

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 June 2021

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1 2AS

Decision (including any steps ordered)

1. The complainant requested information from the Cabinet Office about the funding of the Prime Minister's holiday to Mustique. The Cabinet Office advised that it did not hold the requested information.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, the requested information is not held. The Commissioner does not require the Cabinet Office to take any steps.

Request and response

3. On 2 March 2020, the complainant wrote to the Cabinet Office and requested information in the following terms:

"Could you let me know who paid for the Prime Minister and his girlfriend's recent holiday to Mustique? If you are able could you also tell me why his holiday was paid for by somebody else and what they hoped to get for their 'generosity'? I understand there are rules about declaring such gifts but in this instance the Prime Minister declaration was challenged by the person named who said he hadn't paid for it. Has the declaration been updated with the correct information? If not why not?"

4. The Cabinet Office replied to the request on 30 March 2020 and stated that it did not hold recorded information within the scope of the request. The Cabinet Office explained that, under the FOIA, a public authority is

not required to create new information in order to answer questions or to provide a commentary on a given issue. The Cabinet Office did, however, direct the complainant to the Register of Members' Financial Interests, available freely online, which provided some information within the scope of the complainant's request. The Register is not, however, information held by the Cabinet Office itself. Outside the terms of the FOIA, the Cabinet Office also alerted the complainant to a reported public statement by an interested party relevant to the request.

5. The complainant requested an internal review on 24 April 2020.
6. The Cabinet Office provided an internal review outcome on 27 August 2020 and maintained its position that it held no recorded information within the scope of the request. The Cabinet Office also reiterated that it would not enter into a discussion about the entry in the Register of Members' Financial Interests as this was not a requirement under the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 7 September 2020 to complain about the way the Cabinet Office had handled his request for information. He disputed the Cabinet Office's explanation that it did not hold recorded information within the scope of the request.
8. The scope of this case is whether the Cabinet Office is likely to hold the requested information.

Reasons for decision

9. 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, to have that information communicated to him."

10. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and

arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.

11. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The Cabinet Office's position

12. In the circumstances of this case, the Cabinet Office has stated that it does not consider the bulk of the complainant's request to fall under the terms of the FOIA. This is because the request is comprised primarily of questions which seek an explanation. The Cabinet Office has, however, accepted that the specific question of who paid for the Prime Minister's holiday could be handled under the FOIA.
13. The Cabinet Office has reiterated to the Commissioner that it holds no recorded information within the scope of the request. The Cabinet Office has provided further information to the Commissioner regarding the Register of Members' Financial Interests. This Register is held by the House of Commons and not by the Cabinet Office. Civil servants in the Cabinet Office, of which the Prime Minister's Office forms a part, had no involvement either with the collation or verification of the information published in the Register entry. This process is not managed by the Cabinet Office.
14. The Cabinet Office has highlighted that the information contained within the Register is publicly available and therefore is reasonably accessible to the complainant.
15. The Cabinet Office has argued that the complainant's attempt, via his request, to enter into a discussion about the contents or veracity of the published information in the Register of Members' Financial Interests is outside the scope of the FOIA.

The Commissioner's position

16. In making her determination, the Commissioner has considered the Cabinet Office's submissions and the specific wording of the request.
17. The Commissioner considers that only two sentences from the request are within the scope of the FOIA and these extracts are highlighted below:

Could you let me know who paid for the Prime Minister and his girlfriend's recent holiday to Mustique?

Has the declaration been updated with the correct information?

18. The Commissioner, having considered the Cabinet Office's submissions, is satisfied that it does not hold any recorded information within the scope of the two sentences highlighted above. That is because the information is held by the House of Commons; a separate public authority.
19. The Commissioner concurs with the Cabinet Office that the remainder of the request consists of questions which are seeking an explanation about the funding of the Prime Minister's holiday and that these parts of the request do not therefore require a response to be provided in accordance with the FOIA. The Commissioner is guided by the fact that the FOIA covers only recorded information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate new information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.
20. For the reasons set out above, the Commissioner considers that on the balance of probabilities, the Cabinet Office does not hold information falling within the scope of the request.

Other matters

Section 45 – internal review

21. The Commissioner cannot consider in a decision notice the amount of time it took a public authority to complete an internal review because such matters are not a formal requirement of the FOIA. However, it is good practice to offer an internal review, and, where a public authority chooses to do so, the code of practice established under section 45 of the FOIA sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.
22. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances.
23. The complainant asked for an internal review on 24 April 2020. The Cabinet Office did not provide the internal review outcome until 27

August 2020 and therefore failed to act in accordance with the section 45 code.

24. The Commissioner does note, however, that the request for review was received during the initial lockdown period during the coronavirus pandemic.
25. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA.

Right of appeal

26. 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

27. 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.
28. 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
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