

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

### **Decision notice**

**Date:** 27 March 2023

**Public Authority:** Cabinet Office

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

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

---

1. The complainant has requested information concerning the Clearing House function of the Cabinet Office. The Cabinet Office initially refused the request under section 12 (cost limit) of the FOIA. Following a refined request from the complainant the Cabinet Office provided information requested in part 5 of the request; advised that they held no information within parts 1, 2 and 4 of the request, and withheld information requested in part 3 of the request under sections 36(2)(b)(i) and (c)(prejudice to the effective conduct of public affairs).
2. The Commissioner's decision is that he is satisfied, on the balance of probabilities, that the Cabinet Office do not hold any information requested in parts 1, 2 and 4 of the request. The Commissioner is satisfied that sections 36(2)(b)(i) and (c) are engaged to part 3 of the request but that in respect of some of the information held, the public interest in disclosure outweighs the public interest in maintaining the exemptions.
3. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation.

- Provide the complainant with an appropriately redacted copy of Annex B of the withheld information, as specified in the Confidential Annex attached to this notice.
4. The Cabinet Office must take these steps within 35 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

---

5. On 27 November 2020, the complainant wrote to the Cabinet Office and requested information in the following terms:

*'Please provide information on :*

- 1) The total annual budget for the Cabinet Office Freedom of Information Clearing House.*
- 2) The number of staff employed by the Clearing House, broken down by civil service grade.*
- 3) A copy of any guidance, working manual, or new starters guide held setting out the operation of the Clearing House.*
- 4) A copy of any organogram held setting out the organisational structure of the Clearing House, and setting out the reporting line for the head of the Clearing House (i.e. identifying which senior civil servant the Head of the Clearing House reports to, and where it sits within the Cabinet Office organisational structure.*
- 5) A breakdown of the number of requests processed by the Clearing House since January 1<sup>st</sup> 2020 to the date of this request, by the department or agency that referred them to the Clearing House'.*

6. The Cabinet Office responded to the request on 29 December 2020. They confirmed that they held the information requested but that they were unable to comply with the request as part 5 exceeded the appropriate limit under section 12 (costs limit) of the FOIA. The Cabinet Office explained that:

*'The reason that your request exceeds the cost limit is that the Clearing House processes a relatively large volume of requests each year as part of its role as an advice centre to coordinate complex requests across Whitehall. There may be a number of different reasons why requesters are shared with the Clearing House (for example, to confirm whether or not the request is a 'round robin' or ask for advice on a particular policy*

*issue). As a result not all requests shared with the Clearing House will receive advice or guidance. To break these down by department referral, we would need to locate the reference email for every one of these. They would also have to be tallied and aggregated by department. We estimate that this process would exceed the appropriate limit'.*

7. The Cabinet Office suggested to the complainant that he might wish to refine his request to bring the cost below the appropriate limit, for example by considering a shorter timeframe for the request. However, the response also advised that any such refined request might still be subject to one or more of the exemptions contained in the Act.
8. The Cabinet Office also provided the complainant with some background information on the Clearing House, stating that it was established in 2004 and has operated in different forms since the FOIA came into force in January 2005 as an advice centre to coordinate complex requests across Whitehall. The Cabinet Office advised that there is no stand-alone Clearing House team, but coordination functions are carried out by a number of staff members who have a range of wider responsibilities. There is no budget allocated specifically to the Clearing House.
9. The Cabinet Office stated that, *'this Government is fully committed to transparency, and ensuring all requests for Freedom of Information (FOI) are handled appropriately. All requests are considered in an applicant-blind manner, regardless of – for example – the occupation of the applicant. The Cabinet Office FOI process complies with relevant protections under the Data Protection Act 2018'.*
10. The complainant wrote to the Cabinet Office on 5 January 2021, and advised that based on their advice and assistance, he was happy to reduce the scope of part 5 of his request to just the month of December 2020. He stated that, *'I understand that requests referred to the Clearing House are monitored in circulated emails with electronic lists of requests, so collating and analysing these lists should not be overly burdensome'.* The Cabinet Office acknowledged receipt of the refined request on the same date.
11. The Cabinet Office provided the complainant with a response to his refined request on 2 February 2021. They advised that the information requested was exempt under section 36 (prejudice to effective conduct of public affairs) and that under section 10(3) of the FOIA, they were extending the time required to consider the balance of the public interest test. They advised that they hoped to be able to provide their substantive response by 2 March 2021.
12. In the event the Cabinet Office provided their substantive response on 19 March 2021.

