

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

### **Decision notice**

**Date:** 18 July 2024

**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 invoices and purchase orders received from David Cameron in the last two years in relation to the Public Duty Costs Allowance. The Cabinet Office withheld the information in scope of the request on the basis of sections 21 (information reasonably accessible) and 40(2) (personal data) of FOIA. The complainant challenged the application of the latter exemption.
2. The Commissioner's decision is that:
  - The invoice documents are not exempt from disclosure on the basis of section 40(2) of FOIA.
  - The schedule documents, submitted in support of the invoices, are exempt from disclosure on the basis of section 40(2) of FOIA.
3. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with a copy of the invoice documents falling within the scope of the request. In doing so, the Cabinet Office can redact any bank account details.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the

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

## Request and response

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5. The complainant submitted the following request to the Cabinet Office on 14 November 2023:

“I am getting in contact under the Freedom of Information Act Please provide the following:

  1. All annual purchase orders received by the Cabinet Office under the Public Duty Costs Allowance from David Cameron in the last two years.
  2. All invoices received by the Cabinet Office under the Public Duty Costs Allowance from David Cameron over the last two years.”
6. The Cabinet Office responded on 13 December 2023 and confirmed that it held information falling within the scope of the request. However it considered the total costs associated with each Prime Minister to be exempt from disclosure on the basis of section 21 as these were available in its Annual Report and Accounts. With regard to the invoices and purchase orders themselves, the Cabinet Office explained that it considered these to be exempt from disclosure on the basis of section 40(2) of FOIA.
7. The complainant contacted the Cabinet Office on the same day and asked it to conduct an internal review of this decision.
8. The Cabinet Office informed her of the outcome of the review on 12 February 2024. This upheld the application of both exemptions.

## Scope of the case

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9. The complainant contacted the Commissioner on 12 February 2024 in order to complain about the Cabinet Office’s decision to withhold the invoices and purchase orders on the basis of section 40(2) of FOIA. She has argued that the information could be disclosed in redacted form.

## Reasons for decision

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### Section 40 – personal information

10. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
11. In this case the relevant condition is contained in section 40(3A)(a).<sup>1</sup> This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
12. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
13. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

### Is the information personal data?

14. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual”.

15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

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<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

17. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
18. The Cabinet Office explained that the information in the scope of the request relates to reimbursements paid to the company, the Office of David Cameron, for the public duties undertaken by Lord Cameron under the Public Duty Costs Allowance (PDCA).
19. The Cabinet Office explained that the invoices refer to support provided for public duties, and contain claims made in respect of the roles and salaries of staff working for the company, which is these individuals' personal data. The invoiced amount is that due for the reimbursement of costs paid for that support. The Cabinet Office argued that it follows that the invoices in their entirety contain personal data, and therefore must be treated as such. In its view this meant that following the application of redactions, there would be so little of substance left to disclose that disclosure would be meaningless, as all that would be left unredacted would be the element that is not personal data, ie the total figure claimed. However, this equated to the already published annual PDCA figure for Lord Cameron, information which it considered to be exempt from disclosure on the basis of section 21 of FOIA.
20. The Cabinet Office explained that the schedules to the invoices show that the claims relate to the work of a small number of individuals specific to the company, including its director (whose identity and role are in the public domain). The Cabinet Office also explained that as indicated by returns to Companies House, an average of seven staff were employed during the accounting period 2018-19. The Cabinet Office argued that the requested information therefore related to a sufficiently small number of employees that it would be possible for their identities to be established by a person who was assiduous and determined enough to find out. Therefore the Cabinet Office argued that the information should be regarded as personal data for the purposes of section 40(2) of FOIA.
21. The Commissioner notes that the withheld information, as the Cabinet Office submissions above suggest, can be split into two categories, firstly the invoices themselves, and secondly schedules attached to the invoices detailing how the funds claimed relate to individual employees.
22. In respect of the schedules, the Commissioner accepts that these contain the personal data of identified individuals, namely their salary details and how the funds claimed under the PDCA covered (in part) these salaries. Furthermore, in respect of the schedules, the Commissioner also accepts the Cabinet Office's position that if this personal data was redacted - assuming of course it was exempt under

section 40(2) – then there would be no real information of any substance left in the schedules. As result, the Commissioner accepts that it is pragmatic and proportionate to treat the entirety of the schedules as personal data.

