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2 September 2015

Dear Mr Smethurst

**Freedom of Information Act 2000**  
**Section 10(3)**

Further to recent correspondence between the Cabinet Office and the Commissioner, I write regarding the Cabinet Office's application of section 10(3) of the Act.

Part of the Commissioner's responsibility under the Act is to check on the performance of public authorities and the Commissioner is committed to identifying areas where performance improvements can be made.

In the past few months the Commissioner has received a number of appeals from complainants regarding the Cabinet Office's use of section 10(3). The Commissioner would like to obtain information from the Cabinet Office in order to understand how it is applying section 10(3) when handling requests. This information will be important in helping the Commissioner determine how the Cabinet Office is currently performing, and will be useful in identifying whether there is any area for improvement in the way in which the Cabinet Office handles requests.

**Information required**

As you know, section 10(3) requires the following:

*"If, and to the extent that—*

*(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or*

*(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,*

*the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection*

*does not affect the time by which any notice under section 17(1) must be given."*

The Commissioner recognises that the terms "reasonable in the circumstances" remains the subject of debate.

It would be helpful if you could provide the Commissioner with the following information so that we have a clearer picture of how section 10(3) is working in practice at the Cabinet Office:

1. As at the date you received this letter, please tell me how many requests are currently subject to section 10(3). That is, in how many "live" requests have you written to the requester to explain that you need further time to consider the balance of public interest test.
2. Please provide the date of each request, the date you wrote to advise the complainant that you would need further time to consider the balance of public interest; and your estimated date for completion of the public interest test.
3. Of these, please let me know how many requesters have written to express dissatisfaction at this.
4. For comparison, please tell me how many "live" requests you have in total at the moment.

I look forward to hearing from you by 30 September 2015. The Commissioner will be in contact soon after the information has been received to discuss how best to proceed.

Should you have any queries please contact me on my direct dial number listed below. If you wish to correspondence in writing please send it to [michael.avery@ico.org.uk](mailto:michael.avery@ico.org.uk) or [elizabeth.hogan@ico.org.uk](mailto:elizabeth.hogan@ico.org.uk).

Yours sincerely

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