

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

### **Decision notice**

**Date:** 27 September 2023

**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 information about requests he had previously submitted to government departments about the then Prince of Wales and on which the Clearing House had provided advice. The Cabinet Office refused the request on the basis of section 14(1) (vexatious) of FOIA.
2. The Commissioner's decision is that the Cabinet Office is entitled to refuse the request on the basis of section 14(1) of FOIA.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. The complainant submitted the following FOI and subject access request (SAR), under the provisions of the Data Protection Act 2018 (DPA), to the Cabinet Office on 14 November 2022:

'I would like to make a subject access request (SAR) for information via the General Data Protection Regulations (GDPR) and I would be grateful if you could forward this subject access request onto the most appropriate person within the organisation.

I enclose a copy of my passport to properly identify me.

I understand that public bodies should not request payment for processing subject access requests when the identity of the requester is not an issue.

Where appropriate please feel free to treat aspects of the request as a request for information via the Freedom of Information Act and the Environmental Information Regulations (EIRs).

My request concerns the work of the Cabinet Office's Clearing House which was set up to advise on and deal with complex and sensitive requests for information submitted via the FOIA and the EIRs. Please note that I am only interested in information generated between 1 June 2019 and 1 June 2022.

Please note that I am only interested in information held and or generated by the Clearing House which relates in any way to my own FOI/EIR requests about the then Prince Charles and his contacts and communications with particular public bodies including but not limited to government departments. Please note that all of my requests were submitted by me via [email address redacted].

Please note that the reference to correspondence and communication in the questions below should include all traditional forms of correspondence and communication including letters and faxes, all emails irrespective of whether they were sent and or received via private and or official accounts, all G-mail messages, all telephone text messages and all messages sent through encrypted messaging services including but not limited to WhatsApp.

Please note that I would like to receive copies of actual documents rather than excerpts from those documents. In the case of letters, I would like to be able to see the letter heads, the signatures and any other design features. In the case of emails and other messages I would like to be able to see dates and times sent and the original sentence and paragraph structures. If you must redact any information, can you please redact it where it appears in the correspondence and communication than I will be able to judge the extent and location of the redaction.

1....Does the Cabinet Office hold information relating to the work of the so-called Clearing House which was set up to deal with complex and sensitive requests for information.

2...Can you provide a list of occasions when those public bodies (including but not limited to government departments) in receipt of information requests from me about the then Prince Charles have

referred these information requests to the Clearing House. In each case can you identify the public body and the date of the referral. In the case of each referral by the public body to the Clearing House can you provide a copy of my original request as well as any written communication and correspondence submitted by the public body to the Clearing House about that request.

3...During the aforementioned period did staff working in the Clearing House advise and or instruct any and or all of the aforementioned public bodies on how they should handle and or process and or respond to any of my requests for information. If the answer is yes and in relation to each of my requests, can you, please provide a copy of this advice and or any written correspondence and communication which includes this advice.

4...Can you please provide copies of all other documents held and or generated by staff in the Clearing House which mention me by name and or which relate specifically to any of my requests for information about the then Prince Charles.'

5. Under FOIA, the Cabinet Office responded to the request on 13 December 2022 and refused to comply with it on the basis of section 14(1) (vexatious) of FOIA because of the burden involved in doing so. The Cabinet Office invited the complainant to make a refined version of the request. Separately, the Cabinet Office also provided the complainant with a response to the parts of his request which it dealt with as a SAR.
6. The complainant contacted the Cabinet Office on 7 January 2023 and asked it to conduct an internal review of the FOI refusal.
7. The Cabinet Office informed him of the outcome of the review on 6 February 2023. The 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 4 May 2023 in order to complain about the Cabinet's Office's refusal of his request on the basis of section 14(1) of FOIA.

