

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2024

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office for a copy of the then Minister for the Cabinet Office/Chancellor of the Duchy of Lancaster, Michael Gove's, ministerial diary for the period 1 March 2020 to 16 April 2020. The Cabinet Office refused the request on the basis of section 14(1) (vexatious) of FOIA given the burden of complying with it.
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 14(1) of FOIA to refuse to comply with the request.
3. No steps are required.

Background

4. In 2021 the complainant submitted two requests to the Cabinet Office for copies of Michael Gove's ministerial diaries spanning a period of (1) 16 months and (2) 5 months. The Cabinet Office refused both requests citing section 14(1), and the Commissioner upheld this position in his decisions under references IC-148715-F9L8¹ and IC-172341-X2X8 (the latter decision being issued at the same time as this notice).

Request and response

5. On 22 January 2022, the complainant further refined the request and requested the following information:

"From 1st March 2020 to 16 April 2020, please provide a copy of the Minister for the Cabinet Office/Chancellor of the Duchy of Lancaster Michael Gove's ministerial diaries."
6. On 21 February 2022, the Cabinet Office responded and refused to comply with the request, citing section 14(1). The Cabinet Office argued that the request would require searching through a substantial volume of information and that the Cabinet Office would also be obliged to spend a considerable quantity of time considering what exemptions might apply.
7. The complainant requested an internal review on 21 April 2022.
8. The Cabinet Office provided its internal review on 20 May 2022, maintaining its original position but providing no further explanation.

Scope of the case

9. The complainant contacted the Commissioner on 31 May 2022 to complain about the way their request for information had been handled. They dispute that section 14 applies given the timeframe of the request is significantly narrower - now just over six weeks.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4023413/ic-148715-f9l8.pdf>

10. As is the practice in a case where a public authority has cited section 14, on 2 March 2023 the Commissioner asked the Cabinet Office to provide a more detailed explanation of its application of section 14 to the request.
11. On 9 January 2024, the Cabinet Office provided its submissions to the Commissioner.
12. This notice covers whether the Cabinet Office correctly determined that the request was vexatious.

Reasons for Decision

Section 14(1) – vexatious requests

13. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
14. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s guidance on section 14(1)² states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation, or distress.
15. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
16. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
17. Most people exercise their right of access responsibly. However, a few may misuse or abuse FOIA by submitting requests which are intended to be annoying, disruptive or which have a disproportionate impact on a public authority. The Commissioner’s guidance on what may typify a vexatious request stresses, however, that it is always the request itself, and not the requestor, which is vexatious.

² <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

18. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("Dransfield")³. Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
19. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.
20. The four broad themes considered by the UT in Dransfield were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
21. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. Rather, it stressed the:

"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).
22. Sometimes it will be obvious that a request is vexatious and other times it will not. In considering such borderline cases, the key is to weigh up any purpose and value that the request represents against any disruption, irritation, or distress that compliance with the request may cause the public authority. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request. The UT stated in Dransfield that:

"all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is

³ <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA" (paragraph 82).

The Cabinet Office's arguments

23. In order to understand the Cabinet Office's basis for relying on section 14(1) of FOIA in the circumstances of this request the Commissioner asked it to respond to a number of questions. The Commissioner has set out these questions below and summarised the Cabinet Office's response to each.

24. **Question:** Please confirm how much information falls within the scope of the request.

Response: There are three different sets of calendar which can be attributed to Mr Gove. Two of these, the second and third set of calendar fall within scope and overlap to a significant degree, but have some differences in the information contained. Extraction of the two calendars produces a PDF version of the Google Calendar in which the appointments can be viewed. For the period covered by this request there are 530 appointments marked in the second calendar. For the same period there are 527 appointments in the third calendar, however some appointments only appear in the second or the third calendar, not both.

25. **Question:** When previous requests for ministerial diaries have been processed by government departments, the departments in question have exported the information contained in Microsoft Outlook to an Excel spreadsheet to assist with the processing of the request. Please confirm that this method – as opposed to simply reviewing the information within Outlook – has been considered by the Cabinet Office.

Response: The Cabinet Office confirmed that there is little efficiency to be gained by this method when dealing with this information, which is held in the Google system rather than Microsoft Outlook. The Cabinet Office explained that it is not clear whether the information could be exported into Microsoft Excel in the same way that Outlook facilitates. It said that some of the appointments are recurring within the diary, for example covering travel arrangements from the Minister's home to the Cabinet Office, or reminders relating to Private Office cover or parliamentary matters. These entries are easily identified and can be redacted as appropriate in the original format of the calendar.

26. **Question:** Please state the exemptions that the Cabinet Office consider will apply to parts of the requested information and provide a short justification as to which sort of material within the diary is likely to engage the relevant exemption and why.

Response: The Cabinet office explained that the following exemptions could apply to parts of the diary entries although this was not exhaustive - it would depend on the background of the appointments and the circumstances):

- Section 24 National Security
- Section 27 International relations
- Section 31 Law enforcement
- Section 38 Health and safety
- Section 35(1)(a) The formulation or development of government policy
- Section 35(1)(b) Ministerial communications
- Section 35(1)(c) The provision of advice by any of the Law Officers or any request for the provision of such advice
- Section 35(1)(d) The operation of any Ministerial private office
- Section 40 Personal information

The Cabinet Office explained that were the requested information to be disclosed, it would be heavily redacted thus rendering it redundant.

27. **Question:** What methods have you considered to remove (or at least substantially reduce) exempt material (for example using a 'Find & Replace' function to remove phone numbers)? How effective have these methods been and why?

Response: The Cabinet Office explained that the removal of repeated and exempt entries does not provide a significant part of the burden of redacting this information for disclosure.

28. **Question:** What sampling exercises have the Cabinet Office carried out to determine the time needed to redact individual entries and in separating exempt and non-exempt information, – please provide details.

Response: The Cabinet Office explained that it undertook an initial hard copy assessment of the second calendar to identify specifically what information might be releasable and where further consultation would be necessary. The initial assessment of the entries in the second calendar took approximately 3 hours, during which period they marked initial redactions, releasable material, and material for further consultation.

The Cabinet Office explained that a large proportion of the entries in the calendar were either personal, and relating to travel between Mr Gove's home and the office, or were political or constituency matters. A number of regular appointments in the calendar related to whipping arrangements or cover arrangements for Private Office. The Cabinet Office argued that none of the personal, political, travel, or private office cover entries would be releasable.

Next, using the redaction tool in eCase, the Cabinet Office said it then marked up two days in the pdf version of the second calendar for release. It said it took fifteen minutes to mark up two days in the calendar with the appropriate exemptions and to finalise and check the redactions. It therefore estimated it would take approximately 5 hours to redact the entire second calendar, (and a similar period to redact the third calendar.)

Next, the Cabinet Office identified what consultations would need to be carried out in order to identify if information was releasable. It explained that the consultations required would initially take approximately half an hour each - to extract the relevant material, draft a covering email, and then to send that email to the relevant policy contacts in the relevant department, for each organisation it needed to consult. The Cabinet Office said that the number of potential consultations that would be required were at least 21, as identified in an initial assessment of the second diary.

In addition to needing to consider the various entries based on the topics of the discussions and attendance etc, the Cabinet Office stated it would also need to give consideration to more mosaic matters to the diary. It argued that the primary consideration would be the security and safety of the Minister (who is still a serving Minister in this case, albeit in a different department). The Cabinet Office said, when considering the potential disclosure or withholding of any information contained within the diary, it must give consideration towards any discernible pattern of movements of Mr Gove that might be of use to anyone that might wish to target him physically, or for the purposes of undermining his security generally (including cyber security, national security, information security). Especially, as someone with hostile intent could build up a useful picture of the pattern of the Minister's official, political and personal life. The Cabinet Office argued that consideration of this would be further time consuming and burdensome, particularly in light of having more than one diary to cross reference.

In addition, the Cabinet Office noted that this process would need to be repeated with the entries in the third calendar which are not duplicated in the second calendar.

As a result, the Cabinet Office's estimate for processing the second calendar was the following:

- initial assessment of the entries in the second calendar = 3 hours
- to redact the entire second calendar = 5 hours
- Preparation for consultations (30 mins x 21) = 10.5 hours
- Conducting consultations (21 x 1 hour) = 21 hours
- Total: 39 hours and 30 mins plus mosaic matters, and entries in the third calendar which are not duplicated in the second calendar.

29. **Question:** Are there any other arguments the Cabinet Office wants to put forward to explain why, in all the circumstances, it believed that complying with the request would incur a grossly oppressive burden – bearing in mind the resources available to the Cabinet Office and the public value of the information within scope?

Response: The complainant states that the disclosure of this information is in the public interest, as the public requires this information since “It is absolutely essential for the public to know - in full detail - the calls, events and meetings that took place when the pandemic gripped the UK”.

First, the Cabinet Office argued that the complainant has simply requested the entire diary for this period and not just engagements related to the COVID-19 pandemic. Not all official diary entries will provide insight into the handling of COVID-19 by the Government. The Cabinet Office's view was that the complainant's request is a 'fishing expedition'. It lacks a genuine line of inquiry and does not go beyond requesting all diary entries for the specified six-week period.

Second, the Cabinet Office argued that the ongoing UK COVID Inquiry will provide a more informed and detailed insight into the government's response to the pandemic in due course. The Cabinet Office therefore believes that greater detail will be explored and disclosed during the course of the Inquiry, in contrast to the complainant's request which would lack vital explanation and will only provide a partial snapshot of what was occurring over the six weeks specified (covering all matters, not just the pandemic). The Inquiry will examine the preparations and response to the pandemic up to 28 June 2022 when it was established, also covering a wider time frame than the request.

Third, a portion of the information that the complainant has requested has also been published in regular transparency data. The Cabinet Office believes that the public interest has already been served by the disclosure of this information.

The complainant's view

30. The complainant provided the Commissioner with submissions to support her view that section 14(1) of FOIA did not apply. The Commissioner has summarised these submissions below.
31. The complainant argued she had asked for information covering an unprecedented time period and in her view this provided the reason for the information to be disclosed. She said: "The pandemic has had a huge impact on people's lives, and it is of vital interest to see what internal and external ministerial meetings took place, as well as the telephone and Zoom/Microsoft Teams calls taken by ministers".
32. Firstly, she argued that disclosure of the information would provide a greater insight into lobbying by external parties. She argued that this was particularly important given both the deficit of transparency information regarding lobbying and in light of recent lobbying scandals.
33. The complainant cited a number of examples to support this latter point including David Cameron having a "private drink" with health secretary Matt Hancock and Lex Greensill in 2019.⁴ The complainant noted that according to the Times, "There are no minutes of Hancock's meeting with Cameron and Greensill. It is not logged in transparency releases and civil servants did not attend."⁵ The complainant argued that it is possible that a ministerial diary would have included a reference to a private drink or meeting. She argued that if ministerial diaries were released, the public can compare them to what is actually logged in transparency releases, and identify ones that are missing.
34. Secondly, the complainant argued that there was a deficit of transparency information in regard to lobbying. She argued that disclosure of ministerial diaries would help rectify the situation, and would go some way in enabling the public and journalists to assess which minister has been lobbied by whom. Not only do ministerial diaries include meetings, but also information on telephone calls arranged.

⁴ <https://www.channel4.com/news/factcheck/factcheck-qa-the-gaps-in-britains-lobbying-laws> and <https://www.thetimes.co.uk/article/matt-hancock-dragged-into-david-cameron-lobbying-scandal-zq7j60dxk>

⁵ <https://www.thetimes.co.uk/article/matt-hancock-dragged-into-david-cameron-lobbying-scandal-zq7j60dxk>

35. Thirdly, the complainant argued that the government's publication of transparency data has often been criticised for its incompleteness and lack of quality. She suggested that over the years there have been many examples where transparency data had purposefully or accidentally excluded ministerial meetings.
36. By way of examples, she cited amongst others that in September 2020, Reuters reported how the then Secretary of State for Trade, Liz Truss had reversed a decision to remove meetings she had with the think tank, the Institute of Economic Affairs (IEA).⁶ The complainant explained that Ms Truss had two meetings and a dinner with the IEA, which was originally declared in government transparency data, but was then deleted by the department in August, arguing that the meetings were held in a 'personal' capacity. The complainant noted that Labour has accused the Minister of circumventing rules designed to stop "secret lobbying" of ministers.
37. The complainant argued that disclosure of the ministerial diaries would greatly help journalists compare to what extent government transparency data is missing ministerial meetings, particularly in regards to the handling of the coronavirus.
38. Fourthly, the complainant argued that disclosure of the information would help provide a greater insight into how ministers had handled the coronavirus pandemic. This is because a disclosure of the ministerial diaries will enable the public to know who exactly ministers have been communicating with, especially in regards to the awarding of COVID contracts and decisions taken by ministers when handling the crisis. The complainant noted that there have been lots of accusations over cronyism⁷ and that a release of ministerial diaries will inform the public of interactions between ministers and firms who received contracts.
39. The complainant also argued that such a disclosure of information would provide very useful information for a COVID inquiry. The complainant noted that in May 2021 there was an announcement of an inquiry into the government's handling of the pandemic.⁸ She argued that by having ministerial diaries to hand, it will enable the public to scrutinise in full detail who ministers were meeting at the time - whether internally or

⁶ <https://www.reuters.com/article/britain-politics-truss/exclusive-uk-trade-minister-reverses-decision-to-remove-think-tank-meetings-from-public-register-idINKBN25U2S2>

⁷ <https://www.bbc.co.uk/news/uk-56319927>

⁸ <https://www.bbc.co.uk/news/explainers-57085964>

externally - and what calls were taking place. The complainant argued that this will help build up a very detailed timeline of events and will also help inform those that are organising the inquiry and those who plan to give evidence to the inquiry.

40. Finally, the complainant argued that the Commissioner had previously concluded that there was significant public interest in the disclosure of ministerial diaries – such as a request the diary of James Wharton, formerly the Minister for the Northern Powerhouse, for the period 1 January 2016 to 15 April 2016⁹.
41. The complainant also cited case of the Andrew Lansley diaries, which covered around a year and were about 200 pages long, and were eventually released without the public authority in question (the then Department of Health) citing section 14(1) of FOIA.
42. In addition, she flagged that a request to the Foreign, Commonwealth & Development Office (FCDO) for Dominic Raab's ministerial diaries during the Afghanistan crisis of August 2021 was relatively successful, and indicates that it is possible for government departments to provide diaries to requesters.

The Commissioner's decision

43. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate, or improper use of FOIA. As previously discussed, there is a high bar for engaging section 14(1).

Value or serious purpose

44. When considering this issue, the UT in Dransfield asked itself, "Does the request have a value or serious purpose in terms of there being an objective public interest in the information sought?" (paragraph 38). The public interest can encompass a wide range of values and principles relating to what is in the best interests of society, including, but not limited to:
 - holding public authorities to account for their performance;

⁹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014731/fs50629605.pdf>

- understanding their decisions;
 - transparency; and
 - ensuring justice.
45. In this instance the request focuses on an issue of high public and media concern about what government ministers were doing in the early days of the COVID-19 pandemic in March 2020 and the first half of April. The complainant believes the request is a legitimate pursuit to uncover this.
46. In its submissions to the Commissioner, the Cabinet Office argued that the value and purpose of the request was diminished for three reasons. First, the complainant has requested the entire diary for this period and not just engagements related to the COVID-19 pandemic. Second, the ongoing UK COVID Inquiry will provide more informed and detailed insight into the decisions taken and management of the pandemic by the government in due course. Third, a portion of the information that the complainant has requested has already been published in regular transparency data.
47. The Commissioner appreciates that the complainant has made a detailed case for why, in her view, there is a compelling interest in the disclosure of the requested information. Furthermore, the Commissioner acknowledges, as he has done in previous related cases, that there is a public interest in the disclosure of ministerial diaries. The Commissioner would note, however, that compliance with the request would not provide the 'full detail' of the events and meetings that took place. The diary entries do not contain details of what occurred during a specific call or meeting but rather what took place at what time. The entries will therefore be brief rather than detailed.
48. Disclosure of the information would, however, provide a direct insight into the day to day activities of the then Minister for the Cabinet Office/Chancellor of the Duchy of Lancaster. However, it could also potentially shed light on some of the issues highlighted by the complainant, including most obviously how decisions were taken during the period covered by the request but also potentially wider issues such as matters of lobbying.
49. The Commissioner also notes that the complainant has raised some valid concerns about the limitations of the Cabinet Office's transparency returns. The Commissioner accepts that disclosure of ministerial diaries would represent a greater level of transparency and openness than such existing arrangements already provide for. Whilst the complainant has previously argued that the quarterly transparency reports are minimal, the Commissioner is of the view that this information does go some way to meeting the public interest in information regarding ministerial day to day working during this time.

