

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 March 2023

Public Authority: Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested copies of all edicts issued to government departments by the Clearing House during 2019. The Cabinet Office confirmed that they did not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the Cabinet Office does not hold the requested information. The Cabinet Office have therefore correctly complied with their duty under section 1(1)(a) of the FOIA.
3. The Commissioner does not require the Cabinet Office to take any steps as a result of this decision notice.

Request and response

4. On 24 November 2020, the complainant wrote to the Cabinet Office and requested information in the following terms:

'[Background: on 24th November 2020 it was revealed in the article below that the UK government has been running an 'Orwellian' operation within its Cabinet Office 'Clearing House' to circumvent transparency laws and block freedom of information requests. We shall send you a copy of the article below for your reference.

FOI request: Please kindly provide a copy of all edict(s) issued to government departments in the manner described above during the year 2019. They don't need to be in any particular order.

For public reference: This follows the revelation that UK government is running an 'Orwellian' unit to circumvent transparency laws and block freedom of information requests:

[UK government running 'Orwellian' unit to circumvent transparency laws and block freedom of information requests | The Independent](#)

5. The Cabinet Office responded to the request on 23 December 2020. They advised that following a search of their paper and electronic records they had established that they did not hold the information requested. The Cabinet Office stated that:

'No edicts have been issued as described in your request. All requests are considered in an applicant-blind manner, regardless of, - for example - the occupation of the applicant. The Cabinet Office FOI process complies with relevant protections under the Data Protection Act 2018'.

6. The Cabinet Office also advised that:

'You may also find it helpful to know that the Clearing House was established in 2004 and has operated in different forms since the FOI Act came into force in January 2005 as an advice centre to coordinate complex requests across Whitehall. There is no stand-alone Clearing House team, but coordination functions are carried out by a number of staff members who have a range of wider responsibilities. This Government is fully committed to transparency and ensuring all requests for Freedom of Information (FOI) are handled appropriately'.

7. The complainant wrote to the Cabinet Office on the same date and requested an internal review. The complainant advised the Cabinet Office that she was not satisfied with their response that there were no edicts or that they operate on an applicant-blind basis. The complainant informed the Cabinet Office that *'we already have a copy of a communication to your Clearing House stating, " Just flagging that X is a journalist" and "once the response is confirmed, I'll just need [redacted] to sign off on this before it goes out, since X is a reporter for openDemocracy"'*.
8. The complainant contended that this proved that neither of the Cabinet Office claims were true. The complainant advised that, *'we know these edicts exist and we'd like a copy of the ones you issued to government departments in 2019 or we shall report you for being in violation of Section 77' (of FOIA).*

9. The Cabinet Office acknowledged receipt of the request for internal review on 5 January 2021. However, having not heard anything further by 26 February 2021, the complainant complained to the Commissioner.

Scope of the case

10. The complainant contacted the Commissioner on 26 February 2021 to complain about the way her request for information had been handled.

11. The complainant advised the Commissioner that:

'We know the information requested exists as we were able to demonstrate in the internal review request what some of the edicts contained'. The complainant provided the Commissioner with a copy of an openDemocracy document entitled, 'Art of Darkness: How the Government is Undermining Freedom of Information' [2020]¹ as 'further proof'.

12. In addition, the complainant provided the Commissioner with what she contended was further information supporting the existence of 'edicts' from the Clearing House. The complainant advised that she had carried out a Google search on a portion of a key communication to the Clearing House which she held, specifically, *'just flagging that [redacted] is a journalist'*, and this search *'reveals an array of information and other examples of where information was about to be released until the Cabinet Office Clearing House stepped in'*.
13. The complainant stated that, *'each example proves to us that the Cabinet Office claim that these edicts simply "do not exist" is a downright lie. They are deliberately wishing to conceal them from us in violation of Section 77'*.
14. On 25 March 2021, the Cabinet Office provided the complainant with the outstanding internal review, and apologised for the time (three months) it had taken.
15. The Cabinet Office confirmed that no edicts have been issued as defined by the request. They advised that they had defined the word 'edict' using the commonly understood definition as being 'an official order given by a government or person in authority'. The review advised that the Cabinet Office, including the Clearing House function, provides advice with respect to FOIA requests. The Cabinet Office stated that

¹ [Art of Darkness | openDemocracy - DocumentCloud](#)

they do 'not direct departments on what they do with individual FOI cases, nor does it direct departments to block FOI requests. On this basis we do not consider that the Cabinet Office issues 'edicts' or 'orders' and so no information is held relating to your request'.