### **Reasons for decision**

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### **Section 14(1) – vexatious**

9. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
10. In the Commissioner's view, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
11. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is, in part, the Cabinet Office's rationale for relying on section 14(1) in this case.
12. The Commissioner believes that there is a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where:
  - The requester has asked for a substantial volume of information **and**
  - the authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the Commissioner **and**
  - any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.<sup>1</sup>

#### The Cabinet Office's position

13. The Cabinet Office explained to the Commissioner that it dealt with part 4 of the request as a SAR given that section 45 of the DPA states that:

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<sup>1</sup> This approach is set out in the Commissioner's guidance on section 14(1) of FOIA <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/how-do-we-deal-with-a-single-burdensome-request/#section-12>

'A data subject is entitled to obtain from the controller confirmation as to whether or not personal data concerning him or her is being processed, and where that is the case, access to the personal data'

14. The Cabinet Office noted that only personal data would be disclosable via the SAR and any other information falling within the scope of the request would be dealt with under FOIA.

*Burdensome*

15. In relation to the first of the criterion set out above the Cabinet Office's internal review noted that its initial response had explained that a search of relevant files had located 'a large amount of documentation' and that:

'The search referred to was of the Clearing House inbox and used the terms 'Prince of Wales' plus your name and related to the time frame 1 June 2019 to 1 June 2022. That search returned 248 email chains, many of which are lengthy 'round robin' emails. To be clear, this would not represent the entirety of the potential information in the scope of your request that would need to be searched for and reviewed. For instance, this does not take into account a necessary search for 'Prince Charles' together with your name, which would return more emails, many of which are likely to be duplicates.'

16. As part of his investigation the Commissioner asked the Cabinet Office to clarify what further searches would be necessary to locate information falling within the scope of the request. The Cabinet Office explained that the initial 248 emails were returned on a very tight basis. It explained that if these searches were widened to include logical variations on the complainant's name, or included the search term 'member of the royal family' or widened to include a search of all FOI-related inboxes then the Cabinet Office was satisfied that it would lead to there being additional returns beyond the 248 initially located.
17. With regard to the second and third criteria, the Cabinet Office explained that many (if not all) of the requests submitted by the requester are 'round robin' requests. These are requests which appear to the Cabinet Office to have been made to more than one government department and which have repeat characteristics. The Cabinet Office explained that its role for such requests was to ensure that there is a consistent approach across government.
18. The Cabinet Office explained that the requests submitted by the requester will have appeared on numerous 'round robin' lists circulated to other government departments and would therefore be contained in documents that included other requests. During the time period covered

by the request such lists would have normally been circulated on a daily basis (and then twice weekly). Departments commonly communicate with the Cabinet Office on several 'round robin' requests at any one time. Furthermore, there is considerable repetition as a result of 'round robin' requests being kept on a list for up to a month.

19. As a result the Cabinet Office argued that there would be a considerable quantity of information to look through to establish what information is within the scope of the request and what information should be exempt from disclosure. The Cabinet Office noted that the complainant has asked generally for 'all other documents held and or generated by staff in the Clearing House' which mention him by name. The Cabinet Office explained that if this were to be dealt with under FOIA it would necessitate examining all of the lists together with referral emails and other information to establish what was subject to exemption.
20. The Cabinet Office argued that similarly exhaustive searches would be necessitated as a result of requests 2 and 3, where the requester seeks, in respect of referrals, 'a copy of [his] original request as well as any written communication and correspondence submitted by the public body to the Clearing House about that request' and then, in respect of advice, 'a copy of this advice and or any written correspondence and communication which includes this advice.'
21. The Cabinet Office argued that it considered the following exemptions of FOIA were likely to apply to information in the scope of the request: section 23/24 (security bodies/national security), 36(2) (effective conduct of public affairs), 37(1) (Royal family and honours), 40(2) (personal data) and 42(1) (legal professional privilege).

