

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 19 April 2022

**Public Authority:** Cabinet Office

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

#### **Decision (including any steps ordered)**

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1. The complainant submitted a request to the Cabinet Office seeking electronic communications made from the Prime Minister's Office in March 2020 containing both the words 'virus' and 'hoax'. The Cabinet Office responded by explaining that it considered the request to be vexatious and therefore it was refusing to comply with it on the basis of section 14(1) of FOIA.
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 14(1) to refuse to comply with the request.
3. No steps are required.

#### **Request and response**

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4. The complainant submitted the following request to the Cabinet Office on 3 October 2020:

'FoI request: If they exist, please kindly provide a copy of electronic communications (such as letters and memos) made from the Prime Minister's Office in March 2020 containing both the words 'virus' and 'hoax'.

We know Covid-19 is not a hoax or conspiracy but we want to write a piece about it to help convince the naysayers.'

5. The Cabinet Office responded on 27 October 2020 and explained that it was refusing to answer the request on the basis of section 14(1) of FOIA because it considered it to be vexatious.
6. The complainant contacted the Cabinet Office on the same day and asked it to conduct an internal review, and in doing so set out why she believed that the request did have a serious purpose and value.
7. The Cabinet Office informed her of the outcome of the internal review on 20 November 2020. The internal review upheld the application of section 14(1) of FOIA.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 20 November 2020 in order to complain about the Cabinet Office's reliance on section 14(1) of FOIA to refuse to answer her request. The complainant provided the Commissioner with submissions to support her position and these are referred to in the analysis below.
9. The complainant also alleged that the Cabinet Office may have been attempting to conceal information in relation to her request and as a result may have committed a breach of section 77 of FOIA. Such matters do not fall to be considered in a decision notice. The Commissioner has separately informed the complainant that there is insufficient evidence to substantiate her allegations and therefore he does not intend to take any further action in relation to them.

### **Reasons for decision**

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10. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
11. Whilst the term 'vexatious' is not defined in FOIA, in the case of the Information Commissioner v Devon CC and Dransfield the Upper Tribunal commented that the term could be defined as the 'manifestly

unjustified, inappropriate or improper use of a formal procedure'.<sup>1</sup> The Tribunal's definition clearly established that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

12. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues; (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request, and (4) harassment or distress of, and to, staff.
13. However, the Upper Tribunal did also caution that these considerations were not meant to be exhaustive. Rather, it stressed the importance of:  
  
'adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.' (paragraph 45).
14. The Commissioner's guidance on dealing with vexatious requests sets out a number of indicators that may apply in the case of a vexatious request.<sup>2</sup> The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious, including the context of the request and the history of the public authority's relationship with the requester, when this is relevant.

### The complainant's position

15. By way of background to her request, the complainant explained to the Commissioner that the organisation which she represented was committed to saving lives where possible and using methods at their disposal to do this by writing and publishing articles. She highlighted that there were a 'staggering' number of people who consider COVID-19 to be a hoax. The complainant suggested that some of these people may

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<sup>1</sup> [2016] UKUT 0273 (AAC)

[https://assets.publishing.service.gov.uk/media/578f2b5aed915d3cfd000179/GIA\\_0246\\_2015-00.pdf](https://assets.publishing.service.gov.uk/media/578f2b5aed915d3cfd000179/GIA_0246_2015-00.pdf)

<sup>2</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

say this without truly believing their words and this creates the problem that they convince other people that there is no threat to life.

16. The complainant explained that her organisation could not stop people spreading lies, but it could discredit them by helping to prove their claims to be wrong. The complainant argued that if COVID-19 really was a hoax instigated by the UK government then she was confident that there would be some record of it.
17. In light of this the complainant explained that she submitted the request she did, expecting to get the response that there was no record of the information requested, which would prove her point. She could then write an article about it to disprove those convinced COVID-19 is a hoax or conspiracy.
18. However, the complainant argued that in light of the Cabinet Office's internal review response she was not clear whether it had, in deciding to refuse the request on the basis of section 14(1), taken into account the part of the request that had explained the rationale behind it.
19. The complainant explained that she did not appreciate being accused of submitting a vexatious request, particularly when she had been transparent with the Cabinet Office about why her organisation wanted the information. The complainant explained that she hoped the Commissioner would appreciate the importance of requests which result in genuinely no information being held, as such responses can sometimes force a conclusion to be drawn which is just as important as had information existed.
20. The complainant explained that it would certainly be a surprise if the Cabinet Office did hold the information requested, but she hoped that it was clear why the intended article would need a result saying there is nothing on file. (She noted that if it turned out that the Cabinet Office did hold information falling within the scope of the request 'then we'd cross that bridge if we come to it.')
21. The complainant emphasised that an article to convince the virus naysayers is what her organisation wanted out of this request and she argued that in her view everyone should have a duty to provide accurate information to discredit these hoax claims.