16. The review explained that:

'The Clearing House function helps ensure there is a consistent approach across government to requests for information which impact or go to a number of different government departments (so-called round robins) or where requests are made for particularly sensitive information, including relating to national security or personal data. This is especially important for complex FOI requests where we are obliged to balance the need to make information available with our legal duties under the FOI Act to protect sensitive information. A coordination function ensures there is a consistent approach so all those submitting FOIs are treated in a similar and fair manner by all departments'.

17. Addressing the examples of internal government correspondence which the complainant alleged contravened the applicant blind principle, the Cabinet Office stated:

'The applicant blind principle sets out that all requests for information handled under the FOI Act must be treated equally and the identity of a requester is immaterial when considering whether information should or should not be disclosed'.

18. The review advised that *'all requests are considered by the Cabinet Office in an applicant-blind manner, regardless of, for example, the occupation of the applicant'*. The Cabinet Office stated that their FOI process complied with relevant protections under the Data Protection Act 2018.

19. The Cabinet Office added:

'Outside the consideration of any FOI response, it is appropriate for departments, including the Cabinet Office, to prepare for possible media interest in information released under FOI, but this is separate from a decision on whether or not to release information'.

20. On the same date that she received the Cabinet Office internal review, the complainant wrote to the Commissioner and stated:

'It becomes evident that their definition of edict does not match that of the media who stated they issue edicts. Furthermore, they are trying to claim even though they discuss journalists, it does not affect the outcome of their decision. The fact remains, however, that the clearing office prevents information requested in Freedom of Information requests being given out – because the communications we gave you a

copy of prove this. Clearly, people from other departments are asking the Clearing Office for permission to release information and that should not be happening. It becomes an edict when the Clearing Office tells them not to release information by way of response and we know that has happened many times AND this is the information we asked for'.

21. The complainant further stated:

'The additional problem is their claim that the discussion of journalists – i.e. their response to the Attorney General's Office "Just flagging that [redacted] is a journalist", and warning that "once this response is confirmed, I'll just need [redacted] to sign off on this before it goes out, since [redacted] is a reporter for OpenDemocracy". We don't accept their claim that even though journalists are discussed by name, that it doesn't affect the outcome. This is because the example above clearly shows us the operating culture established by the Clearing Office. They obviously want to be informed about such things, which in turn means "just flagging that [redacted] is a journalist" is relevant in the decision-making process. If it wasn't relevant then such communications would not exist. It clearly matters to the Clearing Office who is requesting the information and we are surprised that the Information Commissioner has not ordered them to stop doing this'.

22. The complainant concluded her complaint to the Commissioner by advising that, *'we know they hold the information we requested and we still want them to provide it. Now that they have provided an internal review, we ask that you order them to release what we asked for'.*

23. The Commissioner considers that the scope of his investigation is to ascertain, on the balance of probabilities, whether the Cabinet Office hold the information requested by the complainant.

Reasons for decision

24. Section 1(1) of the FOIA states that:

'Any person making a request for information to a public authority is entitled –

(a) To be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) If that is the case, to have that information communicated to him'

25. In cases where there is a dispute over the extent of recorded information held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and actions

taken by the public authority to check that the information is not held and any reasons given by the public authority to explain why the information is not held. The Commissioner is not expected to prove categorically whether the information is held, rather he is required to make a judgement on the balance of probabilities (the civil standard) on whether the information is held by the public authority.

