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

**Decision notice**

**Date:** 12 October 2023

**Public Authority:** Cabinet Office  
**Address:** 70 Whitehall  
London  
SW1A 2AS

**Decision (including any steps ordered)**

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1. The complainant has requested a copy of Mark Fullbrook's government diary appointments. The Cabinet Office eventually disclosed some information to the complainant and applied section 35(1)(b) (Ministerial communications) and section 40(2) (personal data) to the remainder.
2. The Commissioner's decision is that section 35(1)(b) is engaged in respect of the withheld information and that the public interest favours maintaining the exemption in respect of part of the withheld information but not all of it.
3. The Commissioner considers that the Cabinet Office has breached section 10(1) of FOIA as it did not confirm that it held information or provide the non-exempt information within the statutory time limit. It has also breached section 17 of FOIA as it did not provide the complainant with a refusal notice, specifying all the exemptions on which it came to rely, within the statutory time limit.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - Disclose to the complainant the calendar entries on specified in the confidential annex to this notice
5. 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

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Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

**Request and response**

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6. On 4 November 2022, the complainant wrote to the Cabinet Office and requested information in the following terms:

“Please provide a copy of former Downing Street chief of staff Mark Fullbrook’s government diary for the period 6<sup>th</sup> September 2022 to 25<sup>th</sup> October 2023.

“Given concerns raised about Fullbrook’s conflict of interests with previous lobbying clients, there is a very clear public interest in transparency about his affairs while serving as chief of staff.”
7. On 5 December 2022, the Cabinet Office responded, refusing the request on the basis of section 14(1) (vexatious requests) of FOIA.
8. On 5 December 2022, the complainant requested an internal review.
9. On 5 May 2023, the Cabinet Office provided its internal review response in which it maintained its position as regards section 14(1) of FOIA.

**Scope of the case**

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10. The complainant contacted the Commissioner on 9 May 2023 to complain about the way their request for information had been handled.
11. In its submissions to the Commissioner, the Cabinet Office retracted its application of section 14 and disclosed the majority of the electronic calendar entries to the complainant.
12. A small number of entries were withheld on the basis that section 35(1)(b) (Ministerial communications) applied to them.
13. A small number of entries were withheld on the basis that section 40(2) of FOIA applied as they were the names of junior officials.
14. During the course of his investigation the Commissioner had sight of the withheld information, which comprised Mr Fullbrook’s electronic calendar for the period covered by the request.

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15. In their complaint to the Commissioner, the complainant challenged the application of section 35(1)(b) but accepted the application of section 40(2) if the Cabinet Office confirmed that the persons in question were junior officials.
16. On 9 October 2023, the Cabinet Office confirmed to the Commissioner that the names of the persons redacted pursuant to section 40(2) were junior officials below the grade of Senior Civil Service and so the Commissioner has not considered whether section 40(2) of FOIA was correctly applied.
17. The Commissioner considers the scope of his investigation to determine whether the Cabinet Office correctly applied section 35(1)(b) to the information requested by the complainant.

## **Background**

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18. Mark Fullbrook served as Downing Street chief of staff under Prime Minister Liz Truss between September and October 2022 and left that role when Ms Truss resigned.
19. Prior to this, Mark Fullbrook directed successful leadership campaigns for both Liz Truss and Boris Johnson and worked as a political lobbyist.

## **Reasons for decision**

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### **Section 35(1)(b) (Ministerial communications)**

20. The Cabinet Office has applied section 35(1)(b) to 20 calendar entries.
21. Ministerial communications are defined by section 35(5) of the FOIA as being:
  - 'any communications –
    - (a) Between Ministers and the Crown
    - (b) Between Northern Ireland Ministers, including Northern Ireland junior Ministers, or
    - (c) Between Assembly Secretaries, including the Assembly First Secretary,

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and includes, in particular, proceedings of the Cabinet or of any committee of the Cabinet, proceedings of the Executive Committee of the Northern Ireland Assembly, and proceedings of the executive committee of the National Assembly for Wales.'

