

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

### **Decision notice**

**Date:** 24 August 2022

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall  
London  
SW1A 2AS

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

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1. The complainant has requested details of the groups and individuals the Minister for Women and Equalities has met or consulted with regarding her response to the Gender Recognition Act consultation. The Cabinet Office provided some information within the scope of the request but stated that further information was not held.
2. The Commissioner accepts that, on the balance of probabilities, no further information is held. However he finds that the the Cabinet Office has not fulfilled its duty under section 16 to provide advice and assistance. During the course of the investigation the Cabinet Office explained to the Commissioner that further information may be held by the Department for International Trade (DIT), however it had not communicated this to the complainant.
3. The Commissioner has provided the complainant with the correct details for submitting their request to DIT. Accordingly he does not require any further steps to be taken by the Cabinet Office.

### **Request and response**

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4. On 28 September 2020, the complainant wrote to the Cabinet Office and requested information in the following terms:

"This FOIR is for the department to provide details of the groups and individuals the Minister has met or consulted with regarding her response to the Gender Recognition Act consultation. This request covers all forms of communication on this matter and should cover all correspondence between Ms Truss being appointed as the Minister and her announcement. The information should include who was consulted

including the name of The organisation and the individuals met and dates and times of any correspondence.”

5. On 7 December 2020 the complainant wrote to the Commissioner to complain about the delays experienced in obtaining a response.
6. On 15 January 2021 the Commissioner issued a decision notice under reference IC-75660-J0Z9 finding the Cabinet Office in breach of section 10 of FOIA and ordering it to provide a response to the complainant within 35 working days.<sup>1</sup>
7. The Cabinet Office responded on 18 February 2021. It provided some information in the form of an annexed list of meetings and calls that the Minister for Women and Equalities participated in where the consultation on reform of the Gender Recognition Act was raised, prior to 22 September 2020.
8. On 23 February 2021 the complainant requested an internal review. They stated that the request hadn't been responded to in full, as they had asked for all forms of communication including, but not restricted to, emails and letters.
9. Following an internal review the Cabinet Office wrote to the complainant on 9 August 2021. It stated that further information was held within the scope of the request in the form of a letter from the Minister to the Chief Executive of Stonewall. The Cabinet Office disclosed this information to the complainant.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 9 August 2021 to complain about the way their request for information had been handled.
11. The complainant stated that the response provided at internal review did not provide any of the information requested.
12. The Commissioner notes that the Cabinet Office did disclose some information to the complainant, both in its initial response and following the internal review. Therefore the scope of this case is to consider whether further information was held within the scope of the request.

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619124/ic-75660-j0z9.pdf>

## Reasons for decision

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### Section 1: General right of access to information

13. Section 1(1) of 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.

14. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.

### The complainant's position

15. The complainant's position is that the Cabinet Office has not fulfilled the request in its entirety. Specifically, the complainant believes the Cabinet Office holds more recorded information within the scope of the request than has presently been supplied.

16. The complainant advised the Cabinet Office in their request for internal review that their request was for all forms of communication, not just emails and letters. The complainant therefore expected that the Cabinet Office would hold information recorded by other forms of communication.

### The Cabinet Office's position

17. The Commissioner wrote to the Cabinet Office on 22 June 2022 with a series of questions to determine whether more information was held within the scope of the request than that which had already been provided. The questions covered the types of searches conducted, whether information may have been destroyed, and whether there was a statutory obligation to retain the information.

18. The Cabinet Office responded on 29 July 2022. It explained that it had conducted a search of the Government Equalities Office's [GEO]<sup>2</sup> communications folders and communication approvals records which includes hard copy letters that are scanned and stored according to the department's naming convention. Staff within the Gender Recognition Act Team who coordinated correspondence were also contacted and asked to perform a search. The Cabinet Office concluded that all information retrieved had been disclosed.

19. The Cabinet Office offered further explanation to the Commissioner:

"The FOI request is confined to the Secretary of State for Women and Equalities, Rt Hon Liz Truss MP. At the time of the FOI request, Minister Truss was Secretary of State for International Trade and President of the Board of Trade (from 24 July 2019 – 15 September 2021). Her private office was therefore within the Department for International Trade (DIT) when she was appointed Secretary of State for Women and Equalities in the GEO on 10 September 2019. Although Minister Truss had (and still has) two portfolios, there is no separate private office in the GEO supporting her equalities portfolio within GEO.

