

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 November 2023

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

Decision (including any steps ordered)

1. The complainant has requested information about any involvement the Cabinet Office has had with 'Stonewall'. The Cabinet Office refused to comply with the request on the basis that it is vexatious, citing section 14(1) of FOIA.
2. The Commissioner's decision is that the request is not vexatious. The Commissioner requires the Cabinet Office to take the following step to ensure compliance with the legislation:
 - Issue a fresh response which does not rely on section 14(1) of FOIA.
3. The Cabinet Office must take this step 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.

Background

4. The following background information is taken from decision notice IC-129040-Y4T2¹. It provides some background information about Stonewall:

“Stonewall first published its Workplace Equality Index (originally known as the Corporate Equality Index) in 2005. Participation in the scheme itself is voluntary and free. Each member employer receives a score from Stonewall based on how well the organisation’s policies and general culture reflect Stonewall’s criteria for judging what an organisation supportive of LGBTQ+² employees should offer. Stonewall publishes an annual list of the 100 employers who have received the highest ranking in that year’s survey.

For those employers which sign up to the Diversity Champions Programme, Stonewall also provides detailed feedback on their applications, noting how the employer could better meet its criteria. Participants pay a fee to join the programme...

The scheme attracted controversy in 2021 when Ofcom decided to withdraw from the Diversity Champions Programme citing a “risk of perceived bias” arising from its membership. Documents disclosed under FOIA indicated that Ofcom had, in its submission, highlighted some of its regulatory decisions as part of its evidence of work it had done to “promote LGBT equality in the wider community”.³

A number of public authorities such as Channel 4, Ofsted, the Cabinet Office and the Equalities and Human Rights Commission

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022502/ic-129040-y4t2.pdf>

² The Commissioner has used the abbreviation LGBTQ+ (which stands for Lesbian, Gay, Bisexual, Transsexual, Queer (or Questioning) and others (the “+”) who do not consider themselves to fall within any of those categories, but do consider themselves part of this community) as this is the abbreviation used by Stonewall and is thus the definition most appropriate in this context. The Commissioner is aware that both longer and shorter abbreviations are used.

³ <https://www.bbc.co.uk/news/uk-58917227>

have also withdrawn from the Diversity Champions Programme saying that it no longer represents value for money.

Stonewall maintains that both the Index and the Diversity Champions Programmes are only intended to promote the rights of LGBTQ+ employees and make them feel welcome in the workplace”.

Request and response

5. On 2 August 2022, the complainant wrote to the Cabinet Office and requested the following information:

“Please can you

1. Confirm whether your organisation applied to be part of the Stonewall Workplace Equality Index in A) 2018 (for 2019), B) 2019 (for 2020) or C) 2021 (for 2022) (NB the index was suspended in 2020/21 because of Covid)

2. Give details of the total amount of money you paid to Stonewall in 2021 whether or not as payment for goods or services.

3. State whether you intend to continue your membership of any Stonewall scheme in the future, and if so which.

If the answer to any part of 1 is yes please supply:

4. Any application you made in 2021 to be included on Stonewall’s Workplace Equality Index, including any attachments or appendices to those applications. Please redact personal details if necessary.

5. Any feedback you received in 2018/19 or 2019/20 or 2021/22 from Stonewall in relation to either application or programme. This must include the priorities or objectives written by your organisation’s representative at the end of the feedback form (under the heading ‘Priorities for the year ahead’ in 2019; ‘Your priorities’ in 2020).

EXEMPTIONS?

If your organisation is considering refusing to disclose feedback received as part of the Stonewall scheme by relying on section 41 (confidential information) and/or section 43 (commercial interest) of FOI, please note the recent ICO decisions IC-129040-Y4T2 and IC-125081-Q8J6 which rejected these reasons. Sex Matters has written a short briefing on these two ICO decisions – please see www.sex-matters.org/wp-content/uploads/2...”

6. On 1 September 2022, having verified the complainant's name, the Cabinet Office responded. It refused to provide any information on the basis that the request was vexatious, citing section 14(1) of FOIA.
7. The complainant requested an internal review on 1 September 2022. He said:

"Your response stated that my request has been refused because it was 'part of a campaign designed to harass or disrupt the work of the Cabinet Office which puts a significant burden on the department. We have decided that your request should be refused under section 14(1) of the FOIA on the grounds that it is vexatious.'

That is incorrect and seemingly libellous. I made this request because I, and other Sex Matters supporters, want to know the information requested. I was not aware that other people had made this request, in fact the SexMatters campaign tried to ensure that duplicate requests were NOT sent in. I did NOT make this request in an attempt to create work for the Cabinet Office; rather purely because the information is and would be interesting, relevant and reasonable to know.

Frankly the Cabinet Office should be, and as determined by the ICO, doing its utmost to ensure transparency, access to information etc.

If other people have already asked identical questions then it would be a very simple matter to send exactly the same response to all those making identical queries. It would therefore create very little work for the Cabinet Office and so your response is unreasonable on grounds of the work it will cause as well. Using s14(1) to refuse to supply the information is unreasonable, not in accordance with the words or spirit of the FOI legislation".

8. The Cabinet Office provided an internal review on 22 September 2022, in which it maintained its position.

Scope of the case

9. The complainant contacted the Commissioner on 22 September 2022 to complain about the way his request for information had been handled. He disagreed that the request was vexatious.
10. The Commissioner will consider whether or not the request is vexatious below.

Reasons for decision

11. The Commissioner has considered the same request for information from a different complainant under case reference IC-193139-R6C6. The Cabinet Office submitted the same response to the Commissioner with joint arguments for both requests.
12. On this basis, the Commissioner does not consider it necessary to repeat the arguments here. He has reached the same conclusion in this case for the same reasons.
13. The Commissioner's decision is that the request was not vexatious and he orders the Cabinet Office to issue a fresh response which does not rely on section 14(1) of FOIA.
14. Both decisions will be published on his website at the same time.

Right of appeal

15. 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

16. 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.
17. 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

**Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**