

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 October 2022

Public Authority: Department for Work and Pensions
Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant submitted a request to the Department for Work and Pensions (DWP) seeking a copy of the Secretary of State's ministerial diary for the period December 2019 to March 2021. The DWP refused the request on the basis of section 14(1) (vexatious) of FOIA given the burden in complying with it.
2. The Commissioner's decision is that the DWP is entitled to rely on section 14(1) of FOIA to refuse to comply with the request.
3. No steps are required.

Request and response

4. On 29 March 2021 the complainant submitted the following request to DWP:

'From 1st December 2019 to the day this request is processed, please provide a copy of Secretary of State at the Department for Work and Pensions Thérèse Coffey's ministerial diaries.

Please note, I am making this request out of the public interest. It is absolutely essential for the public to know - in full detail - the calls,

events and meetings that took place across the year when the pandemic gripped the UK and beyond.'

5. DWP responded on 28 April 2021. It refused the request on the basis of section 14(1) of FOIA because of the burden that would be placed on it if it answered the request.
6. The complainant contacted DWP on 14 May 2021 and asked it to conduct an internal review of its response. She set out why in her view section 14(1) did not apply to her request, focusing on what she considered to be the public interest in the disclosure of the requested information.
7. DWP informed her of the outcome of the internal review on 14 June 2021. The review upheld the application of section 14(1).

Scope of the case

8. The complainant contacted the Commissioner on 12 September 2021 to complain about the DWP's reliance on section 14(1) to refuse her request. The complainant's submissions to support her complaint are set out below.

Reasons for decision

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.
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 DWP in this case.

12. The Commissioner believes that there is a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where:
- The requester has asked for a substantial volume of information **and**
 - the authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the Commissioner **and**
 - any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.¹

The DWP's position

13. In order to understand the DWP's basis for relying on section 14(1) of FOIA in the circumstances of this request the Commissioner asked it to respond to a number of questions. The Commissioner has set out these questions below and summarised the DWP's response to each.

14. **Question:** Please confirm how much information falls within the scope of the request.

Response: As set out by the scope of the request, processing this request would require examining 16 months' worth of individual diaries.

15. **Question:** When previous requests for ministerial diaries have been processed by government departments, the departments in question have exported the information contained in Microsoft Outlook to an Excel spreadsheet to assist with the processing of the request. Please confirm that this method – as opposed to simply reviewing the information within Outlook – has been considered by DWP.

Response: The DWP confirmed that it had looked into exporting information from Outlook to Excel. However, it explained that the spreadsheet that is produced does not contain sufficient detail to help

¹ This approach is set out in the Commissioner's guidance on section 14(1) of FOIA <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/how-do-we-deal-with-a-single-burdensome-request/#section-12>

locate all information in the scope of this request. For example, DWP explained that it only includes a basic overview of meaning but the context of the diary is not there. In addition, any saved attachments to the diary entry are not provided. The DWP argued that even using this spreadsheet – which it suggested could be seen as creating new information – you would not be able to locate all relevant details without manually reviewing information within Outlook.

The DWP emphasised that all requests are considered purpose blind and on their own individual merits. In addition each government department is its own public authority for the purposes of FOIA and therefore the approach taken by one does not set a precedent that should be followed by others. The DWP also noted that each department operates its own IT systems and there may not be a standard level of equipment/specifications between departments. There will also be different capabilities of the individuals handling the data; just because one person has the ability to export data to an excel table does not mean that such an approach can or should be used by all others.

16. **Question:** Please state the exemptions that DWP consider will apply to parts of the requested information and provide a short justification as to which sort of material within the diary is likely to engage the relevant exemption and why.

Response: The DWP explained that the following exemptions could apply to parts of the diary entries:

- Section 35 – policy in development
 - Section 35(1)(a) – to exempt meetings about policy development
 - Section 35(1)(b) – to exempt meetings between Ministers of the Department
 - Section 35(1)(d) – to exempt meetings between SoS and her Private Office staff
- Section 36 – Conduct of public authorities – to exempt meetings where release of the information could harm departmental business.
- Section 40 – Personal information – to exempt meeting details of individuals below senior civil service grade.
- Removal of Non-DWP related business e.g. Conservative Party meetings and meetings relating to matters where the Secretary of State is acting in her capacity as an MP as these areas are not covered under FOIA.