### *Intransigence*

22. The Cabinet Office also argued that the complainant's request demonstrated a degree of intransigence. In support of this point it referred to requests, also submitted by the complainant, which had been considered by the Commissioner.<sup>2</sup> In that case the complainant had sought information about historic honours, which the Cabinet Office had refused on the basis of section 14(1), a position upheld by the Commissioner in his decision notice. The Cabinet Office noted that during its handling of that request the complainant had explained that he was 'happy to speak to a relevant member of staff prior to submitting

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<sup>2</sup> IC-135121-M9P8 <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4023830/ic-135121-m9p8.pdf>

any request for information'. In response to the Cabinet Office's internal review explained that it would:

'...endeavour to provide advice and assistance under section 16(1) of the Act and we suggest that, in the first instance, [he] may wish to contact the FOI via email at [foi-team@cabinetoffice.gov.uk](mailto:foi-team@cabinetoffice.gov.uk)'

23. The Cabinet Office explained that the request in this previous case consisted of seven sub-requests which sought wide ranging disclosure of information. Similar requests sought the disclosure of 'any other material' in relation to particular honours cases. The Cabinet Office argued that its conclusion in that case that the requests were, in its view, vexatious, ought to have served as notice to the complainant that such broadly worded requests which would compel open-ended searching on the part of officials would not be complied with by the Cabinet Office on burdensomeness grounds.
24. Furthermore, the Cabinet Office emphasised that it had provided the advice that the complainant should contact the FOI Team for advice and assistance prior to submitting requests on historic honours on 16 November 2021. However, a year after the Cabinet Office signalled to the complainant that a more constructive approach might be achievable in respect of such expansive requests, he submitted the request which is the subject of this notice on 14 November 2022 which, alongside other requests, sought the disclosure of 'all other documents' mentioning him or requests he submitted concerning the (then) Prince of Wales.
25. The Cabinet Office accepted that the advice provided to the complainant was in the context of requests about historic honours, but in its view the spirit can be applied to a request on any subject which the complainant submits. The Cabinet Office explained that it is preferable that the complainant checks with the FOI Team that a potential request can be complied with rather than submitting the request and placing the Cabinet Office under a statutory obligation to respond. In the circumstances of this case the Cabinet Office argued that its previous advice had not been given the attention that it deserved to have been.
26. Furthermore, the Cabinet Office suggested that the complainant's request could also have better assisted compliance. It suggested that the complainant would have a note of the references of the particular FOI requests which he has submitted to the Cabinet Office about the (then) Prince of Wales. Providing these would at least have assisted with the conduct of searches.

*Value and purpose of request*

27. The Cabinet Office noted the complainant had argued in his internal review request that there is a value and purpose to the request:

'I would argue... that there is a wider public interest in FOI/EIR disclosures which could shed light on the operation of the Clearing House, not least because it is alleged to have obstructed requests submitted by journalists.'

28. The Cabinet Office acknowledged that it is legitimate to seek information about (what was then) the Clearing House and its operation.

29. However, the Cabinet Office argued that there was substantial documentation in the public domain about the operation of the Cabinet Office's Clearing House function, as it had pointed out to the complainant. This included Cabinet Office's Clearing House Review conducted by Sue Langley OBE and other relevant documentation concerning the Clearing House: namely the remit of the Clearing House, the referral criteria, the referral form, letters sent by the (then) Chancellor of the Duchy of Lancaster about the role of the Clearing House, the terms of reference of the Clearing House Review and a letter from Lord True to Ms Langley on the subject.<sup>3</sup> The Cabinet Office explained that this subject has also been well covered by the Public Administration and Constitutional Affairs Committee (PACAC), which reported in April 2022. The Cabinet Office noted that the oral evidence transcripts together with written evidence are all readily available and shed copious light on the operation of the Clearing House and the attitudes of those who have an interest in it.<sup>4</sup> As a result the Cabinet Office argued that the legitimate aim of furnishing the public with more information about the Clearing House has therefore already been substantially, if not wholly met.

