

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 20 March 2018

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

Decision (including any steps ordered)

1. The complainant has requested information submitted by former Prime Ministers in relation to their claim for the Public Duty Costs Allowance.
2. The Cabinet Office refused to disclose the information citing section 40(2) and section 41(1) of the Act.
3. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 40(2) and section 41(1) for part of the requested information but the remaining information should be disclosed.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with the information that falls outside the exemptions under section 40(2) and section 41(1).
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. On 4 April 2016, the complainant wrote to the Cabinet Office and requested information in the following terms:

"Copies of all receipts and supporting documentation provided in respect

of claims since 1 April 2014 by former Prime Ministers for public duty costs allowance.”

7. The Cabinet Office responded on 3 May 2016 and confirmed that it held the requested information. The Cabinet Office explained that it was withholding the information under section 40(2)¹ as it considered disclosure would breach the first data protection principle of the Data Protection Act 1998 (DPA). It also considered that the information was exempt under section 41(1)². It was satisfied that disclosure could lead to an actionable breach of confidence and the Cabinet Office would not be able to defend its decision on the basis of the public interest in disclosure.
8. The complainant requested an internal review on 4 May 2016 and disputed the Cabinet Office's decision and referred to the First Tier Tribunal decision EA/2015/0194³.
9. Following an internal review, the Cabinet Office wrote to the complainant on 7 June 2016 and upheld its decision to withhold the information under section 40(2). The Cabinet Office did not state if it was relying on section 41(1) of the Act but did explain that it considered the public interest lay in maintaining the confidential nature of the information.
10. The Cabinet Office also confirmed that it was appealing the First Tier Tribunal decision and therefore considered the exemptions still applied.

Scope of the case

11. The complainant contacted the Commissioner on 21 June 2016 to complain about the way his request for information had been handled.
12. As the Cabinet Office were appealing the First Tier Tribunal decision EA/2015/0194 and this decision would be likely to impact on the Commissioner's decision in this case, the Commissioner and the complainant agreed to await the outcome of the appeal. However, the

¹ Third party information where disclosure would breach the Data Protection Act 1998.

² Information provided in confidence

³ [http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1760/Webber,Gabriel-%20EA2015-0194%20\(22-03-16\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1760/Webber,Gabriel-%20EA2015-0194%20(22-03-16).pdf)

appeal did not progress to the Upper Tribunal and has been remitted back to the First Tier Tribunal.

13. The Commissioner, therefore, decided to proceed with the case and wrote to the Cabinet Office for its submission in February 2017.
14. The Commissioner notes that as of May 2015, Rt Hon Nick Clegg (now Sir Nicholas Clegg)⁴ was entitled to receive the Public Duty Costs Allowance (PDCA), however, the request for information clearly states that the complainant requires the information submitted by former Prime Ministers. The supporting documents for claims by Sir Nicholas Clegg do not, therefore, fall within the scope of this request for information.
15. The Cabinet Office stated in its submission to the Commissioner that there was information that should have been provided to the complainant at the time of the request and that it intended to write to the complainant and disclose this information.
16. As of the date of this notice, neither the Cabinet Office nor the complainant has made the Commissioner aware that this information has been disclosed. The Commissioner will therefore consider all information falling within the scope of the request.
17. The Cabinet Office confirmed that it wished to rely on section 40(2) and section 41(1) to withhold the information. It acknowledged that the internal review had not mentioned section 41(1) and explained that this was an error.
18. The Commissioner therefore considers the scope of this case to be whether the Cabinet Office are entitled to rely on section 40(2) and section 41(1) to withhold the information.

Background

19. The Public Duty Cost Allowance was introduced to assist former Prime Ministers still active in public life. According to the Cabinet Office's website⁵, payments are made only to meet the actual cost of continuing
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⁴ Sir Nicholas Clegg was Deputy Prime Minister of the Conservative-Liberal Democrat Coalition from 2010-2015.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476392/Page_139_-_Other_administration_costs.csv/preview

to fulfil public duties. The costs are a reimbursement of incurred expenses for necessary office costs and secretarial costs arising from their special position in public life.