The DWP explained that the process of applying the exemptions would involve checking whether any entries are already publicly known, eg if

a meeting has been publicly mentioned then this would affect its use of any exemptions. It explained that there could also be other exemptions that may apply but these would only be considered once an individual diary entry has been read.

17. **Question:** What methods have the DWP considered to remove (or at least substantially reduce) exempt material (for example using a 'Find & Replace' function to remove phone numbers)? How effective have these methods been and why?

Response: The DWP explained that as it needed to look at individual records using the 'find and replace' function would not save that much time. It also explained that such an activity would still require manual checking to make sure the function has happened correctly as using this approach to identify information is not always accurate.

By way of example, DWP explained that if it was decided to redact the names of junior civil servants by replacing their names with 'redacted under s40(2)' this would involve: locating their name, checking their grade and replacing their name with the text. However, each name is unique so the only time it would save would depend on how many times that name appeared and DWP would still have to verify that this process has worked correctly.

Furthermore, DWP explained that that this was not its preferred method of preparing for information for disclosure as it leads to new versions of the file being created. Rather, its preferred method of redaction is to highlight the information subject to an exemption, colour coded for different exemptions. This approach means that it has files saved where the redactions are being applied and the exemptions being used, an approach useful if it subsequently needed to supply such information to the Commissioner at later stage.

The DWP explained that it would then use the redaction tools built into its case system which allows for the redactions to be done, all exemptions cross referenced, and importantly saves the document so that the redactions cannot be altered or changed once the information has been released.

The DWP noted that its concerns with find and replace were similar to exporting the information to Excel; in the theory they appear to solutions but in practice they are not.

18. **Question:** What sampling exercises have the DWP carried out to determine the time needed to redact individual entries? Please provide details.

Response: The DWP explained that it conducted a sampling exercise looking at a single month of diary entries, namely January 2020. It noted it did not start with December 2019 as the UK Parliament was on recess between 20 December 2019 and 6 January 2020 and therefore choosing this month would not have given an accurate picture.

For the period 6 January 2020 to 31 January 2020 the DWP located 173 diary entries covering a 20 working day period which equated to 8.65 per day.

The DWP explained that based on the sampling exercise across the 16 month period covered by the request it estimated that there would be around 2,768 separate diary entries that would each need to be manually reviewed.

The DWP explained that from looking at the entries it estimated that it would take around 2 minutes to fully review and workout if the information is in scope and if so, what exemptions may apply, if any.

The DWP explained that this process involved considering who has been invited, what civil service grade they may be, what is being discussed, is the meeting already publicly known about, is the meeting about non-DWP business (therefore outside the scope of FOIA). The DWP explained that if it applied an exemption, then it would need to mark up the elements for redactions, and if a qualified exemption applied it would need to consider the public interest test arguments. The DWP stressed that these were just some of the basic checks and assessments that it needed to do; there could be additional work that was necessary but that would depend on the content of each entry.

As result the DWP's estimate for processing the request was the following:

- 173 entries Jan (2020) x 16 months = 2,768 entries for the whole of the request
- 2,768 entries x 2 mins = 5,536 mins
- 5,536 mins / 60 mins in an hour = 92 hours and 15 mins

Based on a 7 hour working day, this equated to around 13 working days ($92.25/7 = 13.17$) to review, mark up and prepare all the entries. The DWP noted that even if the time was halved to 1 minute per entry this would still represent 6 to 7 working days.

The DWP noted this would have to done in addition to someone's day-to-day activities.

19. **Question:** Are there any other arguments the DWP wants to put forward to explain why, in all the circumstances, it believed that complying with the request would incur a grossly oppressive burden – bearing in mind the resources available to DWP and the public value of the information within scope?

