

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

### **Decision notice**

**Date:** 8 November 2023

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

#### **Decision (including any steps ordered)**

---

1. The complainant has requested information relating to recruitment campaigns and staff organisational charts.
2. The Cabinet Office refused the request under section 14(1) of FOIA (vexatious requests).
3. The Commissioner's decision is that the requests were vexatious and therefore the Cabinet Office is entitled to rely upon section 14(1) of FOIA to refuse them.
4. The Commissioner does not require further steps.

#### **Request and response**

---

5. On 12 April 2023, the complainant wrote to the Cabinet Office and requested information in the following terms:

"I am requesting the following information under the Freedom of Information Act 2000.

1. The organisational chart showing grades, roles, employment status (permanent, interim etc) as at March 2023
2. The organisational chart showing grades, roles, employment status (permanent, interim etc) as at March 2022

3. The number of G7 Commercial Managers recruited by the Cabinet Office between June 2020 and December 2021 whether interim, short term appointment, fixed term appointment or permanent. Please provide numbers for each category
  4. Details of recruitment campaigns which Lord Agnew closed in the period March 2020 to March 2022
  5. A note of recruitment campaigns that Lord Agnew instigated during the period March 2020 to March 2021
  6. Documentation relating to the approval, funding and outcome of recruitment campaign 5071
  7. Was recruitment campaign 5071 stopped because of a recruitment freeze or Zero Based Review?
  8. How many Cabinet Office recruitment campaigns were stopped between June 2020 and March 2021 because of Zero Based Reviews?
  9. How many Cabinet Office recruitment campaigns were stopped between June 2020 and March 2021 because of a recruitment freeze between June 2020 and March 2021?
  10. How many people were recruited to the cabinet Office as civil servants between June 2020 and March 2021?"
6. On 12 May 2023, the Cabinet Office refused the request as "vexatious" (section 14 of FOIA).
  7. The complainant requested an internal review on 12 May 2023 which, to date, has not been provided.

### **Scope of the case**

---

8. The complainant contacted the Commissioner on 28 June 2023 to complain about the way their request for information had been handled.
9. This notice covers whether the Cabinet Office correctly determined that the request was vexatious.

### **Reasons for decision**

---

10. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.

11. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s guidance on section 14(1)<sup>1</sup> states, it is established 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.
12. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
13. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
14. Most people exercise their right of access responsibly. However, a few may misuse or abuse FOIA by submitting requests which are intended to be annoying, disruptive or which have a disproportionate impact on a public authority. The Commissioner’s guidance on what may typify a vexatious request stresses, however, that it is always the request itself, and not the requestor, which is vexatious. However, a public authority may also consider the context of the request and the history of its relationship with the requester when this is relevant.
15. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) (“Dransfield”)<sup>2</sup>. Although the case was subsequently appealed to the Court of Appeal, the UT’s general guidance was supported, and established the Commissioner’s approach.
16. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.
17. The four broad themes considered by the Upper Tribunal in Dransfield were:

---

<sup>1</sup> <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

<sup>2</sup> <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

- the burden (on the public authority and its staff);
  - the motive (of the requester);
  - the value or serious purpose (of the request); and
  - any harassment or distress (of and to staff).
18. However, the UT emphasised that these four broad themes are not a checklist and are not exhaustive. Rather, it stressed the:
- “importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests” (paragraph 45).
19. Sometimes it will be obvious that a request is vexatious and other times it will not. In considering such borderline cases, the key is to weigh up any purpose and value that the request represents against any disruption, irritation, or distress that compliance with the request may cause the public authority. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request. The UT stated in Dransfield that:
- “all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA” (paragraph 82).

## **Background**

20. The complainant was interviewed by the Cabinet Office for a role in June 2020 and was assessed as appointable for that role. However, the complainant was not appointed and was instead added to a reserve list. Whilst on that list, the complainant was considered for several different roles, but was not appointed.