The Cabinet Office search was thorough and located all the information in scope. Any further information would, if held, be held by DIT. We therefore advised the requester to submit an FOI request to DIT for any information they may hold."

20. On review of the information submitted by the complainant the Commissioner concluded that he could not identify where the Cabinet Office had advised the complainant to contact DIT, and wrote to the Cabinet Office on 2 August 2022 to request that it direct him to where in its responses it had done this.

21. The Cabinet Office responded on 4 August 2022. It explained that the briefing note that preceded the issue of its response of 18 February 2021 had suggested advising the complainant to contact DIT, however the Cabinet Office had overlooked including this in both the initial response and internal review response.

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<sup>2</sup> <https://www.gov.uk/government/organisations/government-equalities-office>

"The Government Equalities Office leads work on policy relating to women, sexual orientation and transgender equality. We are responsible for a range of equalities legislation."

### The Commissioner's view

22. The Commissioner's view is that the searches conducted by the Cabinet Office were reasonable, proportionate and likely to have retrieved all of the information held within the scope of the request. The Cabinet Office has clarified to the Commissioner that the Minister's Private Office was in another department; therefore it is unlikely that further Cabinet Office searches would have retrieved more information than that which has been provided to the complainant.
23. The Commissioner considers it reasonable for the complainant to have believed that further information would have been held, as the Cabinet Office had not notified them of the Minister's Private Office in its response or internal review. Furthermore, the Commissioner considers it understandable that the complainant believed that information would have been held by the Cabinet Office given that it works closely with the GEO and handles its FOIA requests.
24. However the details of searches performed by the Cabinet Office have demonstrated why further information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held; he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
25. For the reasons above, the Commissioner is satisfied that the Cabinet Office does not hold any further recorded information within the scope of the request. The Commissioner has not addressed whether further information is held by DIT.

### **Section 16: Duty to provide advice and assistance**

26. Section 16(1) of FOIA states:

"It shall be the duty of the public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it".

27. The Commissioner considers that the Cabinet Office has failed to comply with section 16. It had intended to provide the complainant with the details of a separate authority that may hold further information sought by the request, however it failed to do so.

28. Paragraph 2.12 of the Section 45 Code of Practice<sup>3</sup> (the Code) provides guidance for public authorities in instances where they have identified that information may be held by a different public authority:

"2.12 In most cases where a public authority does not hold the information, but thinks that another public authority does, they should respond to the applicant to inform them that the requested information is not held by them, and that it may be held by another public authority. The public authority should, as best practice where they can, provide the contact details for the public authority they believe holds the requested information."

29. The Cabinet Office overlooked the opportunity at both its initial response and internal review to provide the complainant with the details for submitting their request to DIT. This may have helped expedite the process of retrieving information for the complainant and negated the need for the complainant to contact the Commissioner. The Cabinet Office did not provide these details, although the Commissioner acknowledges the briefing note referred to in paragraph 21 above. For this reason, the Commissioner finds that the Cabinet Office failed to comply with its duty at section 16 of FOIA.
30. In light of the significant delays the complainant has experienced the Commissioner considers it practical at this juncture to provide the complainant with the contact details<sup>4</sup> for submitting their request to DIT, rather than requiring the Cabinet Office to do so.

## Other matters

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31. While there is no statutory time frame within which a public authority is expected to complete an internal review, the Commissioner observes that paragraph 5.4 of the Code recommends that internal reviews should normally be completed within 20 working days. In any event the Commissioner considers seven months from the date of the internal review request to be excessive.

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<sup>3</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

<sup>4</sup> [FOI@trade.gov.uk](mailto:FOI@trade.gov.uk)

32. The Commissioner would also refer the Cabinet Office to his guidance on completing an internal review.<sup>5</sup> This sets out the Commissioner's view that internal reviews should take a maximum of 40 working days, even in the most exceptional of circumstances.

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<sup>5</sup> <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/#20>

## Right of appeal

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33. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals  
PO Box 9300  
LEICESTER  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

34. 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.
35. 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 .....**

**Sarah O’Cathain  
Senior Case Officer  
Information Commissioner’s Office  
Wycliffe House  
Water Lane  
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