

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 April 2023

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested to know the number of times the Home Secretary sent official Home Office correspondence from personal email accounts. The Home Office cited section 21 (Information accessible to applicant by other means) to refuse the request and referred the complainant to information on the matter on the GOV.UK website.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 21 to refuse the request.
3. The Commissioner requires no steps as a result of this decision.

Background

4. Suella Braverman was Home Secretary from 6 September 2022 to 19 October 2022, when she resigned, having mistakenly sent an official Home Office document from her personal email account, to a colleague in Parliament, an action which she accepted breached the Ministerial Code.
5. Following the resignation of the then Prime Minister on 20 October 2022, Ms Braverman was reappointed as Home Secretary on 25 October 2022, by the new Prime Minister.

Request and response

6. On 27 October 2022, the complainant wrote to the Home Office and requested information in the following terms:

“Under FOIA I would like to request the following:

How many times has Suella Braverman sent official home office correspondence from her personal e-mail address during her two stints as Home Secretary? This may not be held on Home Office infrastructure, but within the Secretary of State's personal email account. Just a reminder, that ICO guidance (and the law) says that information held in webmail accounts (i.e. not Home office email systems) is held for the purposes of FOIA. I'm not asking for the detail of those emails or for any sensitive information. Just a simple number will suffice.”

7. The Home Office responded on 23 November 2022. It confirmed that it held the requested information but it refused to disclose it, citing section 21 of FOIA. It referred the complainant to the Home Secretary's letter to the Home Affairs Select Committee, of 31 October 2022, which was published on the GOV.UK website. The letter concerned the events surrounding the Home Secretary's recent resignation¹.
8. The letter set out the reasons why, on occasion, the Home Secretary had required correspondence to be sent to her personal email account, when conducting official Home Office business. The instances when this had occurred were included in an appendix to the letter. The letter also explained that, on 19 October 2022, the Home Secretary sent one official email from her personal email account to a Parliamentary colleague, with a draft document attached – an action which breached the Ministerial Code.

9. The letter said:

“Review

29. Following my referral and subsequent resignation, the Home Office conducted a review of my use of personal email and verified the above sequence of events. The review also identified that within the period between 6 September and 19 October, I had sent official documents from my government email to my personal email address

¹ <https://www.gov.uk/government/publications/letter-to-hasc-from-home-secretary/letter-to-hasc-from-home-secretary-accessible-version#review>

on six occasions (see Appendix). The review confirmed that all of these occasions occurred in circumstances when I was conducting Home Office meetings virtually or related to public lines to take in interviews. Some of these meetings had been hastily arranged in response to urgent operational matters relating to Home Office priorities. The review also confirmed that on no other occasions had my Special Adviser emailed my personal account in relation to official business.

...

33. The review also confirmed that I had never used my government email to send any information to external recipients outside of government. Other than 19 October, I have not used my personal email account to send official Home Office documents to other people outside of government.

34. In my appointment discussion with the new Prime Minister, I assured him that I would no longer use personal IT for government business”.

10. The complainant requested an internal review on 24 November 2022, on the following grounds:

- The Home Office failed to clearly direct him to where in the public domain the information in question could be found.
- The Home Secretary’s statement was published four days after his request was submitted and therefore the information was not “reasonably available” to him at the time the Home Office received his request.
- The statement only addressed the incident of 19 October 2022, when the request asked to know the total number of times, while in office, that the Home Secretary had sent official emails from personal account(s).

11. Following an internal review, the Home Office wrote to the complainant on 21 December 2022. It conceded that its initial response should have provided a web link to the information on the GOV.UK website, and it provided that link. However, it maintained that section 21 did apply, explaining that the specific information the complainant had asked for was contained in the letter and that it was reasonably accessible to him.

Scope of the case

12. The complainant contacted the Commissioner on 22 December 2022 to complain about the way his request for information had been handled. His concerns remained as stated in paragraph 10, above.
13. The analysis below considers whether the Home Office was entitled to apply section 21 of FOIA to refuse the request, on the grounds that the requested information was reasonably accessible to the complainant.