Response: The DWP emphasised that its only valid option to process this request involved manually checking each entry. However, it explained that not everyone has access to the source information and that anyone working within the DWP private office has to undergo enhanced security clearances, and only those people with this, and who work in the Secretary of State's private office would have had access to her diaries. The DWP explained that the Secretary of State has one diary secretary who responsibility it would be to handle this request, so the initial burden falls to one person, then only a select few people will have the clearances and abilities to deal with the FOI as a whole.

The complainant's position

20. The complainant provided the Commissioner with submissions to support her view that section 14(1) of FOIA did not apply. The Commissioner has summarised these submissions below.
21. The complainant explained that she was concerned about the generic response of the DWP. She suggested that if there are data protection concerns then presumably it would be quite straightforward to redact, for example the names of junior officials. She also argued that it was unlikely that lots of other exemptions would be relevant. She highlighted a decision notice issued by the Commissioner which concerned ministerial diaries which found:

'The Commissioner's decision is that the diary extracts for the period specified above do not engage section 35(1)(a) and 35(1)(b) of the FOIA, and whilst the extracts do engage section 35(1)(d), the public interest favours the disclosure of much of the withheld information'²

22. The complainant also cited case of the Andrew Lansley diaries, which covered around a year and were about 200 pages long, and were eventually released without the public authority in question (the then Department of Health) citing section 14(1) of FOIA.

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014731/fs50629605.pdf>

23. Furthermore, the complainant argued that even if the processing of this her request did involve the application of numerous exemptions, then in her view there was a significant public interest in the disclosure of the information. She acknowledged that she had asked for information covering an unprecedented time period, but in her view this provided even more reason for the information to be disclosed.
24. She noted that although section 14(1) was not subject to a traditional public interest test, consideration of this provision did require consideration of whether the request had a value or serious purpose in terms of the objective public interest in the information sought. She argued that this request did and provided detailed submissions to support this position which the Commissioner has summarised below.
25. Firstly, she argued that disclosure of the information would provide a greater insight into lobbying by external parties. She argued that this was particularly important given both the deficit of transparency information regarding lobbying and in light of recent lobbying scandals.
26. The complainant cited a number of examples to support this latter point including David Cameron having a "private drink" with health secretary Matt Hancock and Lex Greensill in 2019.³ The complainant noted that according to the Times, "There are no minutes of Hancock's meeting with Cameron and Greensill. It is not logged in transparency releases and civil servants did not attend."⁴ The complainant argued that it is possible that a ministerial diary would have included a reference to a private drink or meeting. She argued that if ministerial diaries were released, the public can compare them to what is actually logged in transparency releases, and identify ones that are missing.
27. Secondly, the complainant argued that there was a deficit of transparency information in regard to lobbying. She argued that disclosure of ministerial diaries would help rectify the situation, and would go some way in enabling the public and journalists to assess which minister has been lobbied by whom. Not only do ministerial diaries include meetings, but also information on telephone calls arranged.

³ <https://www.channel4.com/news/factcheck/factcheck-qa-the-gaps-in-britains-lobbying-laws> and <https://www.thetimes.co.uk/article/matt-hancock-dragged-into-david-cameron-lobbying-scandal-zg7j60dxk>

⁴ <https://www.thetimes.co.uk/article/matt-hancock-dragged-into-david-cameron-lobbying-scandal-zg7j60dxk>