30. The Cabinet Office explained that the request was expressed chiefly as a SAR and question 4 constituted the substance of that SAR. The Cabinet Office responded to that SAR on 15 December 2022 (and responded to the complaint about that response on 27 January 2023). The Cabinet Office noted further that the questions seek the disclosure of various information about the Clearing House in relation to the complainant's specific requests concerning the (then) Prince of Wales. The Cabinet Office therefore argued that it was not apparent what could be further

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<sup>3</sup> <https://www.gov.uk/government/publications/cabinet-office-and-freedom-of-information>

<sup>4</sup> <https://committees.parliament.uk/work/1348/the-cabinet-office-freedom-of-information-clearing-house/>



gained in terms of enlightenment by the disclosure of how the Clearing House dealt with any requests he had submitted concerning the (then) Prince of Wales. Moreover, the Cabinet Office argued that nor is it apparent that, if Ms Langley's Clearing House Review or the PACAC investigation missed anything of substance, it would be brought to light by the disclosure of the information sought by this request.

31. The Cabinet Office noted that the complainant had referred to allegations that the Clearing House operated to obstruct requests submitted by journalists. However, as the (then) Chancellor of the Duchy of Lancaster stated in writing to the Chairman of PACAC on 9 March 2021:

'It would be unlawful for the Cabinet Office, or any other public authority, to blacklist enquiries from journalists.'

32. The (then) Minister of State for the Constitution and Devolution reiterated this on 31 August 2021:

'We do not recognise the basis of media reporting, which incorrectly asserted that journalists and other users of the Act are being 'blacklisted', and that the Clearing House directs departments to block requests. As we have previously set out, there is no such blacklist.'<sup>5</sup>

33. The Cabinet Office also highlighted that in her Clearing House Review, Ms Langley found that there was no 'evidence that pointed to the deliberate unlawful obstruction of the FOIA or other relevant legislation.'<sup>6</sup>

34. The Cabinet Office argued that it was not clear that the complainant would reach a different conclusion based upon the disclosure of the information he had requested.

35. In view of the above the Cabinet Office concluded that the value and purpose underpinning the request is a limited one, despite the legitimacy of enquiries into how the Clearing House has operated.

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<sup>5</sup> <https://committees.parliament.uk/publications/7145/documents/75490/default/>

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1100384/Final\\_Report\\_-\\_Publication\\_version\\_FOI\\_CH\\_Review\\_20220824\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1100384/Final_Report_-_Publication_version_FOI_CH_Review_20220824_1_.pdf)

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*Value and purpose assessed against impact*

36. As set out above the Cabinet Office argued that the Clearing House has received considerable scrutiny, both within the Cabinet Office and from Parliament. In its view disclosure of the requested information would not reveal much which was of interest to the public about the Clearing House and as result it was of the view that the request had a limited value and purpose. Furthermore, the Cabinet Office explained that it had concluded that it would take many hours for officials to locate the information he had requested and to fully consider the potential exemptions which may apply to it.
37. As a result the Cabinet Office concluded that the value and purpose of the request would not justify the expense of such efforts by Cabinet Office officials.

The complainant's position

38. The complainant disputed that the processing his request would be burdensome. Given the nature of the Clearing House the complainant suggested that the information will be held centrally and consequently argued that the Cabinet Office should be able to process it within the time and cost constraints laid down by the legislation.
39. The complainant noted the Commissioner would be aware of previous concerns expressed about the work of the unit of MPs, journalists, newspapers editors and information campaigners. The complainant explained that the Cabinet Office had argued that there is already a great deal of information in the public domain about the operation of the Clearing House. He acknowledged that this may be the case but he emphasised that he was seeking information about the way the Cabinet Office dealt with own requests.
40. Finally, he argued that some of the information falling within the scope of his request was likely to be environmental information as defined by the EIR and should have been treated accordingly under that legislation.

The Commissioner's position

41. With regard to whether the request (or the FOIA aspects of it) are burdensome, the Commissioner accepts that a significant volume of information falls in the scope of the request. The Cabinet Office has initially located nearly 250 email chains and the Commissioner accepts that further searches of the nature described by the Cabinet Office will be necessary to locate all information relevant to the case.
42. Furthermore, given the nature of the information, ie primarily emails containing advice between the Clearing House and government

departments about FOI requests, the Commissioner accepts that such information could potentially contain information which could attract the exemptions cited by the Cabinet Office. (Indeed the Commissioner is aware from other cases that he has dealt with that the Cabinet Office applied such exemptions to very similar information.) Finally, given the nature of such information the Commissioner accepts that any potentially exempt information could not easily be isolated from such material.

