

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

### **Decision notice**

**Date:** 22 February 2024

**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 copies of Dominic Cummings' diary appointments from April through to June 2020. 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 were entitled to refuse the request on the basis of section 14(1).
3. The Commissioner does not require further steps.

#### **Request and response**

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4. The complainant submitted the following request to the Cabinet Office on 1 June 2023:  

'I wish to see full copies of Dominic Cummings' diary appointments from April through to June 2020.'
5. The Cabinet Office responded on 29 June 2023 and refused the request citing section 14(1) (vexatious) of FOIA.
6. The complainant contacted the Cabinet Office on 6 July 2023 and asked for an internal review of this decision.

7. The Cabinet Office informed him of the outcome of the internal review on 18 August 2023. The review upheld the application of section 14(1).

## Scope of the case

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8. The complainant contacted the Commissioner on 27 August 2023 in order to complain about the Cabinet Office's decision to refuse 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 complainant's position

13. The complainant explained that he had previously submitted a similar request to the Cabinet Office, seeking Dominic Cummings' diary appointments for the period January to March 2020 and the Cabinet Office had not refused this request on the basis of section 14(1) of FOIA. Rather the Cabinet Office sought to refuse the request on the basis of a number of exemptions. The complainant challenged that refusal to the Commissioner, and this resulted in a decision notice being issued which ordered disclosure of the requested information, with the exception of a small number of entries.<sup>2</sup>

### The Cabinet Office's position

#### *Burden*

14. The Cabinet Office argued that in its view complying with this request would place a grossly oppressive burden on it.
15. It explained in its internal review response that:

“While reviewing Dominic Cummings' diary for your previous request [ie the request which was the subject of decision notice IC-71150-B0L7], it was evident that it placed an excessive amount of work on the FOI team within the department. Mr Cummings' was a senior special adviser to the Prime Minister; it follows that entries in his diary are likely to engage exemptions from disclosure under the Freedom of Information Act. The role of Chief Advisor covers a vast portfolio across the whole of the Government's priorities, this includes matters of national security and sensitive policy areas. It also involves meeting with a wide range of stakeholders of a range of seniority including the Prime Minister, other advisors and officials, both junior and senior. Each event in the diary would need to be considered as to whether it

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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>

<sup>2</sup> IC-71150-B0L7  
<https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024591/ic-71150-b0l7.pdf>

was personal or political in nature, which would not be within scope of the Act.”

16. The Cabinet Office noted that the timeframe for the request in the previous case, and the timeframe in this case were the same, ie three months. It explained that it had not conducted a sample exercise to determine the burden that would be imposed on it in processing the disputed request. This was on the basis that it had already essentially undertaken such an exercise in the form of processing the complainant's earlier request, both at the time it was received, and in response to the Commissioner's decision notice.
17. The Cabinet Office explained that the process that was needed to fulfil that request involved the following stages, and the same process would have to be followed if it were to process the disputed request:
18. Firstly, all calendar entries received an initial sift. Where it was clearly marked that a particular entry related solely to either a political or personal engagement, or simply marked a block of time rather than relating to a specific engagement these were removed from further consideration.
19. Next, each remaining entry was reviewed to definitively determine the purpose of that entry. This required close consultation with officials in the (then) Prime Minister's private office, as well as those who worked directly with Mr Cummings.
20. Once the purpose of an engagement was understood, officials then had to consider whether any exemptions would apply to the information within the scope of the request. Given the seniority of Mr Cummings at the time, a great many of the meetings in question appeared to engage one or more exemptions.
21. The information is held in the form of a PDF file rather than as a 'live' Outlook calendar as Mr Cummings account was closed when he left his position. Therefore the Cabinet Office cannot access the contents of individual calendar entries. This means that it could not open an entry to glean additional context (such as the other attendees) which might allow for the purpose and context of a meeting to be easily understood.
22. Entries were not only reviewed individually, but also considered in the round, where disclosure of a pattern of meetings could itself reveal potentially exempt material.
23. The personal information of all junior officials was highlighted for redaction in reliance on section 40(2) (personal data) of FOIA, in line with long-standing practice. Where it was not clear if the individual in question was a junior official, additional consultation was undertaken.

24. All entries were also reviewed on security grounds, and where calendar entries provided information such as specific room locations with the Downing Street estate, or login details for a remote meeting etc this was highlighted for consideration for redaction on the grounds contained in sections 24 (national security), 31 (law enforcement) and 38 (health and safety) of the Act
25. Finally, the relevant information was transcribed into a usable list, annotated as to which exemption(s) apply to each entry.
26. The Cabinet Office explained that given the passage of time, and the movement of officials since it responded to the previous request, it was not able to provide an accurate summation of the total time taken to process that previous request.
27. However, the Cabinet Office argued that the time taken to review each diary entry in the scope of the disputed request was the same amount of time it would take to review the diary entries in a request previously considered by the Commissioner which sought Boris Johnson's diaries, namely 10 minutes. That request was considered in decision notice IC-200771-L6Z8<sup>3</sup>, with the Commissioner upholding the Cabinet Office's reliance on section 14(1) of FOIA. The Cabinet Office's basis for arguing that it would take 10 minutes per diary entry is set out at paragraph 40 of that decision notice.
28. The Cabinet Office explained that there were 430 entries falling within the scope of the request which is the subject of this present complaint and based an estimate of taking 10 minutes per entry, it would take 72 hours to process this request.
29. The Cabinet Office explained that in its view the same exemptions that it considered to apply to Mr Cummings' diary entries for January to March 2020 would apply to those in the scope of these request, namely sections 23 (security bodies), 24, 35(1)(a) (formulation or development of government policy), 35(1)(b) (Ministerial communications), 35(1)(d) (operation of Ministerial offices) (section 36, effective conduct of public affairs, in the alternative) and 40(2). The Cabinet Office also argued that exempt material would be scattered throughout the information falling within the scope of the request.