28. Thirdly, the complainant argued that the government's publication of transparency data has often been criticised for its incompleteness and lack of quality. She suggested that over the years there have been many examples where transparency data had purposefully or accidentally excluded ministerial meetings.
29. By way of examples, she cited amongst others, newspaper reports that health minister Lord Bethell failed to declare 27 of his meetings, which were left off official transparency disclosures for more than a year. Health secretary Matt Hancock also failed to publicly declare meetings with testing firms that later secured millions of pounds worth of Covid contracts.⁵ She also highlighted that in September 2020, Reuters reported how the Secretary of State for Trade, Liz Truss had reversed a decision to remove meetings she had with the think tank, the Institute of Economic Affairs (IEA).⁶ The complainant explained that Ms Truss had two meetings and a dinner with the IEA, which was originally declared in government transparency data, but was then deleted by the department in August, arguing that the meetings were held in a 'personal' capacity. The complainant noted that Labour has accused the Minister of circumventing rules designed to stop "secret lobbying" of ministers.
30. The complainant argued that disclosure of the ministerial diaries would greatly help journalists compare to what extent government transparency data is missing ministerial meetings, particularly in regards to the handling of the coronavirus.
31. Fourthly, the complainant argued that disclosure of the information would help provide a greater insight into how ministers had handled the coronavirus pandemic. This is because a disclosure of the ministerial diaries will enable the public to know who exactly ministers have been communicating with, especially in regards to the awarding of Covid contracts and decisions taken by ministers when handling the crisis. The complainant noted that there have been lots of accusations over cronyism⁷ and that a release of ministerial diaries will inform the public of interactions between ministers and firms who received contracts.

⁵ <https://www.mirror.co.uk/news/politics/matt-hancock-attended-more-missing-24439919>

⁶ <https://www.reuters.com/article/britain-politics-truss/exclusive-uk-trade-minister-reverses-decision-to-remove-think-tank-meetings-from-public-register-idINKBN25U2S2>

⁷ <https://www.bbc.co.uk/news/uk-56319927>

32. The complainant also argued that such a disclosure of information would provide very useful information for a Covid inquiry. The complainant noted that in May 2021 there was an announcement of an inquiry into the government's handling of the pandemic.⁸ She argued that by having ministerial diaries to hand, it will enable the public to scrutinise in full detail who ministers were meeting at the time - whether internally or externally - and what calls were taking place. The complainant argued that this will help build up a very detailed timeline of events and will also help inform those that are organising the inquiry and those who plan to give evidence to the inquiry.
33. Fifthly, the complainant argued that release of the requested information would enable the public to examine how Therese Coffey used her time to deal with other important matters. By way of example, she explained that in July 2021 Ms Coffey told MPs that the £20-a-week increase to universal credit would be "phased out" in the autumn, having previously been introduced in April 2020 to help deal with the economic impact of Covid. The complainant argued that disclosure of the ministerial diaries could allow examination of how, by seeing which meetings and phone calls took place at specific times, this decision was taken.
34. Finally, the complainant argued that the Commissioner had previously concluded that there was significant public interest in the disclosure of ministerial diaries. She cited the case seeking the diaries of a Department for Communities and Local Government minister and noted that the decision notice, in considering the application of qualified exemptions, had concluded:

'70. In the Commissioner's opinion there is a legitimate and strong public interest in the public having knowledge of how Ministers use their time, particularly in the context of carrying out their official duties. Such knowledge has a positive effect by assisting the public in understanding of how public money is spent and whether that spending is both justified and effective.

71. Likewise, the Commissioner considers that the level of transparency gained by disclosing the Minister's diary merits a significantly high weighting in terms of the public interest.

72. What it [the diary of information] does offer, is significant in terms of the public's understanding of how government works and most

⁸ <https://www.bbc.co.uk/news/explainers-57085964>

certainly in how a minister spends his time: It is informative in terms of how the Minister operated and it may assist the public in identifying the focus and weight the Minister or his Department has given particular issues over the time period covered by the particular entries⁹