43. In accepting that processing the request would be burdensome, the Commissioner notes that the complainant's point that the information will be held centrally and as a result the request should not be overly time consuming to comply with. The Commissioner would emphasise that it is not the process of locating the requested information that it is burdensome. Rather it is the process of reviewing that information and considering and applying the application of any exemptions. Such a process is not hastened by the fact that the information is held centrally.
44. The Commissioner is however less persuaded by the Cabinet Office's arguments that the complainant's behaviour in submitting this request displays a degree of intransigence. The Commissioner acknowledges the advice the Cabinet Office has previously provided in the context of broad requests for honours information. However, the Commissioner is conscious that this request is on another subject matter and over a year had passed since such advice had been provided and the disputed request which is the scope of this notice was submitted. Whilst the Commissioner does not dispute the potential usefulness of such advice in relation to this request, given the passage of time and different subject matter he is not convinced that the manner in which the disputed request was submitted is evidence of any wilful inflexibility on the part of the complainant.
45. As a result the Commissioner does not accept that the complainant should have been aware that this request (or the FOI aspects of it) would effectively automatically trigger a section 14(1) refusal on the basis of burden. In reaching this conclusion the Commissioner also considers a distinguishing feature of this case to be that the request was a hybrid one seeking both information under FOIA and DPA. As a result it was perhaps not unreasonable for the complainant to assume that a broadly worded request was necessary to capture all of the information he was interested in, at least in terms of the SAR aspects of it.
46. The Commissioner finds that the Cabinet Office's point that the complainant could have provided a list of relevant requests to be one that has slightly more merit. Although the Commissioner would concede that the complainant would presumably have assumed that the Cabinet

Office would have a centralised and accurate records of all such requests so that the requests could have been relatively easy to identify.

47. With regards to the value and purpose of the request, the Commissioner agrees with the Cabinet Office, and the complainant, that there is value and purpose, in principle, in seeking information about the Clearing House. However, the Commissioner considers the points made by the Cabinet Office about the availability of information in the public domain about the Clearing House to be compelling ones. The Commissioner agrees that it is difficult to see how the information requested, and potentially disclosable under FOIA, could shed any particularly useful or revelatory light on the operation of the Clearing House beyond the information already in the public domain at the point this request was issued. The Commissioner appreciates the complainant's point about concerns raised by various parties concerning the Clearing House, but in his view these have been essentially addressed in detail by the PACAC and the Langley review. Furthermore, the Commissioner notes that the review concluded that there was no evidence that particular requesters had been 'blacklisted'.
48. The Commissioner appreciates the complainant's point that the intention of the request was to establish how his own requests were dealt with. Whilst disclosure of such information could provide some insight into how one individual's requests over a broad period of time were dealt with, the Commissioner is still not persuaded that purpose of the request attracts any particular or notable weight for the reasons set out above. The Commissioner also notes that at least some of this information will have fallen out of scope of FOIA and be covered instead by the complainant's SAR.
49. Taking the above into account, the Commissioner agrees with the Cabinet Office that given the burden and impact on it of complying with the request, balanced against the limited value in disclosure, it is entitled to adopt the position that the request is vexatious under FOIA and it can therefore rely on section 14(1) to refuse it.
50. In reaching this conclusion, the Commissioner notes the complainant's points about the EIR. However, in the Commissioner's view it is very unlikely that any information caught by this request would constitute environmental information. Even if some of the requested information sought by the requests which the Clearing House offered advice on was environmental information, this does not mean that the advice offered by the Clearing House about such requests is itself environmental information.

## Right of appeal

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51. 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)

52. 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.
53. 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**