26. Since the complainant submitted her information request to the Cabinet Office in November 2020, a significant amount of information about the Clearing House has come into the public domain. The Commissioner references some of this information below, since it provides important contextual background and helps inform his decision in this matter. Although the release of the information post-dates the complainant's request, it refers to and concerns the position which existed at the time of the request and the timespan to which the request encompassed.
27. On 9 February 2021, the Cabinet Office published, on the Government's website, a response to the allegations made by openDemocracy, which provided information as to the function and role of the Clearing House².
28. On 18 March 2021, the then Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, Michael Gove, wrote to the Director of Editorial Legal Services at Guardian News & Media. In the published letter, Mr Gove stated that *'the Clearing House function is not new. It was established in 2004 and has operated in different forms since the Freedom of Information Act came into force in January 2005'*³. This letter corrected a slightly earlier letter sent by Mr Gove to the Chair of the Public Administration and Constitutional Affairs Committee (PACAC) on 9 March 2021, in which it was stated that *'the Clearing House function is not new. It is a simple three person team designed to co-ordinate timely and effective responses to FOI'*.
29. In his letter of 18 March 2021, Mr Gove also noted that in April 2005, the then Parliamentary Under Secretary for Constitutional Affairs, David Lammy MP, had referred to the function in explaining that the then Department for Constitutional Affairs *'has provided support to Freedom of Information (FOI) practitioners in government departments'*. Mr Gove stated that the purpose and remit of the Clearing House had not changed.

² [Response to points raised in openDemocracy article, 08/02/21 - GOV.UK \(www.gov.uk\)](#)

³ [CDL letter to the Guardian.pdf \(publishing.service.gov.uk\)](#)

30. Importantly, in the context of this case, Mr Gove stated that:

'The Cabinet Office provides advice, and does not direct departments on how to respond to individual FOI cases, nor does it direct departments to block FOI requests. All FOI requests are treated exactly the same, regardless of who the request is from, and their occupation. It would be unlawful for the Cabinet Office, or any other public authority, to blacklist enquiries from journalists. It is a pernicious myth that we take such an approach. It is appropriate for departments to prepare for possible media interest in information released under FOI, but this consideration does not form part of the decision on whether or not to release information'.

31. On 18 March 2021 the Government also published The Clearing House [departmental] Remit⁴ and Cabinet Office FOI Referral Criteria⁵. The latter document stated that, *'Departments may refer complex or round robin FOI requests to the Cabinet Office for advice and guidance and particularly where requests relate to matters listed below'* (the document going on to list a number of types of request where advice or guidance might be sought from the Cabinet Office). The Commissioner notes that the document states that departments *'may'* refer such requests to the Clearing House and not that they *must* do so.

32. Whilst there would be a reasonable expectation, given that the FOIA has been in force for more than 15 years, that FOI teams within individual government departments would have sufficient knowledge and experience of the exemptions contained within the Act and the application of the public interest test where relevant, the Commissioner considers that there is nothing irregular, in principle at least, in government having in place a process or system to coordinate sensitive or round robin information requests and try to ensure as much consistency to these as possible. As the former Information Commissioner, Elizabeth Denham, noted in her oral evidence⁶ to the PACAC inquiry into the Clearing House:

'The existence of clearing houses and some kind of co-ordination mechanism in governments is not unusual, but the question is whether the way that they treat applicants is fair and respects the principles in the Act'.

⁴ [Microsoft Word - Clearing House Remit FINAL.docx \(publishing.service.gov.uk\)](#)

⁵ [Microsoft Word - Cabinet Office FOI Referral Criteria FINAL.docx \(publishing.service.gov.uk\)](#)

⁶ [Information Commissioner gives evidence in FoI probe - Committees - UK Parliament](#)

33. The PACAC inquiry was launched to provide a view on the transparency surrounding the Clearing House, the Cabinet Office's efforts to review the Clearing House, and the Cabinet Office's oversight of and attitude towards the FOIA more generally.
34. As part of the evidence provided to the PACAC, the then Minister of State for the Constitution and Devolution, Chloe Smith, wrote to the Chair on 31 August 2021 to provide an update on the Cabinet Office's work in this area. Importantly, within the context of this case, Ms Smith stated:

'We do not recognise the basis of media reporting, which incorrectly asserted that journalists and other users of the Act are being 'blacklisted', and that the Clearing House directs departments to block requests. As we have previously set out, there is no such blacklist. All FOI requests are treated exactly the same, regardless of the identity or occupation of the requester. The names of requesters are only included in Round Robin guidance to identify the shared applicant, not as a material consideration in itself'.

