



Cabinet Office

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Joseph Lloyd
Via: request-672041-d1557397@whatdotheyknow.com

Our ref: IR2020/14194

13 November 2020

Dear Mr Lloyd

FREEDOM OF INFORMATION REQUEST REF: IR2020/14194 - INTERNAL REVIEW

We refer to your email of 8 October in which you requested an Internal Review. Your request for an Internal Review was prompted by the Cabinet Office's response of 8 October 2020 to your request for information (reference FOI2020/08440) under the Freedom of Information Act 2000 ('the Act').

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

The request

On 23 June you submitted a request for information. You wrote:

'I wish to see full copies of Dominic Cummings' diary appointments from January through to March 2020.'

The response

The Cabinet Office responded to you on 8 October 2020. It informed you that it held information relating to your request. However, it also informed you that this information was exempt from disclosure under sections 40(2) (personal information) and 35(1)(a) (formulation of government policy) of the Act.

Furthermore, it neither confirmed nor denied whether information was held which would engage the exemptions contained in sections 24 (national security) and 27 (international relations) of the Act.

Request for an Internal Review

On 8 October, you requested an Internal Review of your request for information. You wrote:

'I am writing to request an internal review of Cabinet Office's handling of my FOI request'

'Dominic Cummings' diary (January - March 2020)'.

Outcome of the Internal Review

I am satisfied that the Cabinet Office correctly dealt with your request for information.

Section 35(1)(a) of the Act

In its response to you of 8 October 2020, the Cabinet Office noted that:

‘the information requested relates specifically to engagements held by Mr Cummings’ in relation to his role in advising the Prime Minister on the subject of live issues of Government policy, rather than relating to data that is of a historic nature.’

Section 35(1)(a) of the Act is a class-based exemption. It is therefore engaged if information falls within the relevant class of information. The class of information in this instance is that which relates to the formulation or development of government policy. The information relating to your request falls within that class and the exemption is therefore engaged.

I have concluded that the Cabinet Office gave full consideration to the relevant public interest factors.

It recognised the general public interest in disclosure of information and that openness may increase public trust in and engagement with the Government. It also gave recognition to the specific public interest in Mr Dominic Cummings’ engagements, given his advisory role to the Prime Minister.

However, it also gave recognition to the strong public interest factors in favour of withholding the information from disclosure.

It referred to the strong public interest in Government being able to explore ideas to gauge the attitude and reaction to a proposed policy idea. This is often undertaken by Ministerial officials. It noted that the removal of space in which advisers can freely speak and contribute to Government policy development could lead to a chilling effect where officials and third parties were less willing to engage in the policy making process. This would, it was observed, diminish the quality of debate that underlay collective decision making.

The Cabinet Office stated that advisers are employed to provide the highest quality of advice to Ministers. I agree that there is a very strong public interest in ensuring that Mr Cummings has the ability to ascertain the genuine views of both officials and third parties in relation to the matters of policy development that he is engaging in on the Prime Minister’s behalf. In my opinion, this is a decisive factor weighing in favour of withholding the information.

Section 36(2)(b)(i), (ii) and (c) of the Act

I consider that the Cabinet Office could, in the alternative to section 35(1)(a) of the Act, rely upon section 36(2)(b)(i), (ii) and (c) of the Act to exempt the information you requested on the grounds that its disclosure, in the opinion of a qualified person (in this instance being a Minister of the Crown) would, or would be likely to inhibit the free and frank provision of advice, the free and frank exchange of views for the purposes of deliberation, or would otherwise prejudice, or would be likely otherwise to prejudice the effective conduct of public affairs.

The public interest factors in favour of disclosure which are relevant to section 35(1)(a) of the Act are equally relevant to section 36(2)(b)(i), (ii) and (c) of the Act.

However, the public interest factors in favour of withholding the information requested from disclosure are stronger. It is strongly in the public interest that senior officials are able to engage with those who assist the Prime Minister, to understand the Prime Minister's requirements in the shaping of government policy, and to ensure that the Prime Minister is equipped to provide full and frank advice in order to support the Prime Minister's decision making.

The disclosure of the requested information may reveal information that could inhibit the free and frank provision of advice and views by special advisers to the Prime Minister as it would indicate those topics on which the Prime Minister was being advised.

There is a strong public interest in the ability of Government officials to explore ideas with colleagues or third parties in order to gauge the attitude and reaction to a proposed policy idea. If advisers could not freely contribute to Government policy development it could lead to a chilling effect in which officials and third parties were less willing to engage in the exploration of new policy ideas. The quality of debate which underlay collective decision making would decline as a result.

Section 40(2) of the Act

The Cabinet Office applied section 40(2) of the Act to some of the information you requested.

I consider that it was correct to do so. Section 40(2) of the Act exempts personal information from disclosure if that information relates to someone other than the applicant, and if disclosure of that information would, amongst other things, contravene one of the data protection principles in Article 5(1) of the General Data Protection Regulation ('the GDPR'). In this case, I agree with the view of the Cabinet Office that disclosure would contravene the first data protection principle contained in Article 5(1)(a) of the GDPR, which provides that personal data must be processed lawfully, fairly and in a transparent manner. As the Cabinet Office noted in its response to you of 8 October 2020, section 40(2) of the Act is an absolute exemption and the Cabinet Office is not obliged to consider whether the public interest favours disclosing the information.

Sections 24(2) and 27(4) of the Act

The Cabinet Office stated in its response of 8 October 2020 that it neither confirmed nor denied whether it held information under sections 24 and 27 of the Act.

Section 24(2) of the Act provides that the duty to confirm or deny does not arise if, or to the extent that, exemption from having to do so is required for the purpose of safeguarding national security.

Section 27(4) of the Act provides that the duty to confirm or deny does not arise if, or to the extent that, confirming or denying would or would be likely to prejudice relations between the UK and another state, the UK and any international organisation, the interests of the UK abroad or the promotion or protection of those interests; or would involve the disclosure of any information which is confidential information obtained from a state other than the UK or from an international organisation or international court.

I consider that the Cabinet Office was correct to neither confirm nor deny whether it held such information in its response to you of 8 October 2020.

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:

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

Yours sincerely

Eirian Walsh Atkins
Head of FOI and Transparency
Cabinet Office