

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

### **Decision notice**

**Date:** 25 May 2023

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

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

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1. The complainant submitted a request to the Cabinet Office seeking correspondence between Ministers and Baroness Mone (Michelle Mone), PPE Medpro and Anthony Page (a director of PPE Medpro). The Cabinet Office initially withheld this information on the basis of section 43(2) (commercial interests) of FOIA. During the course of the Commissioner's investigation of this complaint the Cabinet Office sought to rely on section 23(1) (security bodies) of FOIA.
2. The Commissioner's decision is that the requested information is exempt from disclosure on the basis of section 23(1) of FOIA.
3. No steps are required.

#### **Request and response**

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4. The complainant submitted the following request to the Cabinet Office on 17 June 2021:

'Please can you answer the following FOI request:

1 - Please can you confirm if you hold any correspondence between ministers at the Cabinet Office and the following people/companies:

- Baroness Mone (Michelle Mone)

- PPE Medpro
- Anthony Page (also a director of PPE Medpro)

2 - Please can you provide a copy of all correspondence between Minister's at the Cabinet Office and the following people/companies:

- Baroness Mone (Michelle Mone)
- PPE Medpro
- Anthony Page (also a director of PPE Medpro)

Please limit the search for correspondence to the following date range: 1st March 2020 to the 30th August 2020.

Please limit your search to discussion regarding the procurement of PPE.'

5. The Cabinet Office responded on 15 July 2021. It confirmed that it held information falling within the scope of the request but it considered this to be exempt from disclosure on the basis of section 43(2) (commercial interests) of FOIA.
6. The complainant contacted the Cabinet Office on the same day and asked it to conduct an internal review in the following terms:  

'It is completely unnecessary to withhold ALL documentation on these grounds. This is a subject of high public interest and I disagree with you ascertainment [sic] that it fails the public interest test. Furthermore I would be prepared to accept correspondence issued in a redacted format but includes names of Ministers along with the companies, company representatives, peers they were in correspondence with.'
7. The Cabinet Office informed him of the outcome of the internal review on 13 August 2021. It upheld the application of section 43(2) but explained that some information in the scope of the request would be published once it had been verified. The Cabinet Office explained that it would contact the complainant once this information was ready for publication.
8. The Cabinet Office provided the complainant with a link to the published information on 3 December 2021.<sup>1</sup>

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<sup>1</sup> <https://www.gov.uk/government/news/ppe-procurement-in-the-early-pandemic>

9. During the course of the Commissioner's investigation, the Cabinet Office contacted the complainant on 10 May 2023 and explained that it was relying on a new exemption to withhold the requested information, namely section 23(1) (security bodies) of FOIA.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 11 January 2022 to challenge the Cabinet Office's decision to withhold the information falling within the scope of the request. Following the Cabinet Office's letter of 10 May 2023 the complainant confirmed that he also sought to dispute its reliance on section 23(1) of FOIA.

## **Reasons for decision**

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### **Section 23 – security bodies**

11. The Cabinet Office argued that all of the withheld information was exempt from disclosure on the basis of section 23(1) of FOIA. This states that:

'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'

12. To successfully engage the exemption at section 23(1), a public authority needs only to demonstrate that the relevant information was directly or indirectly supplied to it by, or relates to, any of the bodies listed at section 23(3).<sup>2</sup> This means that if the requested information falls within this class it is absolutely exempt from disclosure under FOIA. There is no requirement on the public authority to demonstrate that disclosure of the requested information would result in some sort of harm. This exemption is not subject to the public interest test.

### The Cabinet Office's position

13. In its submissions to the Commissioner the Cabinet Office noted that it is public knowledge that PPE MedPro, a company linked to Baroness
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<sup>2</sup> A full list of the bodies detailed in section 23(3) is available here:

<https://www.legislation.gov.uk/ukpga/2000/36/section/23>

Mone, is the subject of an ongoing potential fraud investigation by the National Crime Agency (NCA). The Cabinet Office explained that this investigation commenced prior to this FOI request being submitted.

14. The Cabinet Office noted that section 23 is not only for information directly or indirectly supplied by the bodies specified in section 23(3). It also extends to information that 'relates to' one of the specified bodies and that the NCA is one of the bodies listed at section 23(3)(n) of the FOIA.
15. The Cabinet Office also noted that the phrase 'relates to' should be interpreted broadly with the Upper Tribunal in the case of *Lownie v ICO & FCO* finding that 'relates to' includes both a direct and indirect connection.<sup>3</sup> The Cabinet Office also noted that the Commissioner's guidance also explains the interpretation of 'relates to' includes any information concerning or linked to the activities of a security body.<sup>4</sup>
16. In these circumstances, the Cabinet Office explained that in its view the information it holds falling within the scope of the request relates to the NCA and is sufficiently proximate to that body for the exemption to be engaged. The Cabinet Office provided further brief (and confidential) submissions to the Commissioner in support of this position.

#### The complainant's position

17. In response to the Cabinet Office's introduction of section 23(1) the complainant explained that he did not accept that all of the correspondence which fell within the scope of his request should be withheld, or is even relevant to section 23 bodies. (Which in this instance, he assumed was the NCA investigation into PPE Medpro.)
18. The complainant explained that he was also concerned that the Cabinet Office had only applied this exemption at this late stage given that the request had been submitted in June 2021.

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<sup>3</sup> *AL v ICO, The FCO and The National Archives (GIA)* [2020] UKUT 32 (AAC)

<sup>4</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-23-security-bodies/#text2>

The Commissioner's position

19. Based on the submissions provided to him by the Cabinet Office, the Commissioner is satisfied that the withheld information is exempt from disclosure on the basis of section 23(1) of FOIA. He has reached this conclusion because he accepts that there is a sufficiently close connection between the information held by the Cabinet Office which falls within the scope of this request, and the NCA's investigation into PPE Medpro, such that the information can be said to relate to a section 23(3) body.
20. The Commissioner can understand the complainant's frustration at the Cabinet Office's late application of this exemption. However, under FOIA public authorities are entitled to introduce exemptions at any stage in the processing of that request, including for the first time when a request is subject to a section 50 complaint to the Commissioner.

## Right of appeal

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21. 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)

22. 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.
23. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**