35. The complainant argued that such arguments were also relevant to her request.

The Commissioner's position

36. With regard to the three criteria set out above at paragraph 12, the Commissioner accepts that the first one is met. While individual diary entries may be short or brief, there are still nearly 3000 such entries falling within the scope of this request. In the Commissioner's view this clearly represents a significant volume of information.
37. With regard to the second criterion, the Commissioner notes the exemptions that the DWP has suggested would need to be considered in relation to information falling within the scope of the request. The Commissioner is conscious of the findings in the decision notice referred to by the complainant at paragraph 21 above. However, in the Commissioner's view it is important to remember that each case needs to be considered on its own merits and therefore although the Commissioner concluded that sections 35(1)(a) and (b) did not apply to the information in the scope of that request, this does not automatically mean that they do not apply to the information in this case. In any event, the Commissioner notes that this previous decision notice did accept that section 35(1)(d) was engaged but required an assessment of the balance of the public interest test. Furthermore, the DWP also argued that section 36(2) may apply to some information, that section 40(2) would apply to some personal data and that further exemptions may be applicable depending on the content of the entries. Taking into account the volume and range of information falling within the scope of the request the Commissioner is satisfied that the DWP's concerns that the requested information may contain potentially exempt information are clearly legitimate ones.
38. With regard to the third criterion, based on the DWP's submissions the Commissioner is satisfied that the potentially exempt information cannot be easily isolated. In reaching this conclusion the Commissioner accepts

⁹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014731/fs50629605.pdf>

that using a 'find and replace' function would not significantly aid the process of locating and redacting exempt information given the variance between entries that need to be redacted and the process of checking any redactions. Similarly, the Commissioner accepts that for the reasons set out by the DWP exporting the diary into Excel would not reduce the burden of processing the request. Moreover, given the nature of a diary, with numerous entries covering a variety of topics over a considerable period of time, the Commissioner accepts that the exempt information is very likely to be scattered throughout the information.

39. In respect of the estimate of work involved in processing the request, the Commissioner accepts that the DWP's estimate of 2 minutes per diary entry is a reasonable one. In reaching this finding the Commissioner has placed weight on the fact that the DWP arrived at this figure as a result of a sampling exercise, which in his view adds to the credibility of the figure. The Commissioner notes that this figure simply includes the process of reviewing and working out if the information is in scope and if so, what exemptions may apply. However, he notes that beyond the basic checks set out in paragraph 18 additional work may be needed thus adding more time to the processing of the request. The Commissioner therefore accepts that the DWP's estimate of 92 hours to process the request is a cogent one, and one which is supported by evidence.
40. Furthermore, in the Commissioner's opinion this represents a significant volume of work and one which would place a grossly excessive burden on the DWP to undertake. The Commissioner considers this burden is arguably amplified by the fact that only a limited number of individuals would have the experience/knowledge of the information, and sufficient clearances, to process the request. (Moreover, even if this estimate was reduced to 1 minute per entry, in the Commissioner's view processing the would still place a grossly excessive burden on the DWP.)
41. Whilst the Commissioner is satisfied that the DWP have demonstrated that the three criteria are met and consequently that as result complying with the request would place a grossly excessive burden on it, the Commissioner has considered whether the purpose and value of the request are enough to justify the impact on the public authority.
42. 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. Furthermore, the Commissioner acknowledges, as he has done in previous cases, that there is a public interest in the disclosure of ministerial diaries. Disclosure of the information would provide a direct insight into the day to day activities of the Secretary of State of the DWP. However, it could also potentially shed light on some of the issues highlighted by the complainant,

including most obviously how decisions were taken during the period covered by the request but also potentially wider issues such as matters of lobbying. In respect of the existing transparency disclosures made by the government the Commissioner accepts that disclosure of ministerial diaries would represent a greater level of transparency and openness than such existing arrangements already provide for. The Commissioner is also sympathetic to the complainant's argument that given that this request covers an unprecedented time, ie the Covid 19 pandemic, there is arguably a particular public interest in understanding how government ministers organised their time and the meetings, contacts and appointments they had during this period. Disclosure of 16 months worth of such data, and such a volume of information, could prove to be particularly illuminating in this regard. For these reasons, the Commissioner accepts that the complainant's request does have a clear purpose and value and that this should not be underestimated.

43. However, it is precisely because of the volume information in the scope of the request which has led the Commissioner to accept that the burden placed on DWP in complying with it is 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 DWP and expect it to undertake at least 13 days work to process this request. As result the Commissioner has concluded that the DWP were entitled to refuse to comply with the request on the basis of section 14(1) of FOIA.

Right of appeal

44. 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

45. 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.
46. 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

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