



Cabinet Office

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[www.cabinetoffice.gov.uk](http://www.cabinetoffice.gov.uk)

Ben Plouviez  
Via: request-643875-74a5e9e4@whatdotheyknow.com

Our ref: IR329497

28 May 2020

Dear Mr Plouviez

### **FREEDOM OF INFORMATION REQUEST REF: IR329497 - INTERNAL REVIEW**

We refer to your email of 3 March 2020 in which you requested an Internal Review. Your request for an Internal Review was prompted by the Cabinet Office's response of 3 March 2020 to your request for information (reference FOI329497) under the Freedom of Information Act 2000 ('the Act').

This letter constitutes the outcome of the Internal Review. My findings are below.

Please accept our apologies for the delay in responding to you.

#### **The request**

On 6 February 2020, we received your request for information. You wrote:

*"Some photographs appearing on the Number 10 Flickr feed recently have licence conditions other than the Open Government Licence which until now has been usual. An example is at <https://www.flickr.com/photos/number10gov/49487775237>, which states "©No10 Crown Copyright" and "All Rights Reserved". I would like to see all correspondence and records of discussions relating to this change in practice; and all documents setting out current guidance or process which describe what licence conditions should be attached on publishing any photographs to this feed."*

#### **The response**

On 3 March 2020, the Cabinet Office responded to your request. It advised you that it did not hold the information you requested. It informed you that the matter which was the subject of your request was a human error and that there had been no change in policy.

#### **Request for an Internal Review**

On 3 March 2020, you requested an Internal Review. That request is reproduced at Annex A to this letter.

### **Outcome of the Internal Review**

I have concluded that the Cabinet Office was correct in informing you that it did not hold information within the scope of your request.

The Cabinet Office has not changed its practice in respect of the licensing of photographs on the Number 10 Flickr feed notwithstanding that it did not accord with Government policy.

### **Information not held**

In its response to you of 3 March 2020, the Cabinet Office explained that it did not hold the information you requested. The Cabinet Office did not apply an exemption. These are contained in Part II of the Act and are applied to information which is held by a public authority but not disclosed.

I am satisfied that your request was handled correctly and that it was accurately determined by the Cabinet Office that no information within the scope of your request was held.

You stated that you did not believe that there are no guidance documents setting out the current policy on the licensing of photographs for use on the Number 10 Flickr account.

The Cabinet Office does not have a specific, written policy on the licensing of photographs published on the Number 10 Flickr account. That it is not written does not make it any less of a policy.

### **Human error?**

The Cabinet also said to you in its response of 3 March 2020 that asserting '© No 10 Crown Copyright' and that all rights were reserved was a 'human error' and that photographs should now be correctly labelled.

I consider that our response could have been clearer as to what error had been made. I think that the Cabinet Office may not have wholly understood in its response the relationship between copyright and licencing in determining where human error lay.

It was not an error for the Cabinet Office to assert Crown Copyright. By virtue of section 163 of the Copyright, Designs and Patents Act 1988, Crown Copyright subsists in works made by the Government.

However, it was an error to state that all rights were reserved when this was not the case in respect of the licence being offered. In any event, the term is now recognised as obsolete and

should not have been used.

While it was not incompatible for a work to be subject to Crown Copyright and be licenced under the Open Government Licence (OGL), it is inconsistent to state that all rights are reserved and to licence usage under the OGL. The Cabinet Office response should have clarified that the human error it referred to related to this point.

### **Has policy changed?**

You also stated that the Cabinet Office informed you that there had been no change in policy and asked how the Cabinet Office knew this unless there was a written policy which has not changed.

In my view, it would be more accurate to state that there had not been a change in *practice*. Furthermore, it has become apparent in the course of conducting this Review that this practice has not been in accordance with Government policy.

The policy of the Government under the UK Government Licensing Framework (UKGLF) is that, with a few exceptions, OGL is the default licence for Crown bodies and is recommended for other public sector bodies.<sup>1</sup>

However, I note that the Number 10 Flickr account stated that its pictures could be 'used in accordance with the terms set out in the specified Creative Commons license.'

As you observed in your request for an Internal Review, it is incompatible for information to be available under a Creative Commons licence and OGL. It is apparent that the photographs on the Number 10 Flickr account do not fall within the exceptions outlined in the UKGLF and that it should have been made apparent that they were available under OGL and not a Creative Commons licence.

The Number 10 Flickr account shall be amended to reflect that its contents are available under the OGL.

However, as noted above, I am satisfied that the Cabinet Office does not have a specific, written policy on the licensing of photographs published on the Number 10 Flickr account and that information within the scope of your request is not held.

### **The Information Commissioner**

This response ends the complaints process provided by the Cabinet Office. If you are not content with the outcome of your internal review, you may apply directly to the Information Commissioner. The Information Commissioner can be contacted at:

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<sup>1</sup>

<https://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/uk-government-licensing-framework/>

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Yours sincerely

Eirian Walsh Atkins  
Head of FOI  
Cabinet Office

## **Annex A - your request for an Internal Review, 3 March 2020**

Dear Cabinet Office,

FAO: Eirian Walsh Atkins

I am writing to request an internal review of Cabinet Office's handling of my FOI request 'Changes to practice in licensing photography'. You have claimed that CO does not hold the information I requested.

I suspect your claim to exemption relies on your assertion that there has been no change in policy, and therefore CO holds no documents relating to such a change. However, my request was also for "any documents setting out current guidance or process which describe what licence conditions should be attached on publishing any photographs to this feed."

I do not believe that there are no such guidance documents setting out the current policy. You have said that there has been no change in policy: how do you know this, unless there is a written policy which has not changed? You have also said that the licence statement I quoted was applied by "human error": but the human in question can only have erred in relation to an existing procedure, which is presumably written down.

The example photo cited in my request has had its licence changed to "CC By nc-nd 2.0" - and that is not the Open Government Licence, nor compatible with it. Given that there is a default presumption for OGL for Government publishing, use of an alternative licence must surely be a deliberate policy choice. I therefore request a review of the Cabinet Office's claim not to hold such any guidance documents that set out the policy for assigning licences.

A full history of my FOI request and all correspondence is available on the Internet at this address: [https://www.whatdotheyknow.com/request/changes\\_to\\_practice\\_in\\_licensing](https://www.whatdotheyknow.com/request/changes_to_practice_in_licensing)

Yours faithfully,

Ben Plouviez