

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 October 2012

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall  
London  
SW1A 2AS

#### Decision (including any steps ordered)

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1. The complainant requested copies of all correspondence between Francis Maude and Common Purpose, between 1 January 2005 and 15 December 2011. The Cabinet Office located and disclosed one email received by Mr Maude and stated that no other information was held. The complainant believed more information was held.
2. The Commissioner's decision is that on the balance of probabilities no further information is held. However, by issuing its response to the request after the statutory time for compliance, the Cabinet Office breached section 10 of the FOIA.

#### Request and response

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3. On 15 December 2011, the complainant wrote to the Cabinet Office and requested information in the following terms:

*"...please supply copies of all correspondence including emails (both from work email addresses and private email addresses) since 1<sup>st</sup> January 2005 between Francis Maude and Common Purpose or any member of Common Purpose".*

4. The Cabinet Office responded on 31 January 2012. It disclosed a single email dated 18 May 2010 which had been sent to Mr Maude by Sue Crawford, on behalf of Julia Middleton, CEO of Common Purpose. The Cabinet Office stated that this was all the information which it held which fell within the scope of the request.
5. The complainant wrote to the Cabinet Office on 14 February 2012, asking for an internal review and asking a supplementary question. He

requested all invoices and associated documents relating to the Cabinet Office's purchase of services from Common Purpose.

6. The Cabinet Office conducted a review and wrote to the complainant on 4 April 2012, maintaining its position that it held no further information.

### Scope of the case

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7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He was unconvinced by the Cabinet Office's response that it only held a single email and felt that it must hold further information. He commented that the Cabinet Office's response was inconsistent with information suggesting a close relationship with Common Purpose, which was freely available on the internet. He also argued that the Cabinet Office's comment in its internal review that it held no information was incompatible with it having disclosed an email in response to the request. He also drew attention to the length of time it had taken the Cabinet Office to respond to his request and to conduct the internal review.
8. The complainant's request for a review contained a supplementary question. While his initial request focusses specifically on Mr Maude's contact with members of Common Purpose, the supplementary question requests information about the provision of services to the Cabinet Office by Common Purpose and does not appear to be time limited, as the first request is.
9. The Commissioner, therefore, considers the supplementary question to constitute a separate request for information to the Cabinet Office. The Cabinet Office appears to have answered it in its letter of 4 April 2012 (the internal review response), as it states:

*"We are also unable to provide information on your supplementary questions as the Cabinet Office does not hold any information".*
10. The complainant has not asked the Cabinet Office for an internal review of this request and so, following section 50(2)(a) of the FOIA, the Commissioner has not included it within the scope of this decision notice.
11. The Commissioner's view is that if he remains dissatisfied with the Cabinet Office's response to his supplementary question, the complainant should ask it for an internal review of this request.

## Reasons for decision

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### Section 1 – is further recorded information held?

12. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him.
13. 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. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities"<sup>1</sup>.

### The complainant's view

14. In his request for a review, dated 14 February 2012, the complainant stated:

*"This reply from the Cabinet Office is not consistent with material freely available on the internet.*

*For example, the Cabinet Office has said that it has no association with Common Purpose. There are many references to the commercial associations between the Cabinet Office and Common Purpose."*

15. The Information Commissioner asked the complainant to specify the material he was referring to. The complainant supplied links to several websites, which could be loosely categorised as "anti-Common Purpose" in their ideology, which he said provided evidence that the Cabinet Office must hold more information which it had not disclosed. He also provided a link to a Common Purpose video.
16. <http://www.ukcolumn.org/article/dark-actors-playing-games>  
This is an article on the website 'UK Column'. It hints at a close relationship between Mr Maude and Common Purpose but provides no

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<sup>1</sup> This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

evidence to substantiate this beyond reproducing the email of 18 May 2010 that the Cabinet Office had disclosed.

17. <http://sirhenrymorgan.blogspot.co.uk>  
[http://nationalsocialistbritain.blogspot.co.uk/2010\\_11\\_01\\_archive.html](http://nationalsocialistbritain.blogspot.co.uk/2010_11_01_archive.html)  
Both the above merely reproduce the 'UK Column' article.
18. <http://www.youtube.com/watch?v=BU6dEa8gkQ8&feature=related>  
This is a nine minute video uploaded to Youtube by Common Purpose on 10 March 2010. Interviewees from the public and private sector talk about important leadership lessons from the previous 12 months. The last two minutes feature Francis Maude talking about the need for openness and transparency in government.
19. Contrary to the complainant's assertion, the Commissioner considers that none of these webpages constitute evidence that the Cabinet Office held information which was covered by the request, which it had not disclosed.
20. The Commissioner therefore considered the complainant's suggestion that he conduct an internet search using the terms "Julia Middleton" and "Francis Maude". While this yielded around 2,500 hits, the websites he viewed appeared to contain only conjecture and speculation about the relationship between Common Purpose and the Cabinet Office. The only evidence of any exchange between Mr Maude and Common Purpose which the Commissioner was able to identify was the aforementioned email of 18 May 2010, which was reproduced across numerous websites and which the Cabinet Office had already disclosed.
21. The Commissioner considers, therefore, that the complainant has not been able to support his assertion that there is independent evidence available on the internet which shows that further information must be held by the Cabinet Office which it has not disclosed in response to his request.
22. However, in reaching this view the Commissioner has not prejudged whether the Cabinet Office does or does not hold further information, and has gone on to conduct an investigation into its handling of the request.