35. The Minister went on to explain:

'The Clearing House provides an advisory function, and does not direct departments on how they should respond to particular requests, or 'block' requests. Departments may take the occupation or interests of the requester into account when considering if press lines should be prepared to respond to any queries arising from a FOI response, but this is separate from the consideration of the request under FOI and is not contrary to the applicant-blind principle. As set out in the ICO guidance, this principle means that requests for information should generally be considered without reference to the identity of the requester or the motives behind the request. It does not mean that the public authority should not make sensible preparations for possible media interest in information it is proposing to release'.

36. It is important to be clear about what is meant by FOIA being 'applicant-blind'. This means that the identity (and purpose) of the requester should have no bearing or influence on the decision taken by a public authority as to whether to disclose requested information or not. For example, if information requested by a member of the public is deemed suitable for disclosure and not exempt, then the same information requested by a journalist must also be disclosed.
37. In her evidence to the PACAC, departing Commissioner Denham stated that if a requester were to be identified as a journalist or a political researcher, for example, *'and if there is a different way of dealing with your request, such as a less timely one, or one that produces a different result, that is not an applicant-blind process'.*

38. At the time of the complainant's request, the ability to assess whether or not requests referred to the Clearing House comply with an applicant-blind process was restricted by the lack of detailed information about the operation of the Clearing House available in the public domain. The PACAC report notes that the aforementioned information about the Clearing House published by the Government on 18 March 2021, '*fell short of earlier public disclosures on the Clearing House, when responsibility for the Clearing House rested with the Ministry of Justice(MoJ)*'. For example, the figures previously published by the MoJ included monthly referrals to the Clearing House split by the relevant referring department, enabling the public to see the volume of cases considered by the Clearing House.

39. As Commissioner Denham explained in her evidence to the PACAC in the context of recent activity undertaken by her office:

'We looked at the allegations (that the Clearing House is a discriminatory process that adds delay to FOI requests) and we offered to the Cabinet Office to carry out an audit. We wanted to follow through the process of a request to understand the criteria with which Government departments are referring cases to the Clearing House. We wanted to really get under the bonnet and see how it all works. The Cabinet Office declined our offer of a voluntary audit, and we do not have compulsory audit powers as we do in the data protection side of our mandate. I think the Cabinet Office missed an opportunity there, because we would have gone in and provided evidence of the way that it operates, in a way that would be helpful to ease some of the suspicion of the Clearing House, as opposed to allowing us in the doors as a regulator, for us to reveal to the public how it operates, because it could be entirely legitimate. We just do not know'.

40. Asked whether she thought that the Clearing House makes a necessary or helpful contribution to the processing of FOI requests by the Government, Commissioner Denham told the Committee:

'I wish I could answer that question, but we simply do not know, because the actual operations of the Clearing House are opaque to our office. Certainly, we have seen allegations and concerns from applicants in our casework, and obviously I have seen some of the cases that have gone to the Tribunal. However, we have not had a systematic, fulsome review of the way that the Clearing House operates. I just think people will continue to be suspicious until an independent agency can have a look'.

41. On 28 April 2022 (the day before publication of the PACAC report), the Cabinet Office published the terms of reference for their own review (to be led by Sue Langley OBE, Lead Non-Executive Director, Home Office)⁷. The Commissioner refers to this as The Langley Review.
42. The stated purpose of the Langley Review was that it would, *'seek to ascertain the optimum working model for the FOI Clearing House to support the effective operation of the Freedom of Information Act across government, and particularly in the light of a continuing increase in the volume of cases being received by Departments'*. The Commissioner notes that one of the questions which the Langley Review was tasked to answer is *'How is the Applicant Blind principle understood and adhered to across Government, including within the Cabinet Office?'*
43. The Langley Review was published in late August 2022⁸. Although the Review post-dates the complainant's request, the information it confirmed about the background and operation of the Clearing House does not. The Commissioner considers that the findings of the Review are of key relevance to this case as they clarify the position as to the purpose and function of the Clearing House.
44. In submissions to the Commissioner, the Cabinet Office noted that the complainant had asked for edicts issued by the Clearing House and referenced claims that the government *'is running an 'Orwellian' unit to circumvent transparency laws and block freedom of information requests'*. The Cabinet Office stated that *'this clearly was not, and never has been, the function of FOI Clearing House'*. The Cabinet Office noted that *'the evidence put forward by the requester that this is not the case refers to correspondence from a department to the Cabinet Office and is clearly not an 'edict' from the FOI Clearing House to departments'*.
45. The Cabinet Office confirmed to the Commissioner that no searches for information held within scope of the complainant's request were carried out [although the Commissioner notes that this appears to be inconsistent with the explanation provided by the Cabinet Office to the complainant as set out in paragraph 5] because such searches were not required *'as the descriptions and assumptions used by the requester were misplaced'*. Similarly, the Cabinet Office confirmed that no information in scope of the request had been deleted or destroyed as it was never held.

