

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 April 2023

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested a copy of the former Home Secretary's Ministerial diaries for a specified period.
2. The Home Office refused to comply with the request, citing section 14(1) (vexatious requests) of FOIA, based on the grossly oppressive burden that complying with the request would impose.
3. The Commissioner's decision is that the Home Office has correctly relied upon section 14(1) of FOIA to refuse to comply with the request.
4. No steps are required as a result of this notice.

Request and response

5. On 9 December 2021, the complainant wrote to the Home Office and requested information in the following terms:

"From 1st February 2020 to 1st July 2020, please provide a copy of Secretary of State for the Home Department Priti Patel's ministerial diaries.

Please note, I am making this request out of the public interest. It is absolutely essential for the public to know - in full detail - the calls, events and meetings that took place across the year when the pandemic gripped the UK and beyond.

I would like to receive this information in an electronic format. If you feel that a substantive response to this request is not possible within a reasonable time frame, I would be grateful if you could contact me and provide assistance as to how I can refine the request. If you need any clarification, please contact me. I look forward to receiving a response in 20 working days. Many thanks.”

6. The Home Office responded, late, on 3 March 2022. It refused to provide the requested information citing section 21 of FOIA – information accessible to applicant by other means. The Home Office said that the requested information was publicly available and provided the relevant URL.¹
7. The complainant requested an internal review on 31 May 2022. Following its internal review, the Home Office wrote to the complainant on 5 July 2022, revising its position. It said that not all of the requested diary entries were reasonably accessible and instead cited section 14(1) of FOIA – vexatious request, based on the grossly oppressive burden that complying with the request would impose.

Scope of the case

8. The complainant contacted the Commissioner on 5 October 2022 to complain about the way her request for information had been handled. She made detailed submissions as to why she considers the requested information should be provided. The Commissioner raised her arguments with the Home Office and has also taken them into account in reaching his decision (see 'The Complainant's view' part of this notice for further details).
9. The Commissioner has considered whether the Home Office was entitled to rely on section 14(1) of FOIA to refuse to comply with this request.

Reasons for decision

10. The information in scope consists of the ministerial diary entries of the former Home Secretary from 1 February 2020 to 1 July 2020. This consists of 151 days.
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¹ <https://www.gov.uk/government/collections/home-office-ministers-hospitality-data#2020>

11. The Home Office has relied on section 14(1) of FOIA to refuse this request based on the grossly oppressive burden that complying with the request would impose.

Section 14(1) – vexatious request

12. Section 12 of FOIA provides an exemption from the duty to comply with a request where doing so would exceed the appropriate limit.² This is £600 for a central government department such as the Home Office which equates to 24 hours of work at approximately £25 per hour. This limit is laid down by The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the “Fees Regulations”).³
13. The following activities may be taken into account to determine whether compliance with a request would exceed the appropriate limit:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
14. The Commissioner’s guidance⁴ states: “An authority cannot claim section 12 for the cost and effort associated with considering exemptions or redacting exempt information.”
15. In such circumstances a public authority may apply section 14(1) of FOIA, if it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation.
16. The Commissioner considers the threshold for reliance on such a refusal to be a high one and to only be appropriate where:
 - The requester has asked for a substantial volume of information and