### **The Information Commissioner's investigation**

23. In its response to the Commissioner, the Cabinet Office stated that Mr Maude had been appointed as Minister to the Cabinet Office on 12 May 2010, after the 2010 general election. It stated that its records for him therefore only covered the period from 12 May 2010 onwards. It stated

that it did not hold records relating to his work in opposition, or to his work as a constituency MP.

24. The Information Commissioner accepts that the Cabinet Office could not hold emails in respect of Mr Maude's ministerial duties prior to him being appointed a Minister on 12 May 2010. He considers it reasonable, therefore, for the Cabinet Office to restrict its consideration of the request to correspondence sent and received between 12 May 2010 and 15 December 2011 (the date of the request).
25. The request asked for any correspondence between Mr Maude and Common Purpose. The Cabinet Office interpreted the request as being for correspondence between Mr Maude and individuals writing on behalf of that organisation or identifying themselves as members of it. It clarified that it has no access to membership lists of Common Purpose and is only able to identify its members if they identify themselves as such.
26. The Cabinet Office conducted a search of Mr Maude's correspondence, which yielded the email dated 18 May 2010, which it disclosed to the complainant. The Cabinet Office stated that the email was sent shortly after Mr Maude's ministerial appointment, and that it appeared to be a speculative approach. There is no record that the email was ever answered and the meeting it proposed never took place.
27. The Cabinet Office explained that there is nothing unusual about this. Ministers receive hundreds of unsolicited letters and emails offering services, and it would be impractical and undesirable to respond to every one, less still to take up every offer of a meeting.
28. As further background information to explain why the information is not held, the Cabinet Office explained the searches that it had undertaken. It stated that the Minister's private office was consulted and a search conducted of emails sent to the Minister's email address. A search was also conducted on information held locally on personal computers and in shared drives. The Cabinet Office also has a central correspondence management unit which was searched for letters from Common Purpose to the Minister and vice versa.
29. The search was sufficient to capture all email and hard copy business correspondence between the Minister and any other party. Email records are searchable and hard copy correspondence is recorded by correspondent, date and subject.
30. These searches included searches of individual email accounts and shared drives. The search terms used were "Francis", "Maude", "Minister for the Cabinet Office" and "MCO", each used in conjunction with

"Common Purpose". Once the email of 18 May 2010 was located, further searches were carried out using the names "Sue Crawford" and "Julia Middleton" as search terms.

31. The Cabinet Office stated that it had no reason to believe that the information had been held and then deleted. It explained that it follows the National Archives' guidelines on record keeping. In general, records are kept for reference for several years before being destroyed unless there is a continuing business need. Given that any information relevant to the complainant's request would have been barely two years old at the time of the request, if other information had ever been held, it would still be held.
32. Having considered the Cabinet Office's correspondence with the complainant and its submissions during the course of his investigation, the Commissioner is satisfied that, on the balance of probabilities and on the basis of the evidence in front of him, the Cabinet Office does not hold any further information which is relevant to the complainant's request. This is because he considers the searches that the Cabinet Office described to be both reasonable and proportionate. He has no grounds for believing that the Cabinet Office has not been honest in its account of them.
33. As explained above, while the complainant may consider that information on internet websites constitutes evidence that the Cabinet Office must hold more information, the Commissioner does not agree. The Commissioner also draws attention to the fact that the complainant's request asks specifically for correspondence between Mr Maude and Common Purpose, while much of the information he has referred to focusses on Common Purpose's supposed provision of services to the Cabinet Office and other government departments.
34. In his complaint to the Commissioner, the complainant drew attention to the following comment by the Cabinet Office, in its internal review letter:

*"I have carefully reviewed the handling of your request and I consider that the "no data held" response was the correct response".*
35. The complainant felt that this statement was incompatible with the Cabinet Office having disclosed an email in response to his request.
36. The Commissioner agrees that it would have been more accurate for the Cabinet Office to describe the position as "no *further* data held", so as to reflect the earlier disclosure of the email. However, the internal review is clear that it upholds the outcome set out in the response of 31 January 2012, which itself was clear that a single email was the only information

held which was covered by the request. The Commissioner therefore considers that any confusion caused by the Cabinet Office's choice of words in the internal review would be minimal and finds no breach of the FOIA in this regard.

## Section 10 - time for compliance

37. Section 10(1) of the FOIA states that a public authority in receipt of a request for information has a duty to respond within 20 working days. Failure to respond within the time limit would be a breach of the FOIA.
38. In this case, the complainant first wrote to the Cabinet Office on 15 December 2011. The Cabinet Office responded on 31 January 2012, 29 working days after the date the request was received. It has explained the late response as being due to staff shortages over the Christmas period.
39. As the Cabinet Office exceeded the twenty working day statutory timescale for responses, the Commissioner considers that it has breached section 10(1) of the FOIA.

## Other matters

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40. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible.
41. While no explicit timescale is laid down by the FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
42. The Cabinet Office has not demonstrated to the Commissioner that the circumstances in the case were exceptional. The Commissioner is therefore concerned that it took 35 days for an internal review to be completed.



## Right of appeal

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43. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

44. 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.
45. 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** .....

**Jon Manners**  
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