⁷ [FOI Clearing House Review - Terms of Reference \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

⁸ [Freedom of Information - FOI Clearing House Review \(HTML\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

46. The Cabinet Office provided the Commissioner with the following background information to the Clearing House:

'The Cabinet Office coordinates complex FOI requests across Whitehall and plays a vital role in ensuring compliance with the Act across Government, while also making sure sensitive information, including that related to national security, is handled appropriately. The Clearing House function was originally established in 2004 and has operated in different forms since FOIA came into force in January 2005. In 2015 Freedom of Information Policy moved from the Ministry of Justice (MoJ) to the Cabinet Office. Since then there has been no stand-alone Clearing House team, but coordination functions are carried out by a small number of staff members who have a range of wider responsibilities. The functions were subject of a Review when in April 2022, Cabinet Office Minister Lord True appointed Sue Langley OBE to lead the 'Cabinet Office FOI Clearing House Internal Review'.

47. The Cabinet Office advised that areas which have led to a referral to the Cabinet Office FOI advisory function may include where the information sought relates to national security matters, the Royal Household, significant live policy development and/or implementation issues and "round robins" (i.e. those requests made to more than one department that have repeat characteristics). A full list of referral criteria is published on Gov.uk (as referenced earlier).

48. The Cabinet Office further explained that:

'The FOI Round Robin List is issued twice weekly by the Cabinet Office to cross-government departments (it was issued almost daily at the time of the requested information). It lists FOI requests received by departments that have 'repeat request characteristics'. The Round Robin list comprises a reference number, the date the Cabinet Office was first made aware of the request, the text of the request, the deadline for the response, and any advice on the approach to take in accordance with the legislation. Departments, as discrete public authorities under the Act, are ultimately responsible for how they respond. The purpose of the Round Robin List is to ensure consistency of approach across departments'.

49. The Cabinet Office noted that the department's Clearing House functions have received considerable scrutiny since the time of the complainant's request in November 2020, including being the subject of an inquiry by the PACAC, the findings of which the Government had provided a response to, and the recent Langley Review.
50. The Cabinet Office stated that the Langley Review was commissioned, in part, following nearly two decades since the FOI Clearing House was set up, increasing volumes of FOIs across government, and in the light of

recent questioning of some of the Clearing House's long standing functions. It was considered appropriate to review the operation functions and to ascertain any new working model to support the effective operation of the FOIA across government. The Cabinet Office noted that the Langley Review took into account a very broad range of input, including government departments, the ICO and representatives from the media.

51. The Cabinet Office noted that the Langley Review had considered and set out some of the Clearing House process in the annexes to the review and recommendations. In particular, the Cabinet Office noted that the Review had found as follows (their own emphasis added):

'Round Robins are those requests which are made to more than one department at the same time and in the same/or similar teams. Although each department must come to an independent decision on FOI requests, there are merits in consistency of approach on substantively similar requests, especially where two departments may both hold the same information.

Departments are asked to also email FOI Clearing House if they have received a request which satisfies the FOI Clearing House referral criteria.

Despite the name, FOI Clearing House does not in fact clear any requests, but provides advice and assistance, as well as guidance on Round Robin requests.

All departments are public authorities for the purposes of the FOI Act and it is for those departments to make the final decision on whether or not to disclose the information sought by the requestor. The advice given through the FOI Clearing House function or in the context of the Round Robin list does not amount to a direction and Cabinet Office, either via its FOI Clearing House function or directly, cannot override the final decisions of departments.