## **Cabinet Office arguments**

21. It is the Cabinet Office’s view that the complainant is reluctant to accept the explanation as to why they were not appointed to a particular role and is instead convinced that wrongdoing has taken place.

22. The Cabinet Office explained to the Commissioner that, between January and March 2021, the complainant engaged a number of officials at the Cabinet Office in correspondence about the recruitment process and their placement on the reserve list. They also made an information request that was responded to in part.
23. The complainant submitted a formal complaint to the Cabinet Office in April 2021 about the handling of the recruitment campaign in question and, following an investigation of the complaint, received a response on 24 June 2021, which found that the Cabinet Office had acted correctly, but had communicated poorly.
24. The complainant then complained to the then Minister of State, Lord Agnew. On 20 August 2021, the Cabinet Office responded on behalf of the Minister, stating that it had nothing to add to the response which had already been provided.
25. In September and October 2021, the complainant followed up the matter with further emails to Public Correspondence, Lord Agnew, the Chief Operating Officer, the Permanent Secretary, and the Cabinet Secretary. On 14 December 2021, the Chief Operating Officer responded to the complainant. The Chief Operating Officer was satisfied with the Cabinet Office's response dated 24 June 2021 and addressed further points the complainant had raised.
26. The complainant subsequently had their complaint referred to the Parliamentary Commissioner for Administration (the Ombudsman). It is the Cabinet Office's understanding that the complainant was advised by the Ombudsman that to be within his jurisdiction a complaint should relate to where it is believed due process had not been followed, rather than where an outcome is disagreed with.
27. In May 2022, the complainant took their complaint to the Parliamentary Secretary at the Cabinet Office, Heather Wheeler MP. A response was sent on her behalf stating that the Cabinet Office had nothing further to add to previous correspondence.
28. The Cabinet Office advised the Commissioner that it has acknowledged to the complainant that the non-recruitment was unfortunate and has apologised that communication with them around the matter was mishandled, which added to the disappointment and mistrust.
29. It is the view of the Cabinet Office that since 2020 the complainant has raised, and continues to raise, matters which have been investigated at length and a full explanation given to the complainant as to why they were not appointed to the role in June 2020.

30. The Cabinet Office set out for the Commissioner a table showing that, since January 2021, the complainant has made five FOI requests and requested four internal reviews around the same subject-matter. In addition, the Cabinet Office had carried out two investigations into the matter and the complainant has entered into other correspondence with the Permanent Secretary and ministers.
31. The Cabinet Office's view is that, although the complainant's initial requests were focused on a particular subject, subsequent requests (including the request considered here) have become repeated, overlapping, and broader in the subject of the requests.
32. The Cabinet Office anticipated that following any issuing of responses to the complainant, follow up requests would be received from the complainant as well as requests for internal reviews and complaints.
33. Accordingly, the Cabinet Office considers that the complainant is unreasonably, and persistently pursuing information and that they will continue to do so.
34. Furthermore, the Cabinet Office believes that FOIA is not the appropriate forum for the complainant to pursue this matter. The concerns of the complainant appear to be those which ought to be brought to the attention of either the Civil Service Commission, or the PHSO. The Commissioner has seen correspondence dated 24 June 2021 and 15 July 2022, in which the Cabinet Office advised the complainant to take their case to the Parliamentary and Health Service Ombudsman ("PHSO").
35. It is the Cabinet Office's view that the amount of work that would be involved in dealing with the requests would impose a grossly oppressive burden.
36. The Cabinet Office has explained to the Commissioner the detailed and extensive searches of records which would be required to establish which "commercial roles" had been recruited and recorded centrally, and to establish which recruitment campaigns were concluded at Ministerial instigation over a two-year period.
37. The Cabinet Office also explained that a different and time-consuming process would be required to identify any vacancies which were considered at business unit level, given a lower priority and where recruitment was discounted or deferred.
38. Separate searches would also have to be undertaken regarding which recruitment campaigns were stopped and why. It would not always be immediately obvious whether these were discontinued as a direct result of the recruitment freeze and zero-based review during the course of

ten months in 2020-2021, or whether some other factor was the driving force.