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<sup>3</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4026993/ic-200771-l6z8.pdf>

30. The Cabinet Office argued that in view of the effort to which its officials were put in complying with the decision notice in IC-71150-B0L7, it had no reason to believe that complying with this request would be any less burdensome. In fact it had reason to believe that it would be significantly greater (there were only 363 calendar entries in the scope of the previous request, in comparison to 430 in this case).

*Purpose and value of the request*

31. With regard to the purpose and value of the request the Cabinet Office acknowledged that there is a value in having a better understanding of the appointments which were maintained by a senior adviser to the Prime Minister at a time when the Government was managing its response to the COVID-19 pandemic. It accepted that it would shed some light on the way in which senior officials around the Prime Minister operated in the circumstances.
32. However, the Cabinet Office argued that the purpose and value could be overstated. In support of this position the Cabinet Office emphasised that Outlook calendar merely records what engagements the individual was invited to attend or otherwise intended to have on a particular given day. As the entries are made prior to the engagements occurring and are not retrospectively altered, it therefore follows that such entries do not accurately record what any individual actually did day-to-day. The information recorded in an Outlook calendar is for the sole purpose of facilitating the work of individuals, and for conveying wider corporate information. It is not intended to, and does not function as, a definitive record as to what meetings etc the individual in question actually attended or with whom. Relevant information pursuant to that point might be held, for example in wider records generated after a meeting, such as set out in minutes, or in a readout of a call, and held within the Cabinet Office official records.
33. The Cabinet Office explained that it was not aware that the calendar was retrospectively altered – there would have been no reason to do this. Mr Cummings' calendar therefore provides nothing more than a record of what he intended or was invited to do on any given day.
34. Furthermore, the Cabinet Office highlighted that in view of the time period under consideration in which the Government confronted an unprecedented challenge in which rapid decision-making was sometimes imperative, it should be anticipated that many of the calendar entries shall reflect events that did not happen, concluded earlier than scheduled or ultimately concerned matters other than those originally intended to form the subject of the meeting. In establishing the nature of Mr Cummings' role in the Government's response to COVID-19, the calendar entries therefore provide an unreliable record.

35. The Cabinet Office noted that the independent public inquiry into the response of the UK to COVID-19 was established with Baroness Hallett as its chair in December 2021. Its terms of reference were received in June 2022. The Cabinet Office explained that the inquiry will have access to information relevant to its terms of reference, such as the calendar entries of Mr Cummings. The Cabinet Office noted that Mr Cummings had already provided a witness statement<sup>4</sup> to the Inquiry and appeared at public hearing.<sup>5</sup> In the Cabinet Office's view the role of Mr Cummings as part of the government's response to COVID-19 has therefore already received scrutiny from those empowered by the Inquiries Act 2005 to investigate.
36. The Cabinet Office argued that a public inquiry headed by a former judge of the Court of Appeal is better equipped to reach well-informed conclusions about the role of Mr Cummings in the Government's response to COVID-19 than a FOI request that seeks the disclosure of his calendar entries.
37. Furthermore, the Cabinet Office argued that given that the Inquiry seeks to consider the many aspects of the Government's handling of COVID-19, including the role of the advice it received from senior officials such as Mr Cummings (and others), it is not apparent what public benefit could be gained from the disclosure of the calendar entries. If there is anything of interest to be obtained from those calendar entries, the Inquiry shall do that and shall reach its conclusions based upon the evidence it has gathered as a whole.

### *Fishing expedition*

38. The Cabinet Office argued that the complainant's request was a speculative one, asking as it does for full diary entries for a three month period; it does not seek information on a particular subject which would help narrow the request. The Cabinet Office argued that the complainant is aware from the disclosure of appointments in the case of IC-71150-B0L7 the range, subject and quantity of entries in Mr Cummings' calendar. In the Cabinet Office's view it was reasonable to argue that

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<sup>4</sup> <https://covid19.public-inquiry.uk/documents/inq000273872-witness-statement-of-dominic-cummings-dated-12-10-2023/>

<sup>5</sup> <https://covid19.public-inquiry.uk/documents/transcript-of-module-2-public-hearing-on-31-october-2023/>

the complainant submitted the request speculatively in the hope that there is something which is of interest to him.

39. The Cabinet Office referred to the following sections of the Commissioner's section 14 guidance on such requests which it considered supported its position:

"...the apparent tendency of some requesters, most notably journalists, to make random requests on the off chance they may capture some interesting information."