#### The Cabinet Office's position

22. The Cabinet Office explained that it had considered the Commissioner's guidance and in its view the complainant's request was one where the detrimental impact of answering the request outweighed its purpose or value. The Commissioner has set out the Cabinet Office's submissions to support this position below.

## Purpose and value

23. The Cabinet Office argued that the requested information, ie copies of electronic communications containing the words 'virus' and 'hoax', was of interest only to the complainant to the extent that she had explained that she wanted this information to inform an article she was planning to write. The Cabinet Office suggested that it was not clear how accessing such communications (were any to exist falling within the scope of the request) would actually further this objective. The Cabinet Office noted that the complainant herself explained that she knew that COVID-19 was not a hoax and therefore it appeared that the request lacked a serious purpose.
24. The Cabinet Office argued that it was not clear how a highly burdensome search by the Prime Minister's Office (PMO), as detailed in the further submissions below, would help the complainant to write an article to convince the naysayers. The Cabinet Office respectfully suggested that it was not clear whether the complainant operated such a platform which would be able to achieve such an aim, or indeed whether such a platform actually exists.
25. The Cabinet Office suggested that the reality was that those who adopt a position of denying the existence of COVID-19 generally do so from a position based on distrust of, or disbelief in, information provided by public authorities. As a result, the Cabinet Office argued that it was not clear how information sourced from a public authority would be of any material use in this instance.
26. The Cabinet Office emphasised the significant volume of information which had been published by various government departments and agencies on the gov.uk website about COVID-19; information which set out what the virus is, how it is transmitted and the real threat that it poses to human health. The Cabinet Office noted that all of this information was available to the complainant at the point she submitted her request. By way of illustrating this point, the Cabinet Office cited the following key information sources:
  - The UK Health Security Agency website<sup>3</sup> provides background information on the epidemiology, virology, characterisation, transmission, and symptoms of COVID-19.

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<sup>3</sup> <https://www.gov.uk/government/publications/wuhan-novel-coronavirus-background-information/wuhan-novel-coronavirus-epidemiology-virology-and-clinical-features>

- The official UK government website for data and insights on COVID-19 (<https://coronavirus.data.gov.uk/>) includes levels of infections, the impact on health in the UK and on measures taken to respond. It presents a dynamic contemporary picture and is updated daily. It provides timely updates at national and local level to ensure good understanding of the day-to-day progress of the pandemic. The site includes interactive maps and trends over time of key measures relating to testing capacity and activity, newly confirmed cases, hospital admissions and deaths.
  - The Office for National Statistics publish the latest data and analysis<sup>4</sup> on COVID-19 in the UK.
27. Furthermore, the Cabinet Office suggested that it is possible that searches for just the terms 'virus' and 'hoax' could identify information that would not be useful generally to the complainant's stated intention. For example, communications could exist in the form of electronic security briefings that could feasibly contain both terms, as opposed to being about COVID-19.
28. The Cabinet Office acknowledged that the complainant may have a serious intent in asking for this information, but it considered that this is limited and that there is little to no direct link between the burdensome scope of the request and the complainant's desired outcome. The Cabinet Office argued that this restricted the value of the request, even if there may be a serious purpose behind it as the complainant claimed.

#### Details of the detrimental impact of complying with the request

29. The Cabinet Office explained that when it received the request on 5 October 2020 the information in scope was sufficiently far back that the PMO could not rely on live email records to locate the information. As a result a simple Outlook search would not suffice. Rather, to find what, if any, 'electronic communications' were held at the time of the request that contained both of the requested search terms, the PMO would have had to, at a minimum:
- a. Searched the PMO formal, official records as managed by the Private Office Support Team.

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<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/conditionsanddiseases>

