

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

### **Decision notice**

**Date:** 5 January 2024

**Public Authority:** The Cabinet Office

**Address:** 70 Whitehall  
London  
SW1A 2AS

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

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1. The complainant requested information from the Cabinet Office (CO) in relation to disciplinary action taken against CO employees. The CO did not consider the request to be a valid one under FOIA and therefore did not provide a response under FOIA.
2. The Commissioner's decision is that the request for information is valid under section 8 of FOIA. The CO has therefore failed to comply with its duty under section 10 of FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Respond to the complainant's request: Firstly, confirm or deny that the requested information is held (or, if the public authority decides to refuse to confirm or deny that any of the requested information is held, then a refusal notice should be issued that complies with the requirements of section 17 of FOIA).
  - Secondly, and subject to the above, if the information is held the public authority must either disclose the requested information or, if it wishes to withhold any information, issue a refusal notice in relation to the information it wishes to withhold and disclose the remainder.<sup>1</sup>
4. The CO must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner

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<sup>1</sup> The Commissioner expects the public authority to take appropriate precautions to protect any personal data when disclosing information in a spreadsheet or similar format; <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/information-commissioner-s-office-advisory-note-to-public-authorities/>

making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

## Request and response

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5. On 22 March 2023, the complainant wrote to the CO and requested information in the following terms:

'I understand from press reports that the defence of the disgraced former prime minister Boris Johnson in relation to the allegations of contempt of parliament relies substantially on assurances he was given by staff who's integrity ought to be beyond question.

As we know that the parties happened, resulting in a large number of fines, it follows that those assurances were entirely false, and those staff are entirely untrustworthy.

By any measure, those false assurances would amount to gross misconduct and in these circumstances, quite possibly misconduct in public office.

What disciplinary action has been taken against the staff who deceived the disgraced former prime minister Boris Johnson, and how much have they been paid to avoid proceedings in the Employment Tribunal?'

6. On 23 March 2023 the CO responded and said:

'Unfortunately your email does not constitute a valid request for information as outlined in section 8(1)(c) of the Freedom of Information Act 2000. The Act does not require public authorities to create new information or to provide opinion or explanation in order to respond to a request or query. The purpose of the Act is to consider the confirmation or provision of recorded information that already exists. Advice on how to make a valid request can be accessed on the Information Commissioner's website at (link provided).

Alternatively, if you would like your email treated as correspondence, you can contact the Cabinet Office by accessing its web form at the following website (link provided).'

7. The complainant responded and asked if their request had been misunderstood. They reiterated that they considered that the CO would be likely to hold a record of disciplinary action against employees.
8. The CO responded and said 'Please can you tell us what information you are looking for? Please note that it needs to be recorded, e.g. which staff and about what exactly.'

9. The complainant responded and said:

'Thank you for your prompt attention.

You will be aware of the Parliamentary Privileges Committee investigation into alleged contempt of parliament by the disgraced former prime minister, Boris Johnson, relating to the occasions where he misled the House about the parties at Downing Street.

His defence rests primarily on the assertion that he received "Multiple assurances" from staff that all of the rules had been followed. Given the number of penalty notices issued, we know that those assurances cannot have been true.

In other words, whoever gave those assertions not only abused the privileges of the office and broke the law, they lied about it, and those lies have got the prime minister into serious trouble.

In any workplace, such lies as those would amount to gross misconduct and in most cases would result in an instant dismissal.

What disciplinary action has been taken against the staff who gave the dishonest assurances?'

10. In their response of 21 June 2023 the CO reiterated their position that the request was not a valid request for information as outlined in section 8(1)(c) of FOIA. It went on to say that an internal review could not be carried out as no response had been issued.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 22 September 2023 to complain about the way the CO handled their request for information.
12. The complainant considered that it is likely that the CO would hold information regarding disciplinary action taken against its employees and therefore should provide a response that addresses whether the information is held or not held and either provide it or withhold it under a relevant exemption.
13. However, if the request is not valid under section 8 of FOIA then the CO is not obliged under FOIA to respond. Therefore the Commissioner has not investigated whether the CO holds the requested information. Nor has the Commissioner considered whether any information, if held, should be disclosed.

14. The Commissioner considers the scope of his investigation is to determine whether or not the CO are correct to say that the request is not a valid request as outlined in section 8(1)(c) of FOIA<sup>2</sup> and are therefore not required to provide a response within the remit of FOIA.

### Reasons for decision

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15. This reasoning covers whether the request made is a valid request for information under FOIA.

16. Section 8(1) says:

'In this Act any reference to a "request for information" is a reference to such a request which—

- (a) is in writing,
- (b) states the name of the applicant and an address for correspondence, and
- (c) describes the information requested.

17. ICO guidance states:

'There may be circumstances in which a requester may level criticisms or allegations at you or your employees. For example, by asking for information about a "ridiculous decision" or "failures within the authority", or making accusations of misconduct or corruption against your staff.

You must not allow your own views about the validity of any criticisms or allegations to influence how you read the request. Your sole focus must be on the information that is being requested.'<sup>3</sup>

18. The position of the CO is that the request is not valid according to section 8(1)(c). In its response to the complainant it has not elaborated why it considers this to be the case. However it did go on to say that FOIA does not require public authorities to create new information or to provide opinion or explanation in order to respond to a request or query.

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<sup>2</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/recognising-a-request-made-under-the-freedom-of-information-act-section-8/>

<sup>3</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/interpreting-and-clarifying-requests/#criticisms>

The purpose of FOIA is to consider the confirmation or provision of recorded information that already exists.

19. Section 8 of FOIA sets out the requirements for a valid request. Section 8(1)(c) requires that an applicant describe the information requested. Accordingly the Commissioner interprets the CO's position to be that the complainant has failed to describe the information requested.

20. The Commissioner considers that, although phrased as a question, the key part of the request as below is a valid request for information under FOIA.

'What disciplinary action has been taken against the staff who deceived the disgraced former prime minister Boris Johnson, and how much have they been paid to avoid proceedings in the Employment Tribunal?'

21. It is clear from the context of the question that the officials whom the complainant is referring to are those unnamed officials who Boris Johnson claimed had assured him that all events in Number 10 Downing Street were within the Covid lockdown rules.

22. The Commissioner agrees that the CO are not required under FOIA to create new information or information that does not exist. However, it is the Commissioner's opinion that this is not what is being asked of the CO in this case. Rather, the Commissioner is satisfied that the complainant has described the information they are seeking and the test at section 8(1)(c) is met.

23. In light of the above the Commissioner finds that the CO has failed to identify the complainant's request as valid under FOIA.

24. The Commissioner requires the CO to provide the complainant with a fresh response which confirms or denies whether the requested information is held. If the CO wishes to refuse to confirm or deny that the requested information is held, it must issue an adequate refusal notice. If the CO confirms that the requested information is held, that information should either be disclosed to the complainant or an adequate refusal notice should be provided.

## 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 .....**

**Sarah O’Cathain  
Senior Case Officer  
Information Commissioner’s Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**