20. In addition to the allowance paid, former Prime Ministers are entitled to claim a pension allowance to contribute towards their staff pension costs. This is limited to a maximum of 10% of their staff salary costs. Such payments are made directly to the pension providers of those staff; they are not paid to the former Prime Ministers or their staff.

Reasons for decision

Section 40(2) – Third party personal data

21. Section 40(2) of the Act states that personal data is exempt from disclosure if to do so would breach any of the data protection principles contained within the DPA.

22. Personal data is defined in section 1(1) of the DPA as:

"...data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual."

23. The Cabinet Office explained in its submissions that it considered the following information was exempt under section 40(2) of the Act:

- Bank details
- Names and salaries of the former Prime Ministers' staff
- Names and contact details of junior officials within the Cabinet Office

24. The Cabinet Office explained that it considered disclosure of the above information would breach the first data protection principle which states that:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, ..."

25. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
- The reasonable expectations of the individual(s) in terms of what would happen to their personal data. Such expectations could be shaped by;
 - what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy including the effect of Article 8 of the European Convention on Human Rights (ECHR);
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - any particular circumstances of the case, eg established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
 - The consequences of disclosing the information, ie damage or distress, would the individual suffer if the information was disclosed? In consideration of this factor, the Commissioner may take into account;
 - Whether information of the nature requested is already in the public domain;
 - If so, the source of such a disclosure, and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
26. Furthermore, notwithstanding the data subjects' reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling legitimate interest in disclosure to the public.
27. In considering 'legitimate interests', in order to establish if there is a compelling reason for disclosure, such interests can include broad

general principles of accountability and transparency for their own sake, as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach.

28. The Cabinet Office explained to the Commissioner that it would be unfair to publish the specific information as the former Prime Ministers and their staff would have a very reasonable expectation that their personal details would be kept confidential.
29. The Cabinet Office acknowledged that it had made public some information on the amounts paid under the PDCA.
30. The Cabinet Office explained that the former Prime Ministers would have no expectation that the provided bank details would be disclosed to the public and to do so would put their security and finances at risk.
31. The Cabinet Office also confirmed that the supporting documentation included the names and salaries of individuals working in the former Prime Ministers' offices.
32. The Cabinet Office explained that the staff would have a reasonable expectation that their personal data would not be disclosed and quoted paragraph 50 of the revised First-Tier Tribunal decision EA/2015/0194:
"We do not find it likely that it would have been the reasonable expectation of these individuals (i.e. those employed in the former Prime Ministers' office) that their personal data would be disclosed."
33. The Cabinet Office explained that it considered the individual salaries paid are exempt as due to the small number of employees in each office, it would be possible to identify the salaries of particular individuals even with names redacted.
34. The Cabinet Office confirmed that it had previously sought the views of the offices of the former Prime Ministers on publication, and redacted publication, of the requested information and the offices did not provide consent for disclosure.
35. The Cabinet Office explained that it had considered whether there was a condition in Schedule 2 of the DPA which would support disclosure. The Cabinet Office acknowledged that there is a legitimate public interest in a better understanding of how the PDCA is paid and what the payment of PDCA supports. The Cabinet Office explained that it does not consider disclosure of the information set out in paragraph 23 would add so significantly to the public understanding of PDCA to justify the release of this personal data.

36. The Commissioner has considered the Cabinet Office's submission, the withheld information and her own guidance regarding the Act and the DPA.
37. She considers that there are few, if any, circumstances in which it would be considered fair to disclose an individual's bank details. In the specific circumstances of this case, it would clearly be unfair and, therefore, the Commissioner considers this information is exempt from disclosure.
38. With regards to the personal details of the staff of the offices of the former Prime Ministers, the Commissioner considers that whilst their salaries are, at least in part, funded by the PDCA, they are not civil servants or public sector workers and, if they were, they would not be at a level of seniority to justify disclosure. The Commissioner considers, therefore, that they would have a reasonable expectation of privacy and the legitimate interest in transparency of how public funds are spent is not sufficient to override this expectation of privacy.
39. The Commissioner notes that in the open annex to the First-Tier Tribunal original decision, EA/2015/0194, it states that individual salaries should be redacted but overall monthly payments should be disclosed.

