

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 October 2017

Public Authority: The Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office seeking information relating to the 'shortlisting' of David Cameron's resignation honours list. The Cabinet Office originally argued that the shortlisting process was conducted in Mr Cameron's personal and political capacity and thus any information generated by this process would not be held by it for the purposes of FOIA. In a previous decision notice concerning this request the Commissioner concluded that any information generated by the shortlisting process would also be held by the Cabinet Office for official purposes. That decision notice therefore found that if such recorded information was physically held by the Cabinet Office, then such information would be held by it for the purposes of FOIA. The previous decision notice ordered the Cabinet Office to confirm whether any such information was in fact held. It did so by stating that no such information was held. The complainant disputes this position. Having investigated this matter, the Commissioner is satisfied that on the balance of probabilities the Cabinet Office does not hold any information falling within the scope of this request.

Request and response

2. The complainant submitted the following request to the Cabinet Office on 1 September 2016:

'I request information held by you concerning the process of shortlisting Mr Cameron's recommendations for honours around the time of his resignation – particularly any discussion or criteria by or with which names were not recommended for honours.'

3. The Cabinet Office contacted the complainant on 30 September 2016 and explained that it held information falling within the scope of the request but needed additional time to consider the balance of the public interest test under section 37 (information relating to the conferring of any honour or dignity) of FOIA.
4. The Cabinet Office provided the complainant with a substantive response on 16 November 2016. The response explained that the Cabinet Office did not hold the requested information on the basis that the shortlisting process was conducted in Mr Cameron's personal and political capacity and thus any information generated by this process would not be held by the Cabinet Office for the purposes of FOIA.
5. This position was upheld in the Cabinet Office's internal review which was issued on 22 November 2016.
6. The complainant subsequently complained to the Commissioner about this matter. The Commissioner issued a decision notice on 20 June 2017, reference FS50661241, which accepted that there is a political dimension to the shortlisting process. However, the notice also concluded that any information generated by the shortlisting process would also be held for official purposes. Therefore, if any recorded information was physically held by the Cabinet Office concerning the shortlisting process then such information would be held by it for the purposes of FOIA. The decision notice therefore ordered the Cabinet Office to confirm or deny whether information falling within the scope of the request is held, and if held, to disclose this information or issue a refusal notice citing an exemption as a basis to withhold this information.
7. The Cabinet Office contacted the complainant on 26 June 2017 and explained that *'We confirm no information is held by Cabinet Office within scope of your request of a political, official nature or otherwise.'*

Scope of the case

8. The complainant contacted the Commissioner on 19 July 2017 in order to complain about the Cabinet Office's response to the decision notice. The complainant disputed the Cabinet Office's position that it did not hold any information falling within the scope of his request.

Reasons for decision

9. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
10. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
11. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches; and/or, other explanations offered as to why the information is not held.

The complainant's position

12. The complainant argued that the Cabinet Office's denial of 26 June 2017 that the requested information was not held is difficult to understand and believe.
13. The complainant argued that the Cabinet Office's assertion that it does not hold the requested information directly contradicts its statement of 30 September 2016 that it did hold the requested information but it needed additional time to consider the balance of the public interest test under section 37 of FOIA. The complainant argued that it was self-evidently difficult for information to be considered as falling under section 37 when it does not in fact exist.
14. The complainant suggested that the conclusions to be drawn from these contradictory statements seem to be that either the claim of section 37 was misleading, perhaps deliberately so, in order to provide the Cabinet Office with additional time to respond to the request, or the Cabinet Office remains in error as to whether it actually holds the requested information. The complainant explained that considering the communications received from the Cabinet Office, he suspected the latter.

The Cabinet Office's position

15. The Cabinet Office acknowledged that it initially extended the time to consider the public interest test under section 37. However, the Cabinet Office explained that when looking more closely at the information it thought was in scope of the request as part of its further public interest test considerations, it came to the conclusion that the information in question did not relate to the shortlisting process, but rather it was about the processes of awarding honours following the completion of the short listing process. As the request specifically sought information about the short listing process the Cabinet Office concluded that this information was not in the scope of the request hence its original response to this request that no information was held.
16. The Cabinet Office reiterated to the Commissioner that it does not hold information falling within the scope of this request. It noted that civil servants will not have been involved in the shortlisting process and therefore information about the shortlisting process will therefore not have been recorded.
17. The Cabinet Office explained that it conducted searches, of both paper and electronic records, of Number 10 Downing Street's archives in relation to the period in question that had been transferred to the Cabinet Office's archives. The Cabinet Office explained that if any relevant information was held it would be located in these records as they contained the records of Mr Cameron's premiership. The search terms used by the Cabinet Office to locate information were 'honours', 'resignation' and 'resignation honours'. The Cabinet Office also stated that no recorded information relevant to this request had been deleted.

The Commissioner's position

18. The Commissioner has examined the information which the Cabinet Office initially considered to fall within the scope of this request, hence its decision to extend the time it needed for its public interest test considerations under section 37. The Commissioner agrees with the Cabinet Office's assessment that this information does not fall within the scope of this request. This is because it does not concern the shortlisting of names for these honours. Rather, as the Cabinet Office has suggested, the information concerns the administrative process conducted after the shortlisting exercise had been complete. In the Commissioner's view the request clearly sought information about the shortlisting of names for the honours list in question and she therefore agrees that this information is out of scope of the request.
19. It is regrettable that the Cabinet Office initially thought that it held information falling within the scope of this request, and thus extended its public interest test considerations, as this understandably led to

confusion and suspicion on the complainant's behalf as to whether information was held or not. However, for the reasons set out in the preceding paragraph the Commissioner is satisfied that this information does not fall within the scope of the request.

20. With regards to the searches that the Cabinet Office has undertaken to locate information falling within the scope of this request, the Commissioner considers these to be reasonable and logical; both paper and electronic records dating from the Cameron administration have been searched and the keywords used are ones that in the Commissioner's view would be expected to have returned material relating to the request.
21. The Commissioner is therefore satisfied that on the balance of probabilities the Cabinet Office does not hold information falling within the scope of the complainant's request.

Right of appeal

22. 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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. 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

Jonathan Slee
Senior Case Officer
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