Having confirmed that information is held within the scope of the request: either disclose the requested information or, issue a refusal notice in accordance with the requirements of section 17 of the 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.

## Request and response

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5. On 24 January 2019, the complainant wrote to the Cabinet Office and requested information in the following terms:

*"Dear FOI*

*I submit the following FOI request to the Cabinet Office & IPA:*

*1. Copies of all emails, meeting notes and any form of written correspondence between the IPA department and the Ethics & Proprietary & FOI department with regard to the use of the Cabinet Office server for the Hoveton Parish Council.*

*2. Copies of all emails, meeting notes and any form of written correspondence between the Ethics & Proprietary and any other Cabinet Office department with regard to exploring the breaches of the GDPR & FOI legislation in respect to the parishioners of Hoveton. [That is all correspondence which relates to the misuse of the Cabinet Office server for the processing and storing of private information about the parishioners of Hoveton. Emails to and from Hoveton parishioners have been stored on the Cabinet Office server for many years].*

*3. Copies of all emails, meeting notes and any other form of written correspondence between any Cabinet Office department that contain decisions and actions undertaken by the IPA department in respect to the misuse of the Cabinet Office office and email server by an IPA employee.*

*4. Copies of all emails, meeting notes and any other form of written correspondence by the Cabinet Office that discuss information or seek legal advice with regard to the use of the Cabinet Office server for transacting the business of the Hoveton Parish Council. [It is understood that legal advice received may be confidential, however, FOI item 4 seeks to understand whether (internal or external) legal advice has been sought and the nature of that legal advice sought]*

*5. Copies of all emails, meeting notes and any other form of written correspondence by the Cabinet Office that discuss extraneous issues linked to Hoveton Parish Council.*

*6. Copies of all emails, meeting notes and another form of written correspondence by the Cabinet Office departments that discuss extraneous information on the misuse of position and power of the crown and the misuse of email server by a Cabinet Office employee.*

*The date this FOI covers is from the period of 20th September 2018 to 1st January 2019.*

*Yours sincerely  
[Complainant]"*

6. The Cabinet Office responded on 21 February 2019. It stated that it held information relevant to the complainant's request but that it would need to extend the time taken to complete its public interest test considerations in respect of section 42(1) of the FOIA.
7. The Cabinet Office wrote to the complainant again on 18 April 2019 stating that it would need to further extend the time taken to complete its public interest test considerations in respect of section 42(1) of the FOIA.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 7 May 2019 to complain about the delay in the Cabinet Office's consideration of the public interest test.
9. The Commissioner wrote to the Cabinet Office on 15 July 2019 asking it to, within 10 working days of receipt of her letter, either provide the requested information or issue a refusal notice in accordance with the requirements of section 17 of the FOIA.
10. Despite this intervention, the complainant contacted the Commissioner again on 13 August 2019 stating that they had not received a response from the Cabinet Office within 10 working days of the Commissioner's letter.
11. The scope of this decision notice is to consider if the Cabinet Office has met its obligations in relation to section 17 of FOIA.

## Reasons for decision

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12. Section 1(1) of the FOIA states that:

*"any person making a request for information to a public authority is entitled*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, have that information communicated to him."*

13. Section 10(1) of the FOIA states that a public authority must comply with section 1(1) *"promptly and in any event not later than the twentieth working day following receipt of receipt of the request."*

14. Section 17(3) of the FOIA states that a public authority can have a *"reasonable"* extension of time to consider the balance of the public interest, where a qualified exemption is engaged. The Commissioner considers a *"reasonable"* extension to be a maximum of 20 working days beyond the initial 20 working days afforded to public authorities under section 10(1). The Commissioner's view is that any extension beyond a total of 40 working days should be granted only in exceptional circumstances.

15. Following the Commissioner's intervention on 15 July 2019, the Cabinet Office made no representations as to why the circumstances of this case should be considered exceptional in respect of section 17(3). The Commissioner therefore has no grounds to consider the circumstances of this case exceptional, and so finds that the Cabinet Office has breached section 17(3) of the FOIA.

16. At paragraph 3 above the Cabinet Office is now required to finalise its public interest considerations and respond to the complainant.

## Right of appeal

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17. 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: 0300 1234504

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)

18. 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.
19. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**