

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **6 February 2023**

Public Authority: **The Cabinet Office**

Address: **70 Whitehall**

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant made a request to the Cabinet Office to see the entry in the then Prime Minister's (Boris Johnson's) diary on a particular date.
2. The Cabinet Office stated that the information was already publicly accessible and as such it was exempt from disclosure under section 21 of FOIA (information reasonably accessible to the applicant by other means).
3. The Commissioner considers that the Cabinet Office incorrectly applied section 21 of FOIA in this case. However, the Commissioner has not ordered disclosure on the basis that the exact wording of the diary entry is reproduced in this decision notice.
4. The Commissioner requires no steps to be taken.

Request and response

5. By way of background, on 20 May 2020 there was a gathering in the No 10 Downing Street garden for No 10 Staff.¹

6. The complainant made the following information request on 12 January 2022:

"I would like to see the entry in the Prime Minister's diary for May 20th 2020 for the hours 18:00 to 18:25."

7. The Cabinet Office responded on 9 February 2022 and refused to provide the requested information citing section 21 of FOIA. A link to a Hansard transcript² was provided to the complainant which listed the Prime Minister's official engagements for the date and time requested. This states:

"When I went into that garden just after 6 o'clock on 20 May 2020, to thank groups of staff before going back into my office 25 minutes later to continue working, I believed implicitly that this was a work event, but with hindsight, I should have sent everyone back inside."

8. On 9 February 2022, the complainant requested an internal review. He said:

"I asked to see a copy of " the entry in the Prime Minister's diary for May 20th 2020 for the hours 18:00 to 18:25". That is to say what was the description in the electronic or hard copy diary of the activities the PM was supposed to be carrying out between those hours. I did not ask what he was actually doing between those hours which is what was described in the reference sent to me by [name redacted]. So you have not answered my request and the information I actually asked for is not accessible and so the S21 exemption does not apply".

9. After the Commissioner's intervention, the Cabinet Office provided an internal review on 6 May 2022 in which it maintained its original position

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1078404/2022-05-25_FINAL_FINDINGS_OF_SECOND_PERMANENT_SECRETARY_INTO_ALLEGED_GATHERINGS.pdf - see page 9 - 12

² <https://hansard.parliament.uk/commons/2022-01-12/debates/CEFD521F-BECA-495E-8650-C4FF8E2C5428/Engagements>

that the information requested was already in the public domain. It also said:

"For the avoidance of doubt, the recorded entry in the Prime Minister's diary for this period is:

"In garden with staff"

Scope of the case

10. The complainant contacted the Commissioner on 9 May 2022 and disputed the Cabinet Office's application of section 21. He argued that the requested entry in the diary was not in the public domain. Further, the requested information was not reasonable accessible to them as:

"the provision of the 4 words "in garden with staff" does not constitute the provision of all the "recorded information". For instance it does not show the time covered by this entry. It does not tell us whether the entry relates to a paper diary or an electronic diary."

11. During the course of the Commissioner's investigation, on 10 November 2022 the Commissioner asked the Cabinet Office to provide a copy of the actual diary entry in question. It is the Commissioner's normal practice to require sight of the actual information being withheld, rather than a description of the information.

12. On 1 December 2022, the Cabinet Office replied to the Commissioner. While it maintained its reliance on section 21 of FOIA, it also argued that the internal review response to the complainant had disclosed the "exact entry" contained within the Prime Minister's diary for the time requested. It said:

"No.10 has confirmed that the exact diary entry is "1802-1830 In garden with staff". The entry is inclusive of the time taken for the Prime Minister to return to his office for his virtual audience of Her Majesty Queen Elizabeth II which began at 6:30pm... No.10 has confirmed that the diary is held in paper and electronic form."

13. Despite the assurances provided by the Cabinet Office that the internal review had disclosed the 'exact' diary entry, the Commissioner contacted the Cabinet Office again as he considered that he still needed to have sight of the diary entry. The Commissioner also noted an inconsistency in that the internal review had stated "In garden with staff" whereas its response to the Commissioner stated "1802-1830 In garden with staff."

14. On 27 January 2023, the Cabinet Office provided the Commissioner with a copy of the actual diary entry held by the Cabinet Office. The entry was a 'copy and paste' from the Prime Minister's diary as follows:

1802-1830 In garden with staff

15. The Cabinet Office also confirmed to the Commissioner that the Prime Minister's definitive diary is held in a Word document, and provided an assurance that the text quoted above is a direct copy and paste from that document (font and all).

Reasons for decision

Section 21 – information accessible to applicant by other means

16. The following analysis sets out why the Commissioner has concluded that the Cabinet Office was not entitled to rely on section 21 of FOIA.
17. Section 21 of FOIA provides that information which is reasonably accessible to the applicant otherwise than under FOIA is exempt information.
18. In the Commissioner's guidance for section 21³, he explains that, in order to be exempt, the requested information must be reasonably accessible to the applicant by another route. In order for section 21 to apply, there should be another existing, clear mechanism by which the particular applicant can reasonably access the information outside of FOIA.
19. The Commissioner agrees with the complainant that the requested information was not accessible to them via the Hansard link provided in the initial response from the Cabinet Office. The complainant asked to see "the entry in the Prime Minister's diary for May 20th 2020 for the hours 18:00 to 18:25". That is to say what was the description in the electronic or hard copy diary of the activities the Prime Minister was diarised to be carrying out. In contrast, what is described in the Hansard link provided is what the Prime Minister was actually doing at that time.

³ <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

20. The Commission's decision therefore is that the Cabinet Office was incorrect to rely on section 21 of FOIA. The requested information was not readily available to the complainant via the Hansard link, and therefore, the exemption is not engaged.
21. The Commissioner, however, does accept that the Cabinet Office provided the complainant with a partial copy of the requested information in the internal review by providing the wording, "In garden with staff", although it did not overturn its reliance on section 21 of FOIA. It is noted, however, that the provision of those four words in the internal review did not constitute all the recorded information held by the Cabinet Office as it did not show the time covered by the entry.
22. The Cabinet Office acknowledged to the Commissioner during the course of his investigation that it would have been helpful to confirm the exact diary entry in the initial response to the complainant and to confirm whether the diary was held in paper or electronic form. It has now provided the full entry to the Commissioner, as set out in paragraph 14 above.
23. The Commissioner also notes that section 1 of FOIA provides a right to access recorded 'information' rather than copies of actual documents. Hence if all of the information on a document is provided to a requestor then the authority will have complied with its obligations under FOIA, even where it has not provided the requestor with a copy of the actual document.
24. The Commissioner is satisfied that the Cabinet Office has provided him with an accurate transcript of the entry contained within the Prime Minister's diary for the time requested, as set out in paragraph 14 above.
25. Whilst section 21 of FOIA did not apply, given that this decision notice has replicated the only possible information he could have ordered the Cabinet Office to disclose, the Commissioner does not consider it proportionate to order any steps.

Other Matters

26. FOIA does not contain a time limit within which public authorities have to complete internal reviews. However, the Commissioner's guidance⁴ explains that in most cases an internal review should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances. In this case, the internal review was requested on 9 February 2022 and the Cabinet Office did not respond until 6 May 2022, after the Commissioner intervened. The Commissioner considers such a delay to be unacceptable. He has recorded this delay for his own purposes of monitoring the Cabinet Office.

⁴ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/#20>

Right of appeal

27. 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: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.
29. 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

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