

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 February 2024

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office seeking information it held relating to a visit to the University of Southampton in March 2018 concerning the diaries and letters of the 1st Earl and Countess Mountbatten. The Cabinet Office disclosed some information to the complainant but sought to withhold additional information on the basis of sections 40(2) (personal data) and 41(1) (information provided in confidence) of FOIA. The complainant challenged the Cabinet Office's decision to withhold information and argued that additional information was likely to be held falling within the scope of his request. During the course of the Commissioner's investigation the Cabinet Office withdrew its reliance on section 41(1) and located additional information falling within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the Cabinet Office has now located all of the information falling within the scope of the request. The Commissioner has also concluded that the information withheld on the basis of section 40(2) is exempt from disclosure on the basis of this provision of FOIA.
3. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with revised copies of the emails described in paragraph 13 of this decision notice with the portions of text which are no longer being withheld unredacted.

- Provide the complainant with a copy of the two emails from 13 March 2018, as described in paragraph 15 of this decision notice below.¹
4. The public authority 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

5. The complainant submitted the following request to the Cabinet Office on 20 June 2022:

'I request under the Freedom of Information Act all information held by the Cabinet Office relating to the visit to the University of Southampton on 15 March 2018 by staff of the Knowledge Management Department, Hanslope Park, Buckinghamshire [part of the then Foreign and Commonwealth Office], concerning the diaries and letters of the 1st Earl and Countess Mountbatten'.
6. The Cabinet Office responded on 11 August 2022 and provided some of the information it held falling within the scope of the request. It explained that further information had been withheld on the basis of sections 40(2) and 41(1) of FOIA.
7. The complainant contacted the Cabinet Office on 16 November 2022 and asked it to conduct an internal review of this decision. This was in light of information that had recently come into his possession which, in his view, showed that the Cabinet Office had not supplied all of the information that it could have done.
8. The Cabinet Office contacted him on 9 December 2022 and explained that it would not normally accept an application for an internal review if it was received more than two months after the initial response. Instead the Cabinet Office suggested to the complainant that he contact the Commissioner.

¹ In making these disclosures the Cabinet Office can continue to redact the personal data of junior officials in line with the Commissioner's finding on section 40(2) in this notice.

Scope of the case

9. The complainant contacted the Commissioner on 20 December 2022 to complain about the Cabinet Office's handling of his request. In his grounds of complaint he explained that as a result of a FOI request to the Foreign, Commonwealth and Development Office (FCDO), it appeared that the Cabinet Office had omitted information from its response.
10. The Commissioner considers that the scope of his investigation is to consider the applications of the exemptions cited and whether, as the complainant suggests, the Cabinet Office holds further information falling within the scope of the request.

Reasons for decision

Whether the Cabinet Office located and disclosed all of the information falling within the scope of the request

11. The complainant argued that the disclosure made to him by the FCDO on this same subject resulted in the disclosure of information that he expected the Cabinet Office to also hold, and therefore such information should have been disclosed to him. There were two examples of this.
12. The first example concerned an email sent by the FCDO to Roger Smethurst at the Cabinet Office on 16 March 2018 at 14:14. Both the FCDO and the Cabinet Office disclosed this email, but the version disclosed by the FCDO had fewer redactions.
13. In response to the Commissioner's enquiries, the Cabinet Office confirmed that it in light of the FCDO's disclosure, and to be pragmatic, it was content to no longer rely on exemptions to withhold the same information. (As a result the Cabinet Office no longer sought to withhold any information on the basis of section 41(1) of FOIA.) The Cabinet Office noted that the complainant clearly already had a copy of this information but would, if the Commissioner insisted, provide the complainant with a fresh response confirming this.
14. In the second example, the FCDO disclosed two emails, one sent and one received, by Roger Smethurst at the Cabinet Office on 13 March 2018. Neither email was disclosed by the Cabinet Office in response to the complainant's request.
15. In response to the Commissioner's enquiries, the Cabinet Office explained that it had conducted an additional search and could confirm

that it held copies of these emails. Again, in light of the FCDO's disclosure, and to be pragmatic, the Cabinet Office was content to not rely on any exemptions to withhold the same information apart from the names, identifiers and contact details contained within them under section 40(2). As above, the Cabinet Office noted that the complainant clearly already had a copy of this information, but if required to do so by the Commissioner it would provide the complainant with a fresh response confirming this was the case.

16. In light of the Cabinet Office's response to these queries, the Commissioner is now satisfied that, on the balance of probabilities, it has located all of the information falling within the scope of the request.
17. The Commissioner appreciates that the complainant already has a copy of the information discussed above that the Cabinet Office is a) now prepared to disclose (first example) and b) has now located and is prepared to disclose (second example). However, for completeness the Commissioner requires the Cabinet Office to provide the complainant with a copy of this information and has included such step in the decision notice.

Section 40(2) – personal data

18. The Cabinet Office redacted information from its original disclosures on the basis of section 40(2). As noted above, it also considers parts of the additional information it has now located to be exempt on the basis of section 40(2). All of the information which the Cabinet Office is seeking to withhold on the basis of this section consists of names, identifiers and contact details of junior staff.
19. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
20. In this case the relevant condition is contained in section 40(3A)(a).² This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
21. It is common practice for a public authority to argue that the names of junior officials are exempt from disclosure under FOIA on the basis of

² As amended by Schedule 19 Paragraph 58(3) DPA.

section 40(2) as disclosure would contravene the principles set out in Article 5 of the GDPR. Furthermore, unless there are very case specific circumstances, the Commissioner accepts that the names of the junior officials are exempt from disclosure on the basis of section 40(2) of FOIA. This is in line with approach taken in the Commissioner's section 40 guidance.³ Therefore, in this case the Commissioner adopts the reasoning set out in these previous decision notices which found that the personal data of junior officials was exempt from disclosure on the basis of section 40(2) of FOIA.⁴

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https://ico.org.uk/media/fororganisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf - see page 12

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022310/ic-114449-b7p7.pdf> - see paragraphs 49-71 and <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022447/ic-110922-t9r1.pdf> - see paragraphs 39-62

Right of appeal

22. 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

23. 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.
24. 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

Jonathan Slee
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