"Although we consider that given the very small number of staff, their names and amounts they were paid should be redacted to provide anonymity, the total amounts paid to the staff should not be redacted. This information would not involve disclosure of personal data, except to the theoretical and very limited extent of disclosing the maximum such individuals would have been paid, if their identities are known. We consider that any such very limited disclosure would be outweighed by the public interest in knowing the total amount claimed by former Prime Minister A for staff salaries."

40. In light of the Tribunal's decision, the Commissioner considers that the individual staff members' names and salaries are exempt from disclosure, however, the monthly totals are not exempt under section 40(2) and should be disclosed.
41. The Commissioner does however note that some records provided show only one or two staff members' salaries. In these cases, set out in the confidential annex, the monthly totals are exempt as these would disclose individual salaries.
42. The Cabinet Office also set out that it considered the names and contact details of junior civil servants administering the PDCA were exempt under section 40(2). The Cabinet Office has not provided arguments regarding withholding this information.

43. The Commissioner acknowledges the standard practice of withholding the personal details of junior members of staff in public authorities.
44. In this case, it appears that the named staff member is not a junior member of staff. He is a deputy finance director and is named as a Senior Civil Servant on the gov.uk website⁶.
45. The Commissioner considers that given his seniority, disclosure would not be unfair. She also notes the Tribunals comment that "*there is legitimate public interest in knowing the level at which these claims are handled*".
46. The Commissioner, therefore, considers that this named staff member's personal details are not exempt under section 40(2).
47. Having reviewed the withheld information, the Commissioner notes that there is personal data not covered by the Cabinet Office's arguments. As the UK regulator of the Data Protection Act 1998, the Commissioner must ensure that privacy rights are upheld even where the public authority has not expressly withheld the information under any of the exemptions under section 40.
48. An individual is named on one of the former Prime Minister's records. The Commissioner considers that this individual would have no expectation that their personal details would be disclosed and, therefore, to do so would be unfair.
49. The information identified in the confidential annex is exempt from disclosure under section 40(2) of the Act.

Section 41 – Information provided in confidence

50. Section 41(1) of the Act states:

"Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and,*
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."*

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62341/co-scs-list-2010-06-10-core.csv/preview

51. To reach a decision on whether section 41(1) applies, the Commissioner will first determine whether the information was obtained by the Cabinet Office from a third party. If so, she will go on to consider whether disclosure of the information to the public would constitute a breach of confidence.
52. Section 41(1) is an absolute exemption so the Commissioner does not have to consider the balance of the public interest to determine whether the information can be disclosed. However, the common law duty of confidence contains an inherent public interest test as the public interest in disclosure can be a valid defence to a claim for breach of confidence.

Was the information obtained from a third party?

53. The documents provided to claim for the allowances have all been submitted to the Cabinet Office by the offices of the former Prime Ministers. From the format of the documents and the information contained within them, it is clear that there is not a pre-determined format required by the Cabinet Office, and each office has its own way of providing justification for the allowance it claims.
54. The information was created externally and only obtained by the Cabinet Office when the offices of the former Prime ministers submitted the claims for the allowance. The Commissioner is satisfied that the withheld information was obtained from a third party.

Would disclosure of the information constitute a breach of confidence?

55. The test of confidence was established in the High Court case of *Coco v A N Clark (Engineers) Limited [1968] FS415*. For the Commissioner to find that disclosure would constitute a breach of confidence it must be shown that;

- the information has the necessary quality of confidence;
- the information was imparted in circumstances importing an obligation of confidence; and
- unauthorised use of the information would be of detriment to the confider.

Information has the necessary quality of confidence

56. Information will have the necessary quality of confidence if it is more than trivial and not otherwise accessible. The information does not have to be particularly sensitive, but it must be more than trivial.

57. The requested information contains information relating to the former Prime Ministers and their claim for reimbursement under the PDCA. The information contains financial details of the former Prime Ministers and their staff.
58. The Cabinet Office also confirmed that in some cases more information than necessary had been provided to support the application for PDCA. The Cabinet Office explained that this was because the expectation of the former Prime Ministers is that the information would not be released and would be held in confidence.
59. The Commissioner considers that the information holds importance to the former Prime Ministers and cannot, therefore, be considered trivial.
60. The Commissioner is not aware that this detailed information was in the public domain at the time of the request. The Commissioner notes that the Cabinet Office has previously informed her that the total cost claimed through the allowance scheme is announced in the House of Common on a regular basis and is not disclosed otherwise beforehand. She also notes that the Cabinet Office published the total amounts claimed by each former Prime Minister as part of its "Transparency data" webpage⁷. However, the supporting documentation requested in this case is not published and so, the Commissioner finds that the detailed withheld information has the necessary quality of confidence.

