

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 September 2024

Public Authority: Cabinet Office

Address: Whitehall
London
SW1A 2HQ

Decision (including any steps ordered)

1. The complainant has requested information about an alleged hack on the phone of the then-Foreign Secretary. The above public authority ("the public authority") relied on sections 23 (security bodies) and 24 (national security) of FOIA to refuse to confirm or deny that any information was held.
2. The Commissioner's decision is that the public authority was entitled to rely on sections 23 and 24 of FOIA to refuse to confirm or deny that any information was held. The public authority breached section 17 of FOIA by failing to issue a refusal notice within 20 working days.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 7 November 2023, the complainant wrote to the public authority and requested information in the following terms:

"Please can you confirm or deny if any investigation has been undertaken into the alleged hacking of the former foreign minister's phone, as widely reported in October 22? if any investigation has take place;

- have any outcome/recommendations have been made [sic]?
- what level of security did the information carry – eg official/secret/top secret?

- how many devices and/or persons were affected?”
5. The public authority responded on 7 February 2024. It relied on sections 23 and 24 of FOIA to refuse to confirm or deny that the information was held. It upheld this position following an internal review.

Reasons for decision

Section 23 – security bodies

6. Section 23 of FOIA allows a public authority to refuse to confirm or deny whether it holds particular information where doing so would reveal information supplied by, or relating to, one of the security bodies listed in the exemption. These bodies include the Secret Intelligence Service (MI6), the Security Service (MI5) and Government Communications Headquarters (GCHQ).
7. If the public authority were (hypothetically) to confirm that it held information, it would be confirming that the then-Foreign Secretary had been subject to a successful cyber attack on her phone.
8. Given that the Foreign Secretary has ministerial responsibility for the Secret Intelligence Service, it is very likely that that organisation would have an interest in any cyber attack on her phone (if indeed there was one). Given the nature of her role it is likely that either the Security Service or GCHQ (or both) would also have taken a keen interest in any attack – if indeed one took place.
9. The Commissioner is therefore satisfied that the nature of the requested information is such that, if it were held (which may or may not be the case) it would either have been supplied by, or would relate to, one or more security bodies.
10. Section 23 of FOIA therefore applies and there is no need to consider the balance of the public interest.

Section 24 – national security

11. Given that the public authority also relied on section 24 of FOIA, the Commissioner has gone on to consider that exemption as well. However, he notes that the public authority could simply have relied on section 23.
12. The complainant has pointed to news coverage in October 2022. Numerous outlets reported that the-then Foreign Secretary had been the subject of a hack. However, there was no official confirmation that this was in fact the case.

13. Reports in newspapers, however widespread and however consistent, do not amount to proof that a particular incident did or did not occur.
14. If the public authority were to confirm that it held information, it would not only be revealing that there was a hack and that it was successful. It would also be revealing that the hack had been discovered – which in turn would reveal something about the effectiveness of the UK's cyber defences.
15. On the other hand, denying that the information was held might suggest that no hack took place, or it might indicate no hack had been discovered. That would, again, provide key information on the effectiveness of the hack and the UK's defences – potentially putting others at risk.
16. The devices of high profile politicians are likely to be key targets for malicious actors. It is important that the public authority not reveal information which could put others at risk.
17. For those reasons and for the fact that confirming or denying may also reveal information relating to a security body, the Commissioner is satisfied that section 24 of FOIA is engaged.

Public interest test

18. The public authority must still confirm or deny that the information is held, unless the balance of the public interest favours maintaining the exemption.
19. The complainant has argued that there is an “overwhelming” public interest in the safe and secure operations of the state and democratic oversight.
20. The Commissioner is not persuaded that there is a particularly strong public interest in confirming or denying that this information is held. On the contrary, there is a very strong public interest in not revealing information that would make it easier for potential hackers to perpetrate a successful attack.
21. The Commissioner is therefore satisfied that, in the circumstances of this case, the public interest favours maintaining the exemption.

Procedural matters

22. As the public authority failed to issue its refusal notice within 20 working days, it breached section 17 of FOIA.

Right of appeal

23. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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
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Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF