

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 June 2022

Public Authority: Cabinet Office

Address: foi-team@cabinetoffice.gov.uk

Decision (including any steps ordered)

1. The complainant requested various information in respect of the Back to School Safely campaign. The Cabinet Office provided some information but the complainant believes it has not disclosed all relevant information it holds.
2. The Commissioner's decision is that the Cabinet Office has failed to demonstrate that it has complied with section 1(1) FOIA in response to this request.
3. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation.
 - issue a fresh response to the complainant including the information in respect of the individual referred to by the complainant.
4. The Cabinet Office 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

5. On 12 October 2020 the complainant wrote to the Cabinet Office and requested the following information:
 - "1. Any analysis of the success and reach of the social media influencers / celebrities in the back to school safely campaign.

2. Please can this include the reach per post on the person's social media and any commentary from the Cabinet Office, or any legacy if commissioned, on the outcomes and successes of this part of the campaign.

3. To be clear, I do not want to access any information deemed commercially sensitive information, such as costs, which would result in the request being refused.

If that is in any documents, please can it be redacted."

6. The Cabinet Office responded on 11 December 2020. It provided some information relevant to the request.
7. The complainant contacted the Cabinet Office on the same date stating that figures did not include those for Dr Philippa Kaye who was also involved in the campaign, and asked if there were any other influencers / celebrities that were paid to be part of the campaign. They added that a breakdown of the reach 'per post' rather than a combined total had also been specified in their request.
8. The Cabinet Office does not appear to have undertaken an internal review although it subsequently responded directly to the complainant following the Commissioner's investigation with its response discussed later in this notice.

Scope of the case

9. The complainant contacted the Commissioner on 15 April 2021 to complain about the way their request for information had been handled. They did not specify the details of their complaint.
10. The Commissioner has therefore considered the complainant's points in their request for an internal review, and their correspondence to the Cabinet Office of 4 April 2022 as the basis of their complaint.
11. The scope of the Commissioner's investigation is to consider whether the Cabinet Office has complied with its obligations under section 1(1) FOIA in respect of the following:
 - the information it has provided in relation to Kirsty Gallagher and;
 - whether information in respect of Dr Philippa Kaye fell within the scope of the complainant's request.

- If there were any other influencers / celebrities paid to be involved in the campaign as requested in paragraph 7 of this notice.

Reasons for decision

Section 1 – General right of access to information held

12. Under section 1(1) FOIA, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
13. 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 Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
14. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.

Information in respect of Kirsty Gallagher

15. In this particular case, although the Cabinet Office do not appear to have undertaken an internal review, following the Commissioner's correspondence, it sent an amended response to the complainant on 1 April 2022 which provided further information in respect of items 1 and 2 of the request relevant to Kirsty Gallagher.
16. Following this response, the complainant contacted both the Cabinet Office and the Commissioner requesting clarification that the information sent in respect of item two was 'per post' as it only showed one input for Ms Gallagher, yet they were aware she made several posts on different social media platforms
17. The Cabinet Office contacted the complainant on 21 April 2022 stating:

"Ms Gallagher uploaded one Instagram grid post in support of the campaign."
18. The Commissioner notes that there remains a disagreement between the complainant and the Cabinet Office regarding the amount of

information it holds in respect of Kirsty Gallagher. Ordinarily in a situation of this kind the Commissioner would make a decision based on the balance of probabilities on whether further information falling within the scope of the request was held following details and evidence of the search undertaken by the Cabinet Office. However, in its response to his request for details of its search, the Cabinet Office stated:

“Not applicable. All the information held ... has been retrieved and disclosed to [name of complainant].”

19. In his determination of whether a public authority has complied with its obligations under section 1(1) FOIA, the Commissioner would point out the details and evidence of the search undertaken by a public authority are an essential component in reaching a considered decision. He is disappointed therefore at this response from the Cabinet Office.
20. Based on the above points, the Commissioner is unable to make a determination that the Cabinet Office has provided all relevant information it holds relevant to this aspect of the request and has no option therefore but to conclude that it has not complied with its obligations under section 1(1) FOIA.

Is information in respect of Dr Philippa Kaye within the scope of the request

21. The complainant is not satisfied that the Cabinet Office did not include information in respect of Dr Philippa Kaye in its response to their request. As stated in paragraph 7 of this notice, they specifically mentioned Dr Kaye noting that the figures provided in its response of 11 December 2020 did not include her and asked:

“Please can I get these figures, and are there any other influencers / celebrities that were paid to be part of the campaign?”

22. However, in its response dated 1 April 2022, the Cabinet Office informed the complainant that neither this response nor its original response referred to Dr Philippa Kaye as her role was that of GP or medical expert, to provide medical advice or reassurance to parents as their children returned to school (after the first lockdown). It further stated that as the request refers explicitly to ‘social media influencers / celebrities’, Dr Kaye’s involvement is not within in the scope of the request.
23. The complainant contacted the Cabinet Office on 4 April 2022, disputing that information in respect of Dr Philippa Kaye is not within the scope of their request or that she is not an influencer, stating that her Instagram

profile shows she has over 24,000 followers, appears regularly on the TV show 'This Morning' and has published several books alongside her work as a GP. The complainant further commented that it could be argued that the Cabinet Office clearly chose her for this audience, as opposed to hiring an unknown GP for the campaign.

24. The Cabinet Office contacted the complainant on 21 April 2022, maintaining its position that Dr Kaye's role was as an expert rather than an influencer given her medical credentials as a health professional. It added that her main role was to be a campaign spokesperson and replicate her professional advice on her social media. It added that in comparison, consumer influencers create bespoke content which appeals to their followers/audience.
25. The Commissioner has considered the above correspondence between both parties, and would make the following observations. Firstly, although the complainant's original request did not specifically refer to Dr Philippa Kaye, it is noted that it did not refer to any individuals by name. Her name was however specifically mentioned in the complainant's request for an internal review. Additionally, the original request referred to:

"...social media influencers / celebrities..."

26. The Commissioner considers that someone with 24,000 followers on a social media platform, who regularly appears on television, and has published several books, would fall within the definition intended by the complainant in the request. As he does not accept the position of the Cabinet Office that information relating to Dr Kaye does not fall within the scope of the request, he finds the Cabinet Office has not complied with its obligations under section 1 of the FOIA in respect of this individual.

Were there other influencers / celebrities paid to be part of the campaign

27. As referred to in paragraph 7 of this notice, the complainant asked in their request for an internal review if there were other influencers / celebrities paid to be part of the campaign. The Commissioner would highlight that the Cabinet Officer has not responded to this in any subsequent correspondence to the complainant or the Commissioner. Again, he therefore has no option but to conclude that the Cabinet Office has not complied with its obligations under section 1(1) FOIA.

Right of appeal

28. 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

29. 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.

30. 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

**Catherine Dickenson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**