The information was imparted in circumstances importing an obligation of confidence

61. In outlining its arguments, the Cabinet stated that the information had been provided on the understanding that it would not be disclosed. The Cabinet Office explained that the information provided included bank details, staff salaries and, in some cases, further information than required to support the application.
62. The Cabinet Office explained that it was clear that the former Prime Ministers would have only provided this information with the reasonable expectation of confidentiality.
63. The Commissioner notes that in decision notice FS50560132, regarding similar information, she states at paragraph 22:

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/647027/page_87_public_duty_cost_allowance.csv/preview

"The Commissioner concludes that the information was imparted in circumstances importing an obligation of confidence. It is clear that the withheld documents were not intended to be released to the public domain, and that the parties involved in providing and receiving the information would expect the supporting documents for the allowance to be treated in confidence."

64. At the appeal of decision notice FS50560132, the First Tier Tribunal stated at paragraphs 29-31:

"29. We find that the information was not provided in circumstances importing an obligation of confidence. The Appellant says, and we agree, that in a post FOIA era, a former Prime Minister cannot reasonably have expected that he or she could claim up to £115,000 per annum, for life, from the public purse, without the public expecting there to be transparency as to what the money is being spent on.

30. In finding otherwise, the Commissioner seems to have relied on the Cabinet Office's assertion that the information was provided to it in strict confidence and on the understanding that it would not be disclosed. The Commissioner has said, in his Response dated 29 September 2015, that he has no reason to doubt the Cabinet Office's explanation in this regard. The Commissioner noted that the understanding that the information would be kept confidential, was evidenced, in some cases, by the inclusion of the words 'Private and Confidential', on the documents supplied, although the Commissioner acknowledged that this was not determinative. The Commissioner, noted however, that it is the practice for the total amounts claimed under the PDCA to be published, while a breakdown of the information is not. The Commissioner says that this supports the conclusion that the information was provided to the Cabinet Office on the understanding that it would not be disclosed.

31. In our view, no evidence has been provided to support the Cabinet Office's assertion that the information was provided to it in confidence. There is no correspondence, protocol, memorandum of understanding or evidence of any other communication before us between the Cabinet Office and any former Prime Ministers in which the confidentiality of the information has been discussed, much less agreed. The fact that a breakdown has not previously been disclosed does not mean that the information was provided in confidence. As the Commissioner has acknowledged, the words 'Private and Confidential' cannot be determinative. In any event, these words appear on only one invoice, and that is for the full amount of

£115,000. That amount has been disclosed, so clearly the Cabinet Office has not itself treated those words as importing an obligation of confidence."

65. In light of the tribunal's comments, the Commissioner has reviewed her position regarding whether the information was provided in circumstances importing an obligation of confidence.
66. The Commissioner acknowledges that the offices of the former Prime Ministers are likely to have expected or assumed information would be kept confidential, however, it does not automatically follow that the Cabinet Office therefore has an obligation to maintain the assumed confidence.
67. The Cabinet Office's guidance on PDCA claims⁸ makes clear that the PDCA is a re-imbusement of expenses encountered in the duties of a former Prime Minister. It is not a flat rate expense or a private income.
68. The above guidance states:

"Payment of the Allowance and salaries

It is the responsibility of the former Prime Minister to advise the Cabinet Office of their intention to make a drawdown for the PDCA allowance.

The allowance is paid on a reimbursement basis and documentary evidence must be received before the payment is made. The former Prime Minister must provide the Cabinet Office with details of where the payments should be made and provide documentary evidence of the claim.

A list of the staff names and how is paid [sic] to each member is required for Audit trail purposes.

The former Prime Minister may arrange to pay his/her staff directly and claim reimbursement from the Cabinet Office. However, any such claims must be supported by documentary evidence that the claim is valid."