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

³ <https://www.legislation.gov.uk/ukxi/2004/3244/regulation/3/made>

⁴ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

- The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO and
 - Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.
17. In circumstances where a public authority wishes to apply section 14(1) based on the grossly oppressive burden that compliance with a request would cause, it must balance the impact of the request against its purpose and value to determine whether the effect on the authority would be disproportionate.
 18. In this case, the Home Office has explained that the request is asking for the entries in Priti Patel's ministerial diaries during a 151-day period. The Home Office stated that this information will show whom she had meetings or telephone calls with, the title of those meetings and the dates, times and locations. It said that entries which include attachments will include further information about those meetings; the diary is managed via Outlook and a number of entries have additional documents attached to them.
 19. The Home Office told the Commissioner it had conducted a sampling exercise and obtained entries from a seven day period of the former Home Secretary's ministerial diary, which contained 64 diary entries (excluding travel time entries). Taking that figure as an average for a seven day period and multiplying it up to 151 days would mean approximately 1,380 entries over the entire period of the request.
 20. To fulfil this request, it would need to open up each individual entry with any potential attachments, assess them, and transfer them to a format which could be presented in response to a request. Considering the wide range of policy work the Home Office is involved in, including sensitivities on a national security level of much of the work of the Home Secretary, officials would also need to consider if any of the information fell within exemptions, making redactions where needed.
 21. The Home Office said that a number of FOIA exemptions including sections 23 (information supplied by, or relating to, bodies dealing with security matters), 24 (national security), 31(1) (the prevention or detection of crime), 35(1)(a) (the formulation or development of government policy), 35(1)(b) (Ministerial communications), 35(1)(d) (the operation of any Ministerial private office), 36 (prejudice to effective conduct of public affairs), 40 (personal information) and 42 (legal professional privilege) are all likely to be engaged.

22. Finally, it submitted that consultation may need to be carried out within the Home Office, including policy officials and lawyers, and externally, as many meetings and phone calls involved external stakeholders and other government departments. The Home Office said that even if it was to take what it described as "a modest average of ten minutes per diary entry to carry out the actions described above (noting some entries will take much longer to conclude, particularly those containing attachments), this would amount to 230 hours of staff time".
23. The Home Office explained that the ten minute average includes the requirement to:
- Open up the Outlook diary entry and save it to desktop, including saving any attachments and linking each attachment to the relevant diary entry.
 - Consult within Private Office, other Home Office officials and external third parties, as required. For each entry and attachment, consider whether exemptions apply, and public interest arguments. Due to the wide ranging responsibilities of the Home Secretary, the consultation required would be wide in breadth and extensive.
 - Undertake the necessary redactions of the information in relation to those exemptions.
24. The Home Office has acknowledged that it could not rely upon section 12 of FOIA as the activities within its time estimate are not relevant considerations under the Fees Regulations. Instead, due to the estimated time it would take to comply with the request, the Home Office considered it in relation to the burden that would be incurred should it have to fulfil this request, and determined that section 14(1) of FOIA applied.
25. Although ICO decision notices are not binding, when reviewing the burden the Home Office considered a recent ICO decision on this exact issue, IC-199129-V7V7⁵ in its handling of this request. This decision notice concerned a request to Defra (Department for Food, Environment and Rural Affairs) for a ministerial diary stretching over a 47 day period. That request also concerned the beginning of the period covered by Covid, but for a shorter time period than the current request submitted in this case; the decision notice found section 14(1) was engaged. In

⁵ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024172/ic-199129-v7v7.pdf>

that decision, the Commissioner commented on the estimate of work involved in processing the request and the quoted time of ten minutes per diary entry that Defra had argued were necessary to process entries in a similar way to the Home Office's suggested estimate here.

26. The Home Office reiterated that 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 Home Office and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, through considering whether a reasonable person would think that the purpose and value are enough to justify the impact on the Home Office.
27. In accordance with its duty to provide advice and assistance under section 16 of FOIA, it is noted that the Home Office invited the requester to consider selecting a much shorter time period.

The complainant's view

28. The complainant submitted a number of grounds to support her view that the requested diary information should be provided, all of which have been raised with the Home Office and considered by the Commissioner.
29. The complainant's submissions (bold text) and the Home Office responses are set out below:

Disclosure would provide a greater insight into lobbying, especially in light of the recent lobbying scandals.

There is a lack of transparency information in regards to lobbying.

The government's publication of transparency has often been criticised for its incompleteness and lack of quality.

...the Home Office publishes details of all ministerial meetings with outside interest groups. The period for the time requested, and beyond, is already published. As the Commissioner himself noted in case IC-199129-V7V7 with regard to the quarterly transparency reports "the Commissioner is of the view that this information does go some way to meeting the public interest in information regarding ministerial day to day working during this time".