39. The number of people recruited to the Cabinet Office during a 10-month period in 2020-2021 would necessitate further searches and checks, as would the location of any relevant organisation charts. Many of these searches would have to be conducted across numerous (shared and individual) inboxes and drives. It would require the skilled use of search terms and the removal of duplicate information from search results. Locating this information would absorb the attention of numerous officials across HR, recruitment, private office, and other functions within the Cabinet Office. It is an undertaking that would require considerable time and coordination.
40. Further, the Cabinet Office argued that section 36 of FOIA (prejudice to the effective conduct of public affairs) would be likely to apply to information relating to internal discussions about recruitment, the recruitment freeze and the zero-based review; section 40 of FOIA (personal data) is very likely to apply to the personal details of the numerous junior officials who will have dealt with the matters which are the subject of these requests; and section 43 of FOIA (commercial interests) could apply to information which concerns the pay of officials and the business requirements of the Cabinet Office.

### **Complainant's arguments**

41. The complainant is of the view that they have not received a "truthful" explanation from the Cabinet Office for the reasons why they were not appointed as a Commercial Manager in 2020.
42. The complainant believes that they have been given "conflicting" and "untrue" reasons by the Cabinet Office for their non-recruitment. The reasons given by the Cabinet Office being (1) a recruitment freeze (when the complainant believes that the Cabinet Office ran nearly 5000 recruitment campaigns between June 2020 and March 2021), then (2) a zero-based review requested by Lord Agnew (of which, the complainant says, they have been provided no evidence) and finally, (3) business need. The complainant has explained to the Commissioner that they are simply trying to "get to the truth of the matter."
43. The complainant also raised issues with the Commissioner about the Cabinet Office not following its own complaints process. Such issues are outside of the Commissioner's remit.

### **The Commissioner's decision**

44. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a

disproportionate, manifestly unjustified, inappropriate, or improper use of FOIA. As previously discussed, there is a high bar for engaging section 14(1).

### **Value or serious purpose**

45. In this instance the requests stem from a specific issue of concern about why the complainant was not appointed to a particular role. The complainant has a clear belief that wrongdoing may have been committed, believes the requests to be a legitimate pursuit to uncover this, and that it is in the public interest to do so.
46. Following recruitment criteria and principles is an area where it would be expected that a public authority would demonstrate high levels of transparency.
47. That being said, the Commissioner notes that the request seeks some information about organisational structures and recruitment campaigns that took place several time before the request was made. Several of the parts of the request relate to one specific recruitment campaign or to a specific role. Whilst such information may be of interest to the complainant, the Commissioner is not persuaded that it is of any wider public value.
48. However, even if the request does have a value or serious purpose, there may be factors that reduce that value. One such factor is the context and history of the request.

### **Context & history**

49. The Commissioner acknowledges that, in this case, the Cabinet Office has dealt with previous similar requests and complaints from the complainant over the past two years and has explained to them that FOIA is not the appropriate avenue via which to resolve this matter.
50. In this case, it seems that a personal issue between the complainant and the Cabinet Office has resulted in ongoing and repeated FOIA requests, complaints, and correspondence for over two years. This has continued despite the Cabinet Office's explanations and advice as regards the nature of the complainant's requests and the limitations of FOIA.
51. The complainant has refused to accept the explanations given by the Cabinet Office as to why they were not appointed to a particular post and has been persistent in escalating their underlying concerns by initially engaging a number of officials at the Cabinet Office in correspondence about the recruitment process, then submitting a formal complaint to the Cabinet Office about the handling of the recruitment



campaign in question and, following the outcome of the investigation then complaining to the then Minister of State.