69. The Commissioner considers that in light of the re-imbusement nature of the expense, previous case law regarding parliamentary expenses and the requirement for transparency in public spending, it was not reasonable to assume that the submitted documentary evidence would

⁸ http://data.parliament.uk/DepositedPapers/Files/DEP2014-0347/PDCA_Guidance_Note_070314.doc

not be subject to outside scrutiny. Indeed, the Commissioner considers it unreasonable to assume such significant sums of public funds could be claimed on an entirely confidential basis.

70. The Commissioner does note, however, that the Cabinet Office explained that a small amount of information provided comprises additional information to that required as documentary evidence. This has been identified in the confidential annex.
71. The Commissioner considers that as this information was provided voluntarily to aid consideration of the claim and it is only indirectly related to the claim for PDCA, the expectation of confidentiality of this information would be reasonable. The Commissioner considers that this small amount of information was imparted in circumstances importing an obligation of confidence.
72. For the remainder of the information, the Commissioner considers that it was not imparted in circumstances importing an obligation of confidence and section 41 is not, therefore, engaged.

Unauthorised use of the information would be of detriment to the confider

73. The Cabinet Office also explained that it considered disclosure would undermine the relationship between the government and the offices of the former Prime Ministers. The Cabinet Office raised concerns that if the former Prime Ministers felt the information shared with the Cabinet Office was not held in confidence, they would feel inhibited in providing this type of information.
74. The Commissioner considers that the small amount of information provided in addition to the required claim information comprises information which would, if disclosed, give an insight into the private undertakings of the former Prime Minister in question.
75. The Commissioner is mindful of the First-Tier Tribunal's decision in the case of *Bluck v ICO & Epsom and St Helier University Hospital NGHS Trust [EA/2016/0090]*. Paragraph 15 states that the loss of privacy can be a detriment in its own right. There is no need therefore for there to be any detriment to the confider in terms of tangible loss in order for information to be protected by the law of confidence.
76. The Cabinet Office has argued that disclosure of the information would weaken the bond between the government and the offices of the former Prime Ministers, and, if the requested information was disclosed, there would be a greater reluctance to provide this information in future.

77. The Commissioner considers that in the context of the entirety of the requested information, this argument would carry little weight as the former Prime Ministers cannot claim the PDCA without submitting the required information. A reluctance to provide information should result in the PDCA claim being rejected in accordance with the Cabinet Office PDCA guidance.
78. However, in the context of the additional information provided, the Commissioner considers that this argument carries more weight as the information was provided voluntarily and disclosure could lead to the breakdown of trust, resulting in only the minimum required information being submitted.
79. The Commissioner is satisfied that unauthorised use of the voluntarily provided information would be of detriment to the confider.

A legal person must be able to bring an actionable case for breach of confidence

80. Section 41(1)(b) provides that the breach of confidence must be actionable by either the legal person who gave the information to the public authority, or by any other legal person.
81. The use of "actionable" was defined by Lord Falconer during a debate on the FOI Bill:

"'Actionable' means that one can go to court and vindicate a right in confidence in relation to that document or information. It means being able to go to court and win." (Hansard HL (series 5) Vol. 618, Col. 416).

"...the word 'actionable' does not mean arguable... It means something that would be upheld by the courts; for example, an action that is taken and won. Plainly, it would not be enough to say, 'I have an arguable breach of confidence claim at common law and, therefore, that is enough to prevent disclosure.' This is not the position. The word used in the Bill is 'actionable' which means that one can take action and win." (Hansard Vol. 619, Col 175-176).

82. Case law on the common law of confidence suggests that a breach of confidence will not succeed and therefore won't be actionable, in circumstances where a public authority can rely on a public interest defence.
83. The Cabinet Office explained that it had considered whether there would be reasonable prospects of success in defending an action for breach of confidence. It confirmed that it had taken into account that there is a presumption in favour of maintaining confidences and that it is necessary to show that the greater public interest will be served by

breaking that confidence. It explained that it did not consider that a successful defence could be argued by using any of the public interests that the courts have previously recognised as defences to an action for breach of confidence. The Cabinet Office explained that it considered that the information does not demonstrate fraud or failure of process, nor is disclosure necessary to protect the public or individuals from harm.