50. The Commissioner does recognise that the period covered by the request is one that is historically significant. The Commissioner is therefore sympathetic to the complainant's argument that, given that this request covers an unprecedented time, ie the COVID-19 pandemic, there is arguably a particular public interest in understanding how government ministers organised their time and the meetings, contacts and appointments they had during this period. Disclosure of such data and information could prove to be particularly illuminating in this regard.
51. The Commissioner also notes that the UK COVID-19 Inquiry began to hear evidence in June 2023 and it is now public knowledge that the Inquiry panel is to be provided with an unredacted copies of Minister's diaries. However, it is clear that at the time the request was made in January 2022 it was by no means clear if Michael Gove's diary was to be made publicly available as part of any Inquiry or when any Inquiry report would be published.
52. For these reasons, the Commissioner accepts that the complainant's request does a have a clear purpose and value and that this should not be underestimated.
53. However, even if the request does have a value or serious purpose, a significant burden, in the balancing exercise, may out weigh the value of the request.

Burden

54. From the evidence he has seen, the Commissioner is satisfied that the complainant has requested a substantial volume of information. He also accepts that the Cabinet Office has real concerns about potentially exempt information being captured by the request.
55. Based on the Cabinet Office's submissions, the Commissioner is satisfied that the potentially exempt information cannot be easily isolated. In reaching this conclusion the Commissioner accepts that using a 'find and replace' function would not significantly aid the process of locating and redacting exempt information given the variance between entries that need to be redacted and the process of checking any redactions. Similarly, the Commissioner accepts that for the reasons set out by the Cabinet Office, exporting the diary into Excel would not reduce the burden of processing the request. Moreover, given the nature of a diary, with numerous entries covering a variety of topics over a considerable period of time, the Commissioner accepts that the exempt information is very likely to be scattered throughout the information.
56. Overall, the Cabinet Office state that the amount of work that would be involved in dealing with the request for the second calendar alone would be 39 hours and 30 mins plus a consideration of mosaic matters would

be needed. In addition, entries in the third calendar which are not duplicated in the second calendar would also need to be considered.

57. The Commissioner welcomes the fact that the Cabinet Office has carried out a sampling exercise, and has therefore provided the Commissioner with sufficient details of a timed sampling exercise and of the specific actions and steps that would need to be undertaken to solidify the estimation of the time needed to review the second diary.
58. In respect of the estimate of work involved in processing the request, the Commissioner accepts that the Cabinet Office's estimate is a reasonable one. In reaching this finding the Commissioner has placed weight on the fact that the Cabinet Office arrived at this figure as a result of a detailed sampling exercise, which in his view adds to the credibility of the figure. The Commissioner also notes that additional work will be needed for mosaic matters and entries in the third calendar thus adding more time to the processing of the request. The Commissioner therefore accepts that the Cabinet Office's estimate of at least 39 hours and 30 minutes to process the request for the second calendar is a cogent one, and one which is supported by evidence.
59. As regards the consideration of mosaic matters, it is acknowledged by the Commissioner that there is concern about the safety of high profile individuals, such as Ministers (and any family). Whilst the Commissioner recognises that the information within the diary shows where Mr Gove was, as opposed to where he will be in future, he nevertheless accepts that disclosure of the entries would reveal patterns of behaviour that might allow a malicious individual to predict where the Minister might be at a particular time of day.
60. Therefore, the Commissioner accepts that the Cabinet Office would need to review diary entries to determine whether their disclosure would present a risk to the Minister's safety (and potentially that of his family) and would therefore require consultation with his Security Team, who would in turn likely need to consult with the Metropolitan Police Service and other partners. Appropriate redactions would be required (e.g. not disclosing the exact time, duration or location of a particular meeting or attendance) and such processes would add to the expenditure of time and resources. It is noted by the Commissioner that this additional consultation time about security issues has not been specifically included in the estimate of 39 hours and so would be additional to it. It is noted that this consideration was accepted by the Commissioner in recent

decisions regarding the then Prime Minister (Boris Johnson's) diary - see IC-200771-L6Z8¹⁰ and IC-154554-P3N¹¹.