A disclosure will provide a greater insight into how ministers handled the coronavirus pandemic.

The UK Covid-19 Inquiry has been set up to examine the UK's response to, and impact of, the Covid-19 pandemic and the Home Office will feed into the Inquiry. We believe the release of the information in scope, in isolation, will do little to provide an additional insight into how ministers handled the pandemic.

Andrew Lansley's ministerial diaries, which covered nearly a year and amounted to nearly 200 pages, have been disclosed under FOIA without section 14(1) being cited. Other ministerial diaries have also previously been released.

There are numerous diary requests where the ICO has agreed section 14 is engaged. Each request must be considered on a case by case basis. For the reasons as discussed above, we believe this [current] request would impose a grossly oppressive burden and section 14 is engaged.

The Commissioner's view

30. When considering the application of section 14(1), where compliance with the request would impose a grossly oppressive burden, the Commissioner expects the public authority to provide clear evidence to substantiate its claim. Given the further sampling exercise carried out (set out at paragraph 19 above) it would appear that the Home Office has taken all reasonable steps to ensure its estimate is accurate and reasonable.
31. The Commissioner is satisfied that the complainant has requested a large volume of information and that the Home Office would need to consider several exemptions in the event that it complied with the request in full. The Commissioner is also satisfied that the exempt information would be scattered throughout the information and could not be easily isolated.
32. The 230 hours estimate is substantially above the 24 hour limit which would be applied in cases involving section 12 of FOIA. Whilst the limit laid down by the Fees Regulations is not directly relevant to the application of section 14 FOIA, this gives a clear indication of what Parliament considered to be a reasonable charge duration of work that staff should be expected to undertake. Even though the threshold is high for refusal of a request under section 14 FOIA, due to the grossly oppressive burden compliance would impose, given the time estimate in this case, the Commissioner considers this threshold can be met.
33. Even where it is established that compliance with a request would impose a grossly oppressive burden, the public authority must still

balance the impact of the request against its purpose and value to determine if the request is vexatious or not.

34. The complainant has submitted valid arguments for disclosure as set out above. Whilst the Commissioner acknowledges the public interest in the disclosure of ministerial diaries, particularly during the pandemic, he will also consider the disruption, irritation or distress compliance would impose at the time that the request was made against any value that the request represents.
35. The Commissioner notes that quarterly transparency reports⁶ are published on the Home Office's website for this time period which include information regarding ministerial travel and meetings. The Commissioner is of the view that this information does go some way to meeting the public interest in information regarding ministerial day to day working during this time. With this in mind, balanced against the number of diary entries that would be caught by the time period of this request, all of which would need to be considered prior to any disclosure, the Commissioner does not consider that the value or purpose in the requested information outweighs the burden that compliance with the request would impose upon the Home Office.
36. In this case, the Commissioner is satisfied that the Home Office is entitled to refuse to comply with the request, citing section 14(1) as its basis for doing so.
37. As the Home Office has already advised, it is open to the complainant to submit a further refined request choosing a much shorter time period. In its submissions to the Commissioner, the Home Office has suggested that the complainant may wish to select a particular week of interest.

Other matters

Time for compliance

38. In this case, the Home Office failed to respond to the request within the statutory 20 working days' timeframe. Although not complained about, the Commissioner has nevertheless logged this delay. The Home Office said it:
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⁶ <https://www.gov.uk/government/collections/home-office-ministers-hospitality-data#2020>

“takes its FOI obligations seriously and works hard to respond to all requests in time. While Home Office FOI performance is strong and exceeds the ICO’s minimum targets, unfortunately delays can occur in some instances”.

39. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance function. This will align with the goal in his draft Openness by Design strategy⁷ to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our FOI and Transparency Regulatory Manual⁸.

⁷ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁸ https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1_0.pdf

Right of appeal

40. 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

41. 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.
42. 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

Carolyn Howes
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SK9 5AF