84. The Cabinet Office explained that it considered the general public interest in openness, and the specific public interest in greater understanding of the purposes for which PDCA is paid, are not sufficient to override the strong public interest in maintaining confidences.
85. The Courts used to take the position that the public interest in maintaining confidentiality could only be overridden on exceptional grounds, for example, if information would bring to light evidence of misconduct, illegality or gross immorality.
86. The Courts' position, however, began to change following the Court of Appeal decision *London Regional Transport v The Mayor of London* [2001] EWCA Civ 1491; [2003] EMLR88 in which the question of whether exceptional grounds are a prerequisite for a public interest defence to succeed was left open.
87. This ruling was subsequently interpreted by the information tribunal in *Derry City Council v ICO* [EA/2006/0014, 11 December 2005) to mean that exceptional circumstances were no longer required to override the duty confidence that would otherwise exist. Further case law has recognised the need to incorporate the provisions of the Human Rights Act into the test of confidence resulting in the modification of the public interest test into a test of proportionality.
88. This was acknowledged by the Court of Appeal in *HRH Prince of Wales v Associated Newspapers Limited* [2008] which stated at paragraph 67:

"...before the Human Rights Act came into force the circumstances in which the public interest and publication overrode the duty of confidence were very limited. The issue is whether exceptional circumstances justified disregarding the confidentiality that would otherwise prevail. Today the test is different. It is whether a fetter of the right of freedom of expression is, in particular circumstances, "necessary in a democratic society". It is a test of proportionality..."
89. The test now, therefore, is whether there is a public interest in disclosure which overrides the competing public interest in maintaining the duty of confidence.

90. Some weight should always be afforded to the general public interest in ensuring public authority remain transparent, accountable and open to scrutiny, for example, where disclosure would;
- further public understanding of, and participation in the debate of issues of the day;
 - enable individuals to understand decisions made by PAs affecting their life and, in some cases, assist individuals in challenging those decisions; or
 - facilitate accountability and transparency in the spending of public money.
91. The Commissioner must however also afford weight to the general public interest in preserving the principle of confidentiality and preventing an unnecessary negative impact on the interests of the confider.
92. The Commissioner acknowledges that, as set out by the Cabinet Office, individuals and organisations may be discouraged from confiding in the public authority if they do not have a degree of certainty that their trust will be respected. However, the weight carried by this factor will depend on the context of the supply of the information and how the relationship of trust operates to serve the public interest.
93. The Commissioner notes that the Cabinet Office's explanation that it could not mount a successful public interest defence was in the context of the entirety of the information requested. If this were the subject of her consideration, it is unlikely that the Commissioner would accept this argument as, in the light of the First Tier Tribunal's decision, referred to above, she considers there is a significant public interest in transparency and accountability of the processing of the PDCA.
94. However, the Commissioner does accept the argument in relation to the small amount of information under consideration. The information is only indirectly related to the PDCA claim and would not provide any further understanding of the PDCA process.
95. The Commissioner considers the public interest in disclosure of this information would not be sufficient to amount to a defence with a reasonable prospect of success.
96. The Commissioner, therefore, considers that the information specified in the confidential annex engages the exemption at section 41 of the Act.
97. The Commissioner requires the Cabinet Office to provide the complainant with the requested information with the exception of the

exempt information named in this notice and identified in the confidential annex.

Other matters

98. The Commissioner's investigation encountered significant and unnecessary delays in waiting for the Cabinet Office to provide the withheld information.
99. The Cabinet Office took several months to provide the withheld information as it was unable to locate items within the scope of the request. The Commissioner is concerned that the Cabinet Office may have applied exemptions to information it had not reviewed or was even certain it held.
100. The Cabinet Office also provided an explanation for part of the delay being that it could not locate specified information. This information was then not provided with the Cabinet Office's submission and when queried, the Cabinet Office confirmed that the information fell outside of the scope of the request. It is not, therefore, apparent to the Commissioner why the delay occurred.
101. Whilst there is no statutory timeframe in which public authorities must provide information to the Commissioner, public authorities are obliged to engage with the Commissioner. The Commissioner asks the Cabinet Office to make efforts to ensure that its submissions and withheld information are provided in a timely manner in future cases.

Right of appeal

102. 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

103. 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.

104. 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

Gerrard Tracey
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