61. The complainant argues that its receipt of the ministerial diaries in a previous case IC-182571-T1T5¹² demonstrates that the Cabinet Office is prevented from relying on s14 in this case. This case concerned a request to the FCDO for the diary of Dominic Raab, formerly Foreign Secretary, between 1 June 2021 to 15 September 2021. The FCDO disclosed a redacted version of the information requested. The Commissioner would note that each request for information must be considered and assessed on its own facts and circumstances, including, in the context of section 14, the particular strength and weight of the serious legitimate purpose or interests which lie behind the request.
62. When making her complaint to the Commissioner, the complainant also specifically referenced the Commissioner's decision in FS50629605¹³ (August 2017), a case which concerned a request to the DCLG for the diary of James Wharton, formerly Minister for the Northern Powerhouse, between 1 January to 15 April 2016. In that case the Commissioner found that the estimate provided by DCLG was not sufficiently adequate for the Commissioner to agree with the department's arguments. The Commissioner therefore found that DCLG were not entitled to rely on section 14.
63. By contrast, in the present case, the Commissioner considers that the estimates provided by the Cabinet Office to substantiate the burden which would be imposed by complying with the complainant's request would be considerable. The Commissioner is unconvinced that the

¹⁰ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4026993/ic-200771-l6z8.pdf>

¹¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4026809/ic-154554-p3n2.pdf>

¹² <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4025633/ic-182571-t1t5.pdf>

¹³ [fs50629605.pdf \(ico.org.uk\)](https://ico.org.uk/media/action-weve-taken/decision-notice/2017/50629605/fs50629605.pdf)

burden of responding to this request could realistically be brought down to a reasonable size.

64. Whilst the limit laid down by The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 is not directly relevant to the application of section 14 FOIA, these give a clear indication of what Parliament considered to be a reasonable charge for staff time. The limit prescribed for central government authorities applying section 12 of FOIA is 24 hours, and this provides a useful starting point for assessing the burden of complying with a request, however, it is important to note that the threshold is high for refusal of a request under section 14 based on the time needed for processing.
65. The Commissioner considers that there is a high threshold for refusing a request on such grounds and a public authority is most likely to have grounds for refusal when:
 - a. The requestor has asked for a substantial volume of information, **and**
 - b. The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO, **and**
 - c. Any potentially exempt information cannot easily be isolated because it is scattered through the material.
66. On its face, the 39 hour and 30 minute estimate (minus the mosaic matters) for the second calendar alone is well above the 24 hour limit. The volume of information indicated by the Cabinet Office that could fall within the request could potentially be within the threshold for refusing the request. The task of redacting such volume of information would not be straightforward but rather complex and time consuming. A significant portion of the material in scope of the request concerns policy decisions and development and therefore very likely be exempt on the grounds of maintaining the delivery of effective government in relation to the formulation or development of government policy. The scope of the request would encompass information which would not contribute any further understanding to the aim of the request about lobbying and COVID-19.
67. In this case, from the evidence he has seen, the Commissioner is satisfied that the Cabinet Office has demonstrated that the amount of time to review and prepare the information for disclosure would impose a grossly oppressive burden.

Fishing expedition

68. The Commissioner's specific guidance for section 14(1) acknowledges that public authorities do express concerns about the apparent tendency of some requesters, most notably journalists, to use their FOIA rights where they have no idea what information, if any, will be caught by the request. He also acknowledges that these requests can appear to take a random approach and are often viewed by public authorities as 'fishing expeditions.'
69. Public authorities should however take care to differentiate between broad requests which rely on potluck to reveal something of interest and those where the requester is following a genuine line of inquiry.
70. The Commissioner has considered the arguments of both parties and he considers that the request is for specific information.
71. The Commissioner's view is that the request has not been solely designed for 'fishing' for information without a clear idea of what might be revealed. In the Commissioner's opinion, the complainant appears to be genuinely trying to access a small amount of specific information about a matter that had received considerable public and media attention.
72. The Commissioner is not therefore persuaded by the Cabinet Office's arguments that the request is part of a 'fishing expedition.' The requester was following a genuine line of inquiry. However, in terms of size and work involved, the Cabinet Office has convinced the Commissioner that preparing this information for disclosure would impose a grossly oppressive burden.
73. In conclusion, the Commissioner has taken into account all of the above, and considered whether, on a holistic basis, he considers that the request is one that typically characterises a vexatious request - and he finds that it does.
74. The Commissioner considers that such is the weight of the burden which would be imposed upon the Cabinet Office in terms of the expenditure of time and resources, and distraction and diversion of the same, that this would be disproportionate to the legitimate purpose and value which would be served by responding to the request. Consequently, the Commissioner is satisfied that the Cabinet Office were entitled to rely on section 14(1) FOIA to refuse the complainant's request.
75. The Commissioner notes that when refusing a request as vexatious under section 14, unlike in section 12 (costs limit) refusals, public authorities are not required to provide advice and assistance under section 16 of FOIA.

Right of appeal

76. 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

77. 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.

78. 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