

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2023

Public Authority: Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested the analysis from an internal pulse survey within the Cabinet Office HR team, relating to Bullying Harassment and Discrimination (BH&D). Cabinet Office refused to provide the requested information, relying on section 36(2)(c) of FOIA as its basis for doing so.
2. The Commissioner's decision is that Cabinet Office was entitled to rely on section 36(2)(c) to refuse the request. No steps required.

Request and response

3. On 1 June 2021, the complainant wrote to Cabinet Office and requested information in the following terms:

"It is my understanding that in June last year, a survey called COHR BHD Survey was conducted amongst members of Cabinet Office HR. I would like the results of that survey please.

I would like the information to be emailed to me in electronic form please to [email redacted].

If you have any questions relating to the above, please call me on [number redacted].

If my request is denied in whole or in part, I ask that you justify all deletions by reference to specific exemptions of the Act.

I would be grateful if you could confirm in writing that you have received this request. I look forward to your response within 20 working days as outlined by the statute."

4. Cabinet Office responded on 22 June 2021. It confirmed that the information requested was held but considered that the disclosure of the

information would be likely to prejudice the effective conduct of public affairs by virtue of section 36(2)(c) of FOIA.

5. The complainant requested for an internal review on 25 June 2021 in which they provided further submissions to challenge Cabinet Office's position. Following an internal review Cabinet Office maintained its original decision to withhold the information under section 36(2)(c) of FOIA.

Reasons for decision

6. Section 36(2)(c) of FOIA states that:

"Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of this information under this Act would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."

7. Section 36 relies on the qualified person within the Cabinet Office to give an opinion on the likelihood of prejudice occurring. Section 36(5) states that in relation to information held by a government department, a Minister of the Crown would meet the criteria of a qualified person. The Commissioner is satisfied that the Minister for the Constitution and Devolution provided the opinion in this case.
8. With section 36, the Commissioner does not necessarily need to agree with the opinion of the qualified person for the exemption to be engaged. He needs only satisfy himself that the qualified person's opinion is an opinion that a reasonable person could hold.
9. In the opinion of the qualified person, the exemption at section 36(2)(c) is applicable to the withheld information because disclosure would otherwise prejudice the effective conduct of public affairs. It is the qualified person's view that officials must be able to utilise the means of gathering staff feedback in a confidential manner to improve internal ways of working without concern that such information would be subject to public disclosure. It is the qualified person's view that the disclosure of the requested information would be likely to inhibit the ability of staff to express themselves openly, honestly, and completely and may reduce response rates or skew responses to future surveys. It says that the survey was ran without external publication in mind and delivered by a staff working group in response to People Survey feedback to help inform local action plans within the team. It says that the "individuals that took part shared their lived experiences on the basis that they were providing the information with assurance that what they said would be treated in confidence. The effect of disclosing this information would be likely to cause employees to be more reticent in expressing their views

on this, and other related issues in future. This would be likely to lead to a less informed picture of the organisation, resulting in less informed conclusions and recommendations being reached.”

10. The Commissioner is satisfied with the opinion that the harm envisaged is one that would otherwise prejudice public affairs in that, disclosure may reduce response rates or skew responses for future surveys and therefore section 36(2)(c) is engaged. As section 36 is a qualified exemption, the Commissioner will now go on to consider whether the public interest lies in disclosure or in maintaining the exemption.

Complainant's public interest arguments

11. The complainant argues that Cabinet Office has not complied with the purpose for which the survey was conducted, which was to be open and aid actions. They contend that the published information are figures produced for the whole Cabinet Office and not just for the HR team. It is the complainant's view that the information they have requested is embedded in Cabinet Office's published information and does not satisfy the public interest in disclosure. The complainant has stated that they dispute Cabinet Office's position that it had not intended to publish the information externally and argues that the frankness of the report is the reason it is being suppressed. They add that if the survey shows high levels of BH&D, then this should be a reason for releasing the information and not withholding it.

Cabinet Office's public interest arguments

12. Cabinet Office recognises a public interest in disclosure of the information and that openness in government may increase public trust in, and engagement with the government. It acknowledges that there is a public interest in there being information available about the nature of BH&D management in the department and understanding how seriously it takes issues surrounding workplace behaviours.
13. However, it argues that there is a strong public interest in maintaining the confidence owed to individuals who contributed to the report and protecting those groups to whom the described behaviours might be attributed irrespective of whether the attribution is correct. It contends that there are mechanisms in place to address and resolve instances of unacceptable behaviour and argues that it is not in the public interest to subvert those mechanisms by publication.
14. Cabinet Office argues that there is information that is already in the public domain. It says that the results of its People Survey were published on Gov.uk website including scores relating to BH&D which provides the public with substantial information.

15. Cabinet Office maintains that the requested information is an internal document not written with the intention to publish and that the value of the report lies in its frankness. It says that the value will diminish if in future the content of internal reports is written with disclosure in mind, which would impact on the provision of honest assessment and conclusions. Cabinet Office contends that the disclosure of such information would lead to publicity and the use of its resources to dealing with media stories based on a document which is over a year old. It says that there is a strong public interest to utilise its resources in the implementation of the comprehensive action plan whilst supporting Trade Union dialogue about these issues.

The Commissioner's view

16. In reaching his conclusion, the Commissioner has considered the complainant's complaint and request for internal review, Cabinet Office's initial response to the information request, the internal review response as well as Cabinet Office's further submissions and the withheld information.
17. Whilst the Commissioner understands the arguments presented by the complainant, it is his view that the disclosure of the information would otherwise prejudice the effective conduct of public affairs.
18. The Commissioner agrees with Cabinet Office that the information was not intended to be published externally to the department, but shared internally, summarised to staff, and acted upon. The Commissioner also agrees that the disclosure of the information would affect the openness of future surveys. He agrees that there is information already in the public domain that covers BH&D. While he has considered the complainant's arguments surrounding the information already in the public domain, he considers that the disclosure of the additional information to the world at large would lead to publicity and the diversion of resources in managing the impact of the disclosure. The Commissioner agrees that there are mechanisms that are in place for the resolution of instances of unacceptable behaviour in the workplace and has not been presented with any evidence to indicate that these mechanisms are defective.
19. The Commissioner is therefore satisfied that Cabinet Office has proactively published information relating to BH&D and has concluded that on the balance, and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

Right of appeal

20. 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

21. 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.

22. 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

Esi Mensah
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
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