52. In submissions to the Commissioner the Cabinet Office noted that the Langley Review *'confirmed that the practices of the Clearing House Advisory functions reflected its purpose to provide advice, rather than instruction'*. In particular, the Cabinet Office highlighted that in her general summary observations, Ms Langley had stated:

'Guidance and processes reviewed reflect the FOIA legislation and no significant gaps were found nor any evidence that pointed to the deliberate unlawful obstruction of the FOIA or other relevant legislation'.

53. The Cabinet Office noted that Lord True had acknowledged all of this, *'as well as the potential for confusion in light of some of the media criticism*

of the Clearing House in his response to the Review'. In particular, he stated:

'The Government agrees that 'FOI Clearing House' should be redesigned to more clearly operate as an advisory function. We accept that the title 'FOI Clearing House' is confusing, suggesting a level of direction and control over other departments' FOI requests which in reality does not exist'.

54. In summary, the Cabinet Office advised the Commissioner that the concerns raised by the complainant have been publicly considered and concluded. The Cabinet Office confirmed that the department *'does not issue 'edicts' to other public authorities as part of its advisory functions. It does however provide advice for the reasons set out above'*.
55. The Commissioner considers that the Cabinet Office interpretation of the word 'edict' in the complainant's request was a reasonable one, that being *'an official order given by a government or person in authority'*. Whatever term is used, edict, order or instruction, the essential characteristic is that it requires compliance by the person/body to whom the edict is issued.
56. The Cabinet Office were clear in the internal review that they *'do not direct departments on what they do with individual FOI cases, nor does it direct departments to block FOI requests'*. That position was also explicitly stated by Mr Gove and Ms Smith in their correspondence to the Chair of PACAC and other parties, as detailed above. As noted above, the position has also been clarified by the Langley Review.
57. The complainant has contended that examples which she has provided or highlighted to the Commissioner, show the Cabinet Office ordering or directing a government department to respond to an FOI request in a certain way, be that providing the information requested or not providing the information requested. However, the Commissioner does not agree that any of the examples provided are evidence of such edicts. Rather, the Commissioner considers that the examples are consistent with what the Cabinet Office advised the complainant in response to her request and what the aforementioned Ministers stated in their correspondence. That is to say, they show the respective government department waiting for advice or input from the Clearing House in respect of a given FOI request.
58. For example, in an internal email from the Attorney General's Office, provided by the complainant, an official states, *'once the response is confirmed, I'll just need [redacted] to sign off on this before it goes out, since [redacted] is a reporter for Open Democracy'*. The Commissioner notes that it is apparent from this that the response to the request had **already** been drafted and completed (i.e. the decision had been taken

as to whether or not to disclose the information requested if held) and the requester's identity as a journalist was flagged because of the expectation that the FOI response would likely generate media interest.

59. Similarly, in a Ministry of Defence (MoD) case cited by the complainant, the Commissioner notes that an internal communication obtained by openDemocracy, stated that, *'due to the time spent in getting an approval from Clearing House, the FOI requester has put in a complaint to the ICO'*. It would seem from this that MoD had drafted a response to the particular FOI request (i.e. a decision had already been taken) and were waiting to see whether the Clearing House had any advice or concerns about the intended response. The Commissioner recognises and acknowledges that the use of the word 'approval' by the MoD official, suggests that MoD were effectively waiting for the Clearing House to give them the green light to send out the response. However, that is not the same as the Clearing House subsequently contacting MoD and ordering or instructing them on how to respond to the FOI request.
60. The Commissioner is mindful of the subtleties of language here, and can quite understand why an individual, without sight of the other evidence and explanation from government as to the flagging of FOI requests from journalists, might interpret emails such as those examined above, as the complainant has done in this case. Furthermore, the name given to this particular function of the Cabinet Office – the *Clearing House*, does tend to suggest/imply a discrete and stand-alone team or unit so the Commissioner considers that it is quite understandable, in the absence of clarification, that at the time of her request, the complainant believed that the Clearing House acts as a formal entity and in a directive rather than advisory capacity.
61. On this point the Langley Review noted that:

'Central government participants did not support the media claims and affirmed that, to date, there has not been any evidence of FOI Clearing House and FOI teams across government deliberately and unlawfully obstructing FOIA statutory obligations and other relevant legislation. Many expressed, however, that the Cabinet Office's historical lack of transparency on the FOI Clearing House function and Round Robin system has led to the prolonged media scrutiny that could have been mitigated sooner'.
62. The complainant has stated that she does not accept the Cabinet Office contention that even though journalist requesters are identified and discussed by name, that this *'doesn't affect the outcome'*. It is important to be very clear about what is meant by the outcome here, namely, the decision by the government department whether or not to disclose the requested information.