23. In terms of the invoices, as the Cabinet Office noted these contain details of the tasks carried out by staff which the PDCA has been claimed for. The Commissioner accepts that such information can be linked to identifiable individuals, namely the company director and junior staff, and therefore such information is in effect akin to an overarching job description or tasks undertaken by employees. The Commissioner accepts that such information can be said to be personal data of these individuals.
24. The Commissioner notes that invoices also contain the amounts claimed per invoice against the PDCA. Whilst the Commissioner appreciates that the figure claimed is used for salary costs, this figure covers more than one individual and the actual number of individuals this figure is claimed for is not stated in the invoice itself (albeit that it is on the schedule attached to the invoice). Therefore, in the Commissioner's view disclosure simply of the total claimed per invoice would not amount to the disclosure of personal data. He also notes that totalling up the figures on the invoices for a particular financial year would (unsurprisingly) result in the annual figure that is published in the Cabinet Office accounts.
25. With regard to the remainder of the information contained in the invoices, the Commissioner is also satisfied that this is not personal data. Such information is essentially the standard information that would be expected to be on an invoice (eg dates, payment terms, references) and he does not consider that such information can be said to relate to an identifiable individual or that they could be identified from it. Moreover, the Commissioner considers that such information could be easily separated from the information on the invoices which he does accept is personal data – namely the description of duties information.
26. In summary, the Commissioner accepts that the entirety of the schedules to the invoices are personal data. However, in respect of the invoices themselves, the only information which he accepts is personal data is the description of duties for which the PDCA was claimed for. The remainder of the information contained in the invoices is not personal data and cannot therefore be exempt on the basis of section 40(2) of FOIA.
27. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under

the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

28. The most relevant DP principle in this case is principle (a).
29. The Commissioner has gone on to consider whether this element of the test is met in respect of the schedules and the information contained in invoices about the description of duties.

### **Would disclosure contravene principle (a)?**

30. Article 5(1)(a) of the UK GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

31. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
32. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

### **Lawful processing: Article 6(1)(f) of the UK GDPR**

33. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

*“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”<sup>2</sup>.*

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<sup>2</sup> Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA and by Schedule 3, Part 2, paragraph 20 the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second

34. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
  - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
  - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
35. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

*Legitimate interests*

36. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
37. The Cabinet Office noted that it could be argued that there is a legitimate interest in the disclosure of the detailed breakdown of what the PDCA has paid for in respect of Lord Cameron. However, it considered that any such legitimate interest was limited given the information already in the public domain, ie the total annual claimed by each recipient under the allowance is published each year in the Cabinet Office accounts.

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sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

38. It argued that if, in its view, there was a legitimate interest in publication details beyond the annual amount claimed, then such information would be proactively and routinely published. However, it was not.
39. The Cabinet Office also emphasised that the reimbursed costs relate to staffing support for Lord Cameron and that these amount to the job description and salary of staff. The Cabinet Office observed that these included the director of a small company, and those of junior staff. In its view, there was not a strong legitimate interest in such personal data of junior employees of a public figure nor of a director of small company established to provide support for that figure.
40. In the Commissioner's view there is, in general, a legitimate interest in understanding more about the nature of PDCA claims made by those in receipt of the allowance. Whilst the Cabinet Office points to the information contained in the public domain about this, this only amounts to the total annual amount claimed by each recipient of the PDCA and general information about the PDCA.<sup>3</sup> That said, in relation to the information contained in the schedules, which essentially amounts to a breakdown of how the amount claimed under the PDCA has been allocated to particular staff salaries, the Commissioner accepts it is difficult to argue that there is a legitimate interest in the disclosure of such specific, and personal, information. However, the Commissioner considers that there is a legitimate interest in the disclosure of the information which is contained in the invoices which he accepts is personal data, namely the description of duties for which the PDCA was claimed for. This on the basis that such information would provide an insight into exactly what the allowance has been used for.

*Is disclosure necessary?*

41. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
42. The Commissioner is also satisfied that the disclosure of the description of duties for which the PDCA has been claimed is necessary in order to

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<sup>3</sup> <https://www.gov.uk/government/publications/public-duty-cost-allowance/public-duty-costs-allowance-guidance>



meet the legitimate interest of allowing the public to better understand how Lord Cameron's office used the funds claimed.

*Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms*

43. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
44. In considering this balancing test, the Commissioner has taken into account the following factors:
  - the potential harm or distress that disclosure may cause;
  - whether the information is already in the public domain;
  - whether the information is already known to some individuals;
  - whether the individual expressed concern to the disclosure; and
  - the reasonable expectations of the individual.
45. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
46. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
47. The Cabinet Office argued that disclosure of the requested information has the potential to cause harm or distress. The disclosure of all of the information in the scope of the request would in effect reveal the job description and salary of staff. The Cabinet Office argued that staff do not undertake roles in a private company in the expectation that details of their precise job descriptions and salaries will be made public. In the Cabinet Office's view disclosure of such information could bring them unwarranted exposure and be the cause of consequent harm and distress.
48. The Cabinet Office argued that the expectation of staff is that such information would not be made public. Notwithstanding that Lord Cameron is a high profile public figure, the staff do not have a heightened expectation that their job descriptions and pay would be put

into the public domain by virtue of his status in public life. In an ordinary employer-employee relationship the employee would expect their job description and salary to remain a confidential matter and the same applies here.

49. Furthermore, the Cabinet Office argued that there is a reasonable expectation of privacy on the part of staff owing to the fact that the PDCA guidance makes apparent that the annual amount received by each claimant is published. This does not include a breakdown of costs being published on an annual basis, from which it would be possible to discern the role and tasks of those who work for PDCA claimants. In the Cabinet Office's view staff could reasonably assume that under such an arrangement that detailed information relating to their job description and salary would not be placed into the public domain.
50. In conclusion the Cabinet Office argued that the interest in disclosure is very limited and the rights and interests of staff strongly outweigh these, and that the legitimate interest in how much is paid to PDCA claimants is met through the publication of annual amounts which are published.
51. Having carefully considered the description of duties contained in the invoices the Commissioner is not persuaded that disclosure of this specific information would lead to any particular harm or distress to the staff in question. The Commissioner has elaborated on this finding in a confidential annex which has been provided to the Cabinet Office only as this further reasoning refers directly to the content of the withheld information.
52. The Commissioner acknowledges the Cabinet Office's point regarding the reasonable expectations of employees in a private company in respect of their job descriptions. However, the Commissioner would place greater emphasis than the Cabinet Office on the fact that this is a private company established to support a high profile public figure. He would also add that the company is supported, in part, directly from the public purse via the PDCA. In this context in the Commissioner's view employees of such a company should arguably have different expectations as to what may be disclosed under FOIA about them than employees of private companies without such features (ie partly funded from the public purse and working in support of an ex-Prime Minister). In any event, as noted above the Commissioner is not persuaded that disclosure would have any particularly harmful impact on the individuals in question.
53. In contrast, the Commissioner considers that disclosure of the description of duties information contained in the invoices could assist the public in gaining a greater understanding as to the activities to

which this funding had been used to cover. In the Commissioner's opinion there is a clear and legitimate public interest in providing the public with a better understanding as to how the PDCA is being used.

54. On balance the Commissioner has determined that there is a sufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms in relation to the description of duties information contained in the invoices. The Commissioner therefore considers that there is an Article 6 basis for processing such information and so the disclosure of such information would be lawful.

### **Fairness and transparency**

55. Even though it has been demonstrated that disclosure of this information under FOIA would be lawful, it is still necessary to show that disclosure would be fair and transparent under the principle (a).
56. In relation to fairness, the Commissioner considers that if the disclosure passes the legitimate interest test for lawful processing, it is highly likely that disclosure will be fair for the same reasons.
57. The requirement for transparency is met because as a public authority, the Cabinet Office is subject to FOIA.

### **Summary of Commissioner's findings**

58. The Commissioner's findings can be summarised as follows:
- All of the information contained in the schedule documents is personal data and that there is no legitimate interest in disclosure of such information. All of the schedule documents are therefore exempt from disclosure on the basis of section 40(2) of FOIA.
  - Only part of the information contained in the invoice documents constitutes personal data, namely the information relating to description of duties. The remainder of the information is not personal data and therefore cannot be exempt from disclosure on the basis of section 40(2) of FOIA.
  - Whilst the description of duties information is personal data, the Commissioner considers that disclosure of such information under FOIA would be fair, lawful and transparent and as result such information is also not exempt from disclosure on the basis of section 40(2) of FOIA.

### **Bank details**

59. The invoices also contain bank details of where the payment of reimbursement should be sent. The Cabinet Office argued that it is self

evident that such information is personal data and there is a reasonable expectation of privacy in respect of it.

60. Respectfully, the Commissioner does not consider that it is self evident that such information is personal data; this bank account relates to a company account rather than a personal one.
61. However, the Commissioner appreciates that details of bank accounts would not generally be disclosed under FOIA, and that public authorities have previously argued that disclosure of such information would be exempt on the basis of section 31(1)(a) (law enforcement) of FOIA. Therefore although this decision notice requires the Cabinet Office to disclose the invoices, in doing so the Commissioner considers it appropriate that bank account details are redacted.

## **Right of appeal**

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62. 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)

63. 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.
64. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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