22. The exemption covers information which 'relates to' ministerial communications, and this is interpreted broadly. This means that information does not have to be a ministerial communication itself; it will also be covered if it recounts or refers to a ministerial communication.
23. In this case, none of the calendar entries to which the Cabinet Office has applied section 35(1)(b) are ministerial communications in themselves. Rather, they simply record the fact that a meeting was scheduled to take place between the Prime Minister and one or more of her Ministers. The meetings themselves are the "ministerial communications." The diary entries "relate to" those meetings and therefore relate to ministerial communications.
24. Section 35(1)(b) is subject to the public interest test, which means that the Commissioner must consider how much public interest there is in maintaining the exemption in this particular case, and balance this against the public interest in disclosure.

**Public interest test**

25. There is no inherent or automatic public interest in withholding all information falling within this exemption. The relevance and weight of the public interest arguments depends entirely on the content and sensitivity of the particular information in question and the effect its disclosure would have on ministerial discussions and the collective decision-making processes.
26. In support of its use of section 35(1)(b) to withhold information, the Cabinet Office contended that:  
  
"If information relating to the frequency, attendance and timings of Cabinet and Cabinet committee meetings were disclosed, this would impinge upon the confidentiality of the process of Cabinet and Cabinet committee discussions and undermine the principle of Cabinet Collective Responsibility and Ministerial accountability."

27. The Cabinet Office further contended that:

"It has been the very long standing practice of successive governments not to give an account of the totality of Cabinet committee meetings,

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including specific information on what was said, the frequency, attendance and content of meetings. Consequently the working assumption of all those in government is that information relating to the meetings of Cabinet and its committees will remain confidential, until released to the National Archives.”

28. The Cabinet Office argued that officials require the necessary space in which to conduct discussions and organise themselves in such a way as to best facilitate such discussions and decision-making without having regard to the external scrutiny which would follow from the disclosure of the withheld information.
29. The Cabinet Office contended that officials should have the benefit of that space without having to consider how the public may react to the timing, frequency and length of meetings leading to particular decisions.
30. Further, the Cabinet Office contended that this snapshot of diary entries could generate a misleading impression of the time ministers spend in Cabinet meetings. The information in scope of the request represents an incomplete record of the totality of Cabinet and Cabinet committee business during the requested time period, thus giving a false impression.
31. Having accepted that section 35(1)(b) is engaged to entries in the calendar referencing Cabinet and Cabinet committee meetings, the Commissioner has considered whether in all of the circumstances of this case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
32. As explained in the Commissioner’s guidance<sup>1</sup> on the ministerial communications exemption, the purpose of section 35(1)(b) is to protect the operation of government at Ministerial level. It prevents disclosures that would significantly undermine Ministerial unity and effectiveness or result in less robust, well-considered or effective Ministerial debates and decisions.<sup>2</sup>
33. The Commissioner is aware that the principle of Cabinet collective responsibility (and other Ministerial communications) was deemed

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<sup>1</sup> [Section 35 - Government policy | ICO](#)

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sufficiently important so as to warrant specific protection in the form of an express exemption in the FOIA. However, the Commissioner notes that the exemption is not absolute and there will be cases where the public interest in disclosure of requested information will outweigh the public interest in maintaining the exemption.

34. The Commissioner recognises the importance of the principle of Cabinet collective responsibility, the longstanding convention that all Ministers are bound by Cabinet decisions and carry joint responsibility for all government policy and decisions. This principle requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. Where requested information would reveal or indicate the views of an individual Minister on a government position, then the Commissioner considers that arguments about maintaining collective responsibility carry significant public interest weight.
35. The Commissioner notes (with the exception of the calendar entries listed in paragraph 1 of the confidential annex) that the specific calendar entries in this case which reference a meeting of the Cabinet or a Cabinet committee, do not reveal any detail or information about what was discussed (or scheduled to be discussed) by Ministers at that meeting. In this respect, the Commissioner does not consider that all of the withheld information itself provides strong public interest grounds for maintaining section 35(1)(b).
36. In [Department of Health v information Commissioner \(EA/2016/0282, 19 July 2018\)](#)<sup>3</sup> the First Tier Tribunal considered a request for the Secretary of State for Health's Ministerial diary. Naturally, the entries included Cabinet meetings and appointments with other Ministers, but the entries were very brief and so did not reveal the topics discussed at these meetings.
37. The First Tier Tribunal found that although a record showing that such meetings had taken place was capable of engaging the exemption, it considered the fact that a Cabinet meeting had taken place was usually