52. When the complainant did not receive the outcome they wanted, they followed up the matter with further emails to Public Correspondence, Lord Agnew, the Chief Operating Officer, the Permanent Secretary, the Cabinet Secretary and finally complained to the Parliamentary Secretary at the Cabinet Office.
53. The complainant has also had their complaint referred to the Parliamentary Commissioner for Administration (the Ombudsman).
54. In the Commissioner's view, this demonstrates a continuation of a pattern of behaviour and part of an ongoing campaign to uncover evidence to support the complainant's belief that wrongdoing has taken place. Having been unsuccessful in their complaints about their non-recruitment, the complainant appears to be using FOIA to reopen issues which have been investigated and refuses to accept that FOIA is not the most appropriate avenue to pursue the concern.
55. It is the Commissioner's view that, in the context of the complainant's previous dealings with the Cabinet Office, the requests can be considered vexatious. The Commissioner also notes that this approach is supported by case law in *Betts vs ICO*.<sup>3</sup> This case suggests that even if a request were not vexatious in isolation, it could be considered vexatious when viewed in context.
56. The Commissioner considers that the requests in this case can be considered to be a burden when seen in context of the history of the complainant's previous requests and complaints.

### **Motive & harassment**

57. The Commissioner accepts that the complainant's early correspondence began as a genuine attempt to understand why they had not been appointed to a particular role. The investigations that have already been carried out would suggest that that sense of grievance was not wholly unjustified but stemmed mainly from poor communication on the part of the Cabinet Office.

---

<sup>3</sup> <https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i61/betts.pdf>

58. However, over time, that motivation has shifted from a genuine effort to understand, to an attempt to find evidence to support the complainant's theory: that his non-appointment could only have been as a result of wrongdoing.
59. The complainant's requests are not abusive or aggressive. Nevertheless, the tenacity with which the complainant has pursued their arguments may be felt as harassing by Cabinet Office personnel – especially the relatively small group of individuals who are likely to have to handle the correspondence. The Commissioner also notes that these officers may feel harassed by dealing with the same complainant and the same issues repeatedly.
60. Further, this demonstrates that the complainant is taking an unreasonably entrenched position, refusing to accept the reasons for their non-appointment, rejecting advice by the Cabinet Office as regards the role of FOIA, and refusing to accept when the Cabinet Office state that information is not held.
61. The Commissioner also notes that the complainant has been contacting some officials via inappropriate channels which has caused them distress.
62. The Commissioner's guidance states that such behaviour undermines a requester's arguments that their request is a serious attempt to access information which will be of use to them.

### **Burden**

63. It is the Cabinet Office's view that the amount of work that would be involved in dealing with the requests would impose a grossly oppressive burden.
64. The Commissioner considers that there is a high threshold for refusing a request on such grounds and a public authority is most likely to have a viable argument when:
  - a. The requestor has asked for a substantial volume of information, and
  - b. 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
  - c. Any potentially exempt information cannot easily be isolated because it is scattered through the requested material.

65. The Commissioner is not persuaded, on the basis of the available evidence, that section 14 of FOIA would be engaged on burden grounds alone. However, he does recognise that the work involved would be significant and, when considered alongside the other evidence listed above, only reinforces the fact that complying with the request would require a disproportionate use of resources.
66. In summary, the Commissioner has taken into account all of the above, and considered whether, on a holistic basis, the requests vexatious - and he finds that they are. While the requests do have some value or purpose, there are several factors that reduce that value, namely, the complainant's unreasonable persistence by making repeated and overlapping requests and the context and history of the requests showing an underlying motive to uncover alleged but unsubstantiated wrongdoing.
67. In the Commissioner's opinion, this indicates that the effect of the request would be to cause a disproportionate or unjustified level of disruption to the Cabinet Office and therefore the Cabinet Office was entitled to rely on section 14(1) of FOIA to refuse the requests.

### **Other matters**

---

68. 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.
69. In this case, the Cabinet Office failed to provide an internal review at all.

## Right of appeal

---

70. 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)

71. 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.
72. 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**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**