- b. Searched the correspondence database managed by the Direct Communications Unit. This would encompass external correspondence with Members of Parliament, members of the public, businesses etc.
  - c. Asked each team within the PMO to check any locally managed records, including hard copy records that may include printed content that was once contained in an electronic communication, held in relation to their team's work.
  - d. Asked individuals to check any records they had saved into their personal (official) electronic filing environment.
  - e. Arranged for searches as set out in c) and d) on behalf of those who held a position in March 2020 but had subsequently left.
  - f. Conducted a search of emails pertaining to FOI requests which might contain the search terms, and which are retained for case-management purposes
  - g. Located (drafts of) correspondence prepared in reply to queries received from MPs, peers etc. and which may have been circulated for comment/clearance.
  - h. Identified if PMO held any relevant information relating to press reporting at the time. This could take the form of circulated press clippings, 'lines to take' developed by the Press Office, daily media summaries and CO-wide briefs circulated and then forwarded by members of PMO staff etc.
  - i. Identified correspondence pertaining to / drafts of answers to Parliamentary Questions.
  - j. Identified briefs prepared for the Prime Minister ahead of Ministerial engagements, visits, speeches, Parliamentary engagements etc in March 2020.
30. The Cabinet Office explained that in the case of some of the records the full contents would not be machine searchable and they would have to be opened and reviewed manually to see if they contained both terms contained in the request.
31. The Cabinet Office explained that it was very hard to put any kind of reliable estimate as to how long such a vast exercise would take to complete. It emphasised that to comply with the request as set out above would require an assessment of all information held for March 2020 that in any way could contain the two search terms, 'virus' and 'hoax'. For example, it is not limited to information which refers to COVID-19. The Cabinet Office explained that complying with the request would therefore require it to examine information beyond that which the

complainant appeared to be seeking (given the context), further increasing the burden on the PMO.

32. The Cabinet Office argued that even assuming it took a reductive view and only looked for material related to COVID-19, this would still have involved an unjustified diversion of resources. It explained that during March 2020 the officials most likely to hold relevant information were those directly involved in handling the COVID-19 pandemic, supporting Ministers as decision makers, whether this related to developing policy options or those charged with managing the messaging around it etc. The Cabinet Office explained that at the time of the request in October 2020 these officials were engaged in nationally important work with cross-Whitehall planning focusing on how to support and protect the NHS in preparation for winter 2020.
33. The Cabinet Office explained that the amount of time required to review and prepare information for disclosure would impose a grossly oppressive burden on the PMO. It noted that the request potentially encompassed a substantial volume of information through which it would have to search to see what, if any, electronic communications it held that contained both terms.
34. Furthermore the Cabinet Office explained that it had real concerns that potentially exempt information could be contained within this body of information, and which may not be easily isolated because it is likely to be scattered throughout. For example, internal correspondence or external correspondence sent to MPs or peers may include information relating to the development of government policy, references to a constituent's physical health, personal data and so on.
35. In conclusion, the Cabinet Office explained that it did not consider the purpose or value of the request to provide sufficient grounds to justify the disruption that would be incurred by complying with it.

#### The Commissioner's position

36. The Commissioner appreciates that the complainant's overarching aim – ie to educate the public about COVID-19 – is clearly a laudable one. However, he is not persuaded that the Cabinet Office responding to this request, either by confirming that it holds information (and if so, disclosing it) or by confirming that it does not the requested information, would actually assist the complainant in her endeavours. The Commissioner has reached this finding for a number of reasons.
37. Firstly, this is to do with the framing of the request. As the Cabinet Office has noted the request is sufficiently broad that it would encompass information that is not necessarily on the topic of COVID-19, eg information cyber security. Therefore, a positive response that information in the scope of the request is held (if that were the case),



could provide the complainant with an inaccurate insight into whether any information about COVID-19 being a hoax was actually held.

38. Secondly, assuming that the Cabinet Office does hold some information falling within the scope of the request that relates to COVID-19, the existence, and indeed disclosure of, such information does not prove that the government was (or was not) part of a hoax. It simply reveals that the PMO holds information from March 2020 with the words 'hoax' and 'virus' in it.
39. Thirdly, nor would a nil response to the request prove that the government were not part of a hoax. Rather, a nil response to the request simply reveals that no information in the scope of that request was held.
40. Fourthly, and most importantly, the Commissioner agrees with the Cabinet Office that the complainant's intention to convince 'naysayers' seems very unlikely to be successful if it is predicated on the Cabinet Office's response to a FOI request given such parties' reluctance to accept the information and evidence of government departments and agencies. Moreover, again as the Cabinet Office has noted, there is already a significant body of evidence published by such bodies on various aspects of COVID-19 which would allow individuals to formulate their own views about the virus, evidence which the complainant could also use for the purpose of the intended article.
41. Ultimately, whilst the Commissioner respects the complainant's intentions, and acknowledges the value of openness and transparency in general, he considers the request to be limited in value for the reasons discussed above.
42. In contrast, the Commissioner accepts that given the breadth of the request and the way in which any relevant records are held, complying with the request would prove to be extremely burdensome for the Cabinet Office. Moreover, the Commissioner is conscious that if the request had been processed at the time of the request in October 2020 then this would have resulted in a distraction to the officials involved in planning for COVID-19 in relation to winter 2020.
43. Taking all of the above into account, the Commissioner is satisfied that the impact of complying with the request significantly outweighs the limited purpose and value of the request. The Cabinet Office was therefore entitled to rely on section 14(1) of FOIA to refuse the request.

## Right of appeal

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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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

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