Reasons for decision

Section 21 - Information accessible to applicant by other means

14. Section 21 of FOIA provides that information which is reasonably accessible to the applicant otherwise than under FOIA is exempt from disclosure.
15. In the Commissioner's guidance on section 21², he explains that in order to be exempt, the requested information must be reasonably accessible to the applicant by another route. In order for section 21 to apply, there should be another existing, clear way by which the applicant can reasonably access the information, outside of FOIA.
16. The Commissioner agrees with the complainant that, in its initial response, the Home Office failed to provide sufficient information to enable the complainant to locate the information it said was reasonably accessible, without difficulty. However, the Home Office acknowledged and corrected this in its internal review response, by disclosing a web link to the information.
17. The Commissioner has then considered the complainant's argument that section 21 could not apply because the information was not reasonably accessible to him on the day that the Home Office received the request.
18. On the question of the time at which to apply a particular FOIA provision, the Commissioner has referred to section 1(4) of FOIA. This states that the information that must be considered when responding to a request is:

² <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

“the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

19. The Commissioner recognises that, for practical reasons, most public authorities do not deal with requests on the day they receive them. In view of this, he considers it permissible for them to use the date on which they actually deal with the request as the date on which to consider whether they hold the information, as well as any wider circumstances that need to be taken into account. As FOIA provides a 20 working day deadline by which a public authority must respond to a request, public authorities may consider whether the requested information is held, and if any exemptions apply, at any point between the date of receipt and the date for statutory compliance (as long as they do so promptly and leave sufficient time to properly consider the application of exemptions).
20. Therefore, noting that the Home Office responded to the request within the 20 working day deadline, the Commissioner is satisfied that it was entitled to consider the position as it stood on the date it prepared its response. As the information in question had been published on the GOV.UK website by that point, and the complainant clearly had the means by which to access online information, he considers that it was “reasonably accessible” to the applicant, for the purposes of applying section 21 of FOIA.
21. Finally, the Commissioner has considered the complainant’s third point, that the published information only addressed the circumstances which led to the Home Secretary’s resignation, and did not provide the total number of times, while in office, that the Home Secretary had sent official Home Office correspondence from her personal email account.
22. The Home Office says that this information is contained in the Home Secretary’s letter to the Home Affairs Select Committee, following her reappointment. The Home Affairs Select Committee is a cross-party committee of MPs, responsible for scrutinising the work of the Home Office and its associated bodies. It examines government policy, spending and the law in areas including immigration, security and policing.
23. The letter states that the Home Secretary only used her personal email account to send official correspondence on one occasion (ie on the 19 October 2022) and that as part of the review conducted prior to her submission to the Home Affairs Select Committee, the Home Office had verified that this was the case. The Home Office’s review also found a

further six instances of official material being sent to her personal email account, for reasons which are explained in the Home Secretary's letter. However, this is outside the scope of the request, which was specifically to know the number of times official correspondence was sent **from** the Home Secretary's personal email account(s).

24. It appears that on discovering the mistake, the Home Secretary might have sent one or more further emails from her personal email account, asking the recipient to delete her email, and then forwarding the correspondence to the appropriate party so that the matter could be reviewed. The Commissioner does not consider that such emails, if indeed, they were sent from the Home Secretary's personal email account, fall within the scope of the request. This is because the request asks about emails in which "official home office correspondence" was being conducted, whereas these emails would have been concerned with corrective steps, following the sending of the earlier email.
25. As regards the complainant's point that the letter only concerns itself with matters up to 19 October 2022, the Commissioner notes that the Home Secretary resigned the same day and was not reappointed until 25 October 2022. At her appointment discussion, she informed the Prime Minister that she would no longer use "personal IT" for government business, and this was stated in the letter.
26. The Home Affairs Select Committee is a very senior authority and the Commissioner has no reason to doubt the veracity of these public submissions to it.
27. He is therefore satisfied that the question as to how many times the Home Secretary "sent official home office correspondence from her personal e-mail address during her two stints as Home Secretary" is answered in the published letter (ie once).
28. Taking all the above into account, the Commissioner is satisfied that the requested information was reasonably accessible to the applicant otherwise than under FOIA, and that the Home Office was entitled to apply section 21 to refuse the request.

Right of appeal

29. 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

30. 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.

31. 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

Samantha Bracegirdle
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Wycliffe House
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