40. And:

"...might make the request in very broad terms because they are either unaware of how and where the information they seek is held, or they want to make sure their request captures all the relevant information."

*Whether the purpose and value of the request justifies the impact*

41. The Cabinet Office was satisfied that the purpose and value of the request does not justify the impact which complying with it would have on it. The request has a very limited value and purpose, principally owing to the calendar entries merely reflecting what Mr Cummings intended to do (rather than actually did) during his working day and the fact that the COVID-19 Public Inquiry is examining the response of the Government to the pandemic.

The Commissioner's position

42. With regard to the burden of complying with the request, the Commissioner accepts that 430 diary entries represents a significant volume of information falling within the scope of the request.
43. With regard to the potential application of the exemptions cited by the Cabinet Office, the Commissioner is conscious that in the previous case concerning the diary entries for January to March 2020, he found that some of these exemptions were not engaged or that for some information the public interest favoured disclosure. However, the Commissioner does not consider that this undermines the Cabinet Office's position that in its view similar exemptions are likely to apply to some of the information within the scope of this request and if it were to process this request it would have to determine how to apply such exemptions. Furthermore, the Commissioner is satisfied that given his experience of investigating the previous case, any exempt material will be scattered throughout the information falling within the scope.
44. The three criteria set out above at paragraph 12 are therefore met.



45. In terms of the time it would take the Cabinet Office to consider each diary entry, ie 10 minutes, in decision notice IC-200771-L6Z8, the Commissioner expressed some reservations about such a figure. The Commissioner considers that such reservations also apply in this case and moreover are supported by his review of all of the information falling within the scope of the previous request seeking Mr Cummings' diary entries for January to March 2020. In view of that analysis, the Commissioner does not accept that on average it would take 10 minutes per entry to review and assess the applicability of any exemptions, rather in his view this is likely to be closer to 5 or 6 minutes although in some cases it would immediately be obvious that an exemption applies. Nevertheless, the Commissioner also accepts that given the nature of Mr Cummings' work, many of the entries are likely to contain similarly sensitive and cross government issues to the diary entries of Boris Johnson as considered in that decision notice IC-200771-L6Z8. Therefore, in respect of the time estimate for processing the information the Commissioner adopts the approach set out in paragraph 69 of that previous decision notice:

"In conclusion, whilst the Commissioner considers that the Cabinet Office's estimate of 87 hours may be inflated and that it did not carry out an adequately detailed sampling exercise, given the breadth of the information involved and the limited individuals available to review the entries, he remains unconvinced that the burden of responding to this request could realistically be brought down to a reasonable size. The burden will require a diversion of resources that no public authority could easily accommodate even given the size and resources available to the Cabinet Office."

46. Consequently, in this case whilst the Commissioner considers that the time taken to process the present request is very likely to be less than 72 hours, he nevertheless accepts that it would still take a considerable, and burdensome, period of time to process this request. For example, if the Cabinet Office's time estimate was halved, this would still equate to approximately one working week of time being needed to process the request.

47. The Commissioner is less persuaded by the Cabinet Office's position that the request presents a fishing expedition. The period in question was a historically significant one given the context of the COVID-19 pandemic. Whilst there is of course an aspect of the complainant not knowing exactly what information such a broad request would capture, in the Commissioner's view there is a legitimate interest in understanding how one of the Prime Minister's chief advisers organised his time and the meetings, contacts and appointments they had during this period.

48. In terms of the broader purpose and value of the request, the Commissioner therefore agrees with the Cabinet Office's point that there is a clear value in having a better understanding of the appointments which were maintained by a senior adviser to the Prime Minister at a time when the Government was managing its response to the COVID-19 pandemic. That said, having seen a sample of the information falling within the scope of the information, the Commissioner does accept that the extent to which the information would be genuinely informative is limited, particularly taking into account the Cabinet Office's point – which the Commissioner accepts – that the appointments in question do not necessarily provide an accurate reflection of how Mr Cummings' spent his time. The Commissioner is also accepts that there is some validity to the Cabinet Office's position that the Public Inquiry provides rigorous and independent scrutiny to the Government's actions and decision making, including those of Mr Cummings, during the pandemic. Albeit the Commissioner notes that both Mr Cummings' witness statement and his appearance at the Inquiry post date this request and therefore cannot be taken into account when considering the application of section 14(1) of FOIA.
49. Taking the above into account, the Commissioner has ultimately concluded, by a relatively narrow margin, that the request is vexatious. In reaching this finding the Commissioner accepts that there is a value and purpose to the request, but for the reasons discussed above there are some limits to this. In particular, he accepts that there is merit to the Cabinet Office's argument that the legitimate interest is better served by the work of the COVID-19 Inquiry, who are better placed to consider and scrutinise the actions that key government figures actually took, as opposed to what their diary entries indicate they planned to take. In view of this the Commissioner is not persuaded that there is sufficient justification to compel the Cabinet Office to process the request, even despite his view that complying with the request would be less burdensome than the Cabinet Office has suggested.

## Right of appeal

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50. 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)

51. 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.
52. 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**