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<sup>3</sup> [Department Of Health EA.2016.0282 \(13.08.18\) Open Decision \(Amended under slip rule 40\).pdf \(tribunals.gov.uk\)](#)

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public knowledge, not least because members of the Cabinet have to walk past the press photographers in Downing Street. There was therefore no public interest in maintaining the exemption. Regarding meetings of Cabinet Committees, these occurred on a more ad hoc basis which meant that the fact a meeting had occurred may be more significant. Nevertheless, the First Tier Tribunal found that the majority of entries recording such meetings could be released (paragraphs 69 and 70).

38. As regards other meetings between Ministers, the First Tier Tribunal again found there was less sensitivity in revealing the fact a meeting had taken place than there would be had the information revealed the contents of the communication (paragraph 54).
39. Therefore, the Commissioner is not persuaded by the Cabinet Office's argument that the calendar entries which merely refer to a Cabinet meeting or Ministerial Coordination meeting taking place with no reference to the subject matter would undermine Ministerial unity and effectiveness and that therefore the public interest balance favours disclosure of the entries listed in paragraph 2 of the confidential annex.
40. However, the Commissioner is mindful that there is a longstanding convention that the details of Cabinet committee meetings are not disclosed beyond what is actively published by the Government. Although not all of the withheld information in this case constitutes the 'details' of the Cabinet committees referenced, the Commissioner recognises that some of withheld information (namely, the entries listed in paragraph 1 of the confidential annex) does contain some detail and its disclosure would potentially infringe upon this convention. The Commissioner also notes that, at the time of the request (4 November 2022) the information was only a few months old, which carries additional weight in favour of maintaining the exemption.
41. Whilst the Commissioner considers that the calendar entries referencing Cabinet committees do carry some public interest in disclosure as they would aid transparency, he does not consider that the benefits and value of such transparency, given the very brief information concerned, outweigh the public interest in maintaining the convention as regards the entries detailed paragraph 2 of the confidential annex.
42. As the Commissioner does not consider that there are sufficiently compelling grounds favouring disclosure of the calendar entries specified in paragraph 1 of the confidential annex, he has decided that the public interest balance, by a narrow margin, favours maintaining section 35(1)(b) to those specific entries.

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**Procedural matters**

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43. The Commissioner is disappointed by the initial approach taken by the Cabinet Office towards the exemptions in this case. The use of section 14 in this particular case was not appropriate given the brief period of entries requested. As a result of this approach, the Commissioner considers that the Cabinet Office has breached section 10(1) of FOIA as it did not confirm that it held information or provide the non-exempt information that it did hold within the statutory time limit. It has also breached section 17 of FOIA as it did not provide the complainant with a refusal notice stating all the exemptions on which it eventually came to rely within the statutory time limit.

**Other matters**

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44. There is no obligation under FOIA for a public authority to provide an internal review process. However, it is good practice to do so and, where an authority chooses to offer one, the section 45 Code of Practice sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
45. In this case the complainant waited five months for an internal review response. The Commissioner reminds the Cabinet Office of the Code of Practice and urges it to respond in a timely In this case the Commissioner considers that the majority of the information contained in the calendar entries could, and should, have been disclosed to the complainant at the outset, rather than almost 12 months after the original request.
46. The Commissioner would impress upon the Cabinet Office the need to adopt an appropriately careful and proportionate approach to requests for such 'diary' information.
47. Notwithstanding these points, the Commissioner notes that the Cabinet Office's timeliness has been better in more recent months.



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**Confidential Annex**

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48. So as to preserve a meaningful right of appeal, the Commissioner has produced a confidential annex to this decision that will be provided to the public authority only.
49. The confidential annex specifies the information that the Commissioner has determined can be withheld and that which must be provided. Necessarily this involves reference to the contents of the actual information being withheld.
50. All the Commissioner's reasoning is included in the published decision notice. No further analysis is included in the confidential annex.

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Right of appeal

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 .....**

**Roger Cawthorne**  
**Team Manager**  
**Information Commissioner's Office**  
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