

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 January 2013

Public Authority: Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered) `

1. The complainant has requested information about concerns raised under the Public Interest Disclosure Act 1998 (PIDA) with Sir Bob Kerslake. The Commissioner's decision is that on the balance of probabilities the Cabinet Office is unlikely to hold relevant information other than the complainant's email of 3 March 2012.

Request and response

2. On 4 March 2012, the complainant wrote to the Cabinet Office and requested information in the following terms:
*"1) How many people have raised concerns with Sir Bob Kersake [sic] under the Public Interest Disclosure Act in the last three months?
2) Were those concerns investigated, given that under the Public Interest Disclosure Act and Civil Service Code, Sir Bob has a duty to consider any concern raised under the PIDA?"*
3. The Cabinet Office responded on 29 March 2012. It stated that it held an email dated 3 March 2012 sent from the complainant, but no other relevant information was held.
4. The complainant requested an internal review on 10 August 2012. The Cabinet Office completed its review on 13 September 2012 and upheld its original decision.

Scope of the case

5. The complainant contacted the Commissioner on 26 September 2012 to complain about the way his request for information had been handled.
6. The Commissioner considers the scope of the case to be whether the Cabinet Office holds any further information relevant to the request.

Reasons for decision

7. Section 1 of the Act states that:

(1) 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.

8. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, in accordance with a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

Public Interest Disclosure Act 1998

9. Under the Public Interest Disclosure Act 1998 (PIDA) civil service employees are allowed to make protected disclosures in certain circumstances.¹
10. PIDA makes it clear that issues should be raised with the employee's line manager, or where this is not appropriate a nominated appeals officer. If the employee is not satisfied with the response the issue can be raised with the Civil Service Commission. If an employee is dismissed or suffers any other form of detriment whilst making a protected disclosure the matter can be taken to an employment tribunal.

¹ For more information see <http://www.legislation.gov.uk/ukpga/1998/23/section/1>

11. It does allow for disclosures to be made "in good faith to a Minister of the Crown". However, the Commissioner does not consider this to apply to Sir Bob Kerslake, as he is the Head of the Civil Service and not a Minister of the Crown.

Balance of Probabilities

12. The Cabinet Office explained to the Commissioner that it had performed searches of all electronic and manual records, including departmental and personal email accounts. The Cabinet Office also states that Sir Bob Kerslake's private office had conducted a search to try and locate any relevant information.
13. The Commissioner is satisfied that the Cabinet Office has met its obligations under section 1(a) of the Act and has performed appropriate and necessary searches to find relevant information. The Commissioner is mindful that the scope of the request was limited to a three month period and considers that this would make it straightforward to locate relevant information.
14. The Commissioner notes that Sir Bob Kerslake does not have a requirement to investigate disclosures under PIDA and does not consider it reasonable that Sir Bob Kerslake would receive much correspondence concerning PIDA. The Commissioner also notes that the Cabinet Office stated to the complainant the correct procedure for raising issues under PIDA and as such has provided reasonable assistance as required under section 16 of the Act.
15. When reaching his decision the Commissioner has considered the detail provided by the Cabinet Office on the extent of their searches, the fact that Sir Bob Kerslake is not a designated recipient for disclosures under PIDA, and that the scope of the request was limited to three months. Based on these factors the Commissioner's decision is that on the balance of probabilities the Cabinet Office is unlikely to hold any requested information beyond the email dated 3 March 2012 sent in by the complainant.

Right of appeal

16. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

17. 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.
18. 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
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