63. The Commissioner would of course entirely agree that it would be a very serious matter and wholly unacceptable if the Clearing House was treating responses to FOI requests differently because of either who the requester worked for, or because of their occupation (i.e. journalist). That is to say, if journalists were encountering hurdles or barriers to obtaining information which were not encountered by a member of the public seeking the same information (i.e. if journalists were being discriminated or prejudiced against).
64. In 'Art of Darkness', openDemocracy contend that, *'there is no obvious need or reason to routinely share requesters names other than to identify the source of the request and subject it to extra-legal procedures'*. However, the identifying of a particular request as being made by a journalist, would not be unreasonable or unusual, if the purpose of such identification was to prepare for potential media interest and reporting on a decision (in respect of the FOI request).
65. As the Cabinet Office stated in their internal review, **'outside the consideration of any FOI response** (Commissioner's emboldening) *it is appropriate for departments, including the Cabinet Office, to prepare for possible media interest in information released under FOI, but this is separate from a decision on whether or not to release information'*.
66. To repeat the important explanation and clarification provided by Ms Smith in her letter to the PACAC Chair of 31 August 2021:
- 'The names of requesters are only included in Round Robin guidance to identify the shared applicant, not as a material consideration in itself. Departments may take the occupation or interests of the requester into account when considering if press lines should be prepared to respond to any queries arising from a FOI response, **but this is separate from the consideration of the request under FOI and is not contrary to the applicant-blind principle'** (Commissioner's emboldening).
67. The Commissioner considers that the evidence available to date, most notably the findings of the Langley Review, supports the above position. Specifically, that any identification or flagging of a requester's identity or profession (i.e. journalist) is not done with the intention or aim of breaching the applicant blind principle, in that it does not result in a different decision or response being provided to the journalist than would be provided to another requester.
68. In their report, the PACAC stated that *'we received evidence detailing multiple examples of Departments treating of FOI cases submitted through the Clearing House process in a non-blind manner'* (such as departments highlighting the name and profession of the applicant, as well as links to professional profile pages in their referral to the Clearing

House). The PACAC discussed such cases under the heading '*Non-applicant-blind handling*'⁹.

69. The Commissioner considers that it is essential to distinguish between the non-applicant blind handling of a request, whereby the requester's identity or profession (e.g. journalist) may be highlighted or identified, but this does not affect or influence the actual **decision** whether or not to disclose the requested information, and *non-applicant blind decision making*, whereby the requester's identity or profession does affect or influence whether or not the requested information is disclosed to the requester.
70. The Commissioner, like the PACAC, has seen examples of non-applicant blind handling (e.g. where the requester's identity as a journalist is highlighted for the purposes linked to the request but ancillary to the actual decision whether or not to disclose information, such as notifying a press office to prepare for press/media management). However, to date, the Commissioner has not seen any clear examples of non-applicant blind decision making (e.g. where the fact that a requester is a journalist has had an influence on or otherwise affected, whether or not they are provided with the information requested).
71. Having considered all the available evidence, including the examples provided by the complainant, the responses to the complainant's request by the Cabinet Office, the information on the Clearing House published by the Government (particularly the correspondence from Mr Gove and Ms Smith previously cited), and most notably the recent findings of the Langley Review, the Commissioner is satisfied, on the balance of probabilities, that the Cabinet Office does not hold the information requested by the complainant.
72. To be clear, the Commissioner is satisfied that the Cabinet Office do not hold the requested information because he is of the understanding, from the evidence he has considered, that the Clearing House does not operate in the way in which the complainant believed (i.e. it does not issue edicts or instructions to other departments telling them how to respond to FOI requests).

⁹ [The Cabinet Office Freedom of Information Clearing House \(parliament.uk\)](https://www.parliament.uk)

Right of appeal

73. 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

74. 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.

75. 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

Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF