

**Freedom of Information Act 2000 (FOIA)**  
**Decision notice**

**Date:** 18 May 2023

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

**Decision (including any steps ordered)**

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1. The complainant has requested information regarding any minutes produced during a meeting between Sue Gray and Boris Johnson
2. On the balance of probabilities, the Commissioner has concluded that the Cabinet Office does not hold the requested information.
3. No steps are required.

**Background**

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4. On 8 December 2021, the then Prime Minister Boris Johnson asked the Cabinet Secretary to carry out an investigation into allegations reported in the media relating to gatherings in No 10 Downing Street and the Department for Education during November and December 2020.

5. On 17 December 2021, the Cabinet Secretary recused himself from the investigation and Sue Gray (Second Permanent Secretary) was tasked with the investigation.
6. Her final report<sup>1</sup> was published and delivered to the prime minister on 25 May 2022.

### **Request and response**

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7. On 23 May 2022 , the complainant requested information by saying as follows;

“Please kindly provide a copy of the minutes produced during the meeting this year between Sue Gray and Boris Johnson that was set up by Downing Street officials subject to the parameters below.

Parameters: We are solely interested in viewing passages of the minutes which relate to the independent inquiry Sue Gray was asked to conduct - which has already been established is NOT a private matter. You may redact everything else if you wish”.

8. On 28 September 2022, the Cabinet Office substantively responded. It denied holding the requested information.
9. The complainant requested an internal review on 30 September 2022. On 13 December 2022, the Cabinet Office sent her the outcome of an internal review. It upheld its original decision.

### **Scope of the case**

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10. The Commissioner must determine whether, on the balance of probabilities, the Cabinet Office holds the requested information.
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<sup>1</sup> [2022-05-25 FINAL FINDINGS OF SECOND PERMANENT SECRETARY INTO ALLEGED GATHERINGS .pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/2022-05-25/FINAL_FINDINGS_OF_SECOND_PERMANENT_SECRETARY_INTO_ALLEGED_GATHERINGS.pdf)

## **Reasons for decision**

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11. Section 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”.

12. In scenarios such as this, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.

### Complainant's Submissions

13. The complainant has expressed the belief that the minutes are held and has pointed to the Morning Lobby Readout of Monday 23 May disclosed to her via a previous Freedom of Information request as confirmation of that belief.

### Cabinet Office's Submissions

14. The complainant has requested a copy of minutes for a meeting between the former Prime Minister Boris Johnson and Sue Gray. Her request was submitted on 23 May 2022. In the days leading up to 23 May, there had been some focus in the media relating to a reported meeting between Sue Gray and the Prime Minister regarding the independent investigation into alleged gatherings during Covid restrictions. That investigation report was published on the 25 May 2022.

15. It is publicly known that Sue Gray and the former Prime Minister met prior to the publication of the report. This was acknowledged in the Cabinet Office's response to the complainant, which referred to a relevant Parliamentary Question (PQ). This PQ asked about discussions between the former Prime Minister and former Second Permanent Secretary in May. The answer to the PQ confirmed that the discussion

focused on process and procedure on timings and publication arrangements for the former Second Permanent Secretary's report.

16. The following teams within the Cabinet Office were asked to confirm if any information in scope of the request was held a) No.10; and b) Sue Gray's Office. Both of those teams conducted searches within the period between the publication of the former Second Permanent Secretary's interim report and the publication of the final report, as any information in scope of the request would have been held in these teams during this period and confirmed that no information in scope of the complainant's request was held.
17. Regarding, the Morning Lobby Readout of Monday 23 May it reads that (their emphasis) "**If** the meeting was minuted, PMOS said they would be minuted in the normal way". The readout is not confirmation that a minute was taken.

#### Commissioner's Reasonings

18. The Commissioner has no reason to doubt that the searches undertaken by the Cabinet Office were reasonable and proportionate in the circumstances.
19. Though there was a meeting between Sue Grey and Boris Johnson, the Commissioner has not been able to discern evidence that the meeting was minuted. The Commissioner notes the Morning Lobby Readout of Monday 23 May does say "If the meeting was minuted..." and therefore is not evidence that it was minuted.
20. The Commissioner is aware of press and media articles whereby the following line has been published:  
  
"Minutes of the latest meeting have been taken, the spokesman confirmed, but he said it had been a private meeting and they would not be published."<sup>2</sup>
21. However, the Commissioner has not been able to identify the supporting evidence for those assertions.

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<sup>2</sup> The Herald Downing Street requested Johnson-Gray meeting but will not publish minutes (Herald Scotland)

22. The Commissioner notes that an Early Day Motion was tabled on 23 May 2022 for "the minutes from or any notes of any meeting or meetings or any written or electronic correspondence between the Prime Minister and Sue Gray since the start of her investigation into alleged gatherings on government premises during Covid restrictions."
23. The motion had 21 parliamentary supporters. However, it does not appear that any findings or conclusion were reached as a result of this motion or that the matter was debated in parliament.
24. In the absence of evidence of the requested information being generated or existing, the Commissioner must conclude on the balance of probabilities, that the Cabinet Office does not hold it.

## **Right of appeal**

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25. 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)

26. 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.
27. 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  
Principal Adviser  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**