13. The Cabinet Office confirmed that they did not hold any information within the scope of parts 1, 2 and 4 of the request. They advised that:

*'Responsibility for FOI policy has moved between the Department of Constitutional Affairs, the Ministry of Justice, and now sits in the Cabinet Office, as part of the FOI and Transparency team and wider Cabinet Secretary Group. There is no stand alone Clearing House team. Coordination functions are carried out by a small number of staff members, all of whom have a range of other wider responsibilities'.*

14. With regard to part 3 of the request, the Cabinet Office advised that this information was being withheld under sections 36(2)(b)(i) and (c) of the FOIA. This was on account of the qualified person's opinion that disclosure would, or would be likely to, inhibit the free and frank provision of advice and prejudice the effective conduct of public affairs.

15. In respect of the public interest test, the Cabinet Office acknowledged a 'general' public interest in disclosure of public information and they recognised that openness in government may increase public trust in and engagement with the government. Specifically, the response recognised that *'there is a public interest in how the Cabinet Office Clearing House operates, particularly given the important contribution the Freedom of Information Act makes'.*

16. Factors in favour of withholding the information were that *'there is a public interest in the effective operation of government, which would be prejudiced by the disclosure of handover documents'.* The Cabinet Office explained that the documents are administrative and were not drafted with the intention of publication but rather to assist the effective handover of administrative processes. On that basis the Cabinet Office contended that the public interest in releasing the documents versus the harm disclosure could cause *'is not convincing'.*

17. The Cabinet Office stated that:

*'Thorough handover processes need to be conducted between officials, which would be made significantly more difficult if the information needed to be presented with a view to future publication and it is likely future handover documents would not as necessarily frank as is needed to support effective administrative handovers. Releasing the documents would therefore be likely to prejudice the effective conduct of affairs'.*

18. The Cabinet Office contended that there was no compelling public interest that overrides the very strong public interest in maintaining the confidentiality of the information. In considering all of the factors in the case, the Cabinet Office considered that the public interest would be better served by withholding the requested information to preserve the 'safe space' in which free and frank advice could be provided, particularly for junior officials.

19. In response to the refined part 5 of the request, the Cabinet Office confirmed that they held information in scope and there were 17 round robin requests throughout the month of December 2020. The Cabinet Office provided the complainant with a table which showed which departments had received a round robin request and had referred the same to the Clearing Office.
20. The response repeated the background information to the Clearing House previously provided, and advised that the FOI and Transparency Data Team in the Cabinet Office carry out coordination functions to help ensure that there is a consistent approach across government to requests for information which are made to a number of different government departments (known as 'round robins') or where requests are made for particularly sensitive information, including relating to national security or personal data.
21. The Cabinet Office advised that they circulate to departments a list of those requests to more than one department which have repeat characteristics ('round robins'). They stated that there is a public benefit in ensuring that exemptions are applied in a consistent and legal way. All FOI requests are treated exactly the same regardless of who the request is from, and their occupation. The Cabinet Office stated that, *'Whilst every freedom of information request is treated individually, there are merits in a consistent approach in the consideration of public interest arguments, and including based on the Clearing House's broader understanding of ICO or Tribunal judgements'*.
22. The complainant requested an internal review on 22 March 2021. He stated that *'it is highly unlikely that no information is held for questions 1, 2 or 4'*. He noted that:  
  
*'For basic business management purposes, it seems likely that the department will hold information on who is assigned to the Clearing House team, even if they have other duties, such as working on general freedom of information requests and other matters within the Cabinet Office. It is also likely that the cost of these staff (i.e. cost of their employment) is held, even if this must be caveated by stating that they have other duties as well, in terms of the Clearing House budget'*.
23. The complainant also contended that it seemed unlikely that details of the reporting structure of the Clearing House were not held, as an organogram, or something functionally similar, would be required to ensure that the team operated effectively.
24. As regard the information requested in part 3 of the request and withheld under section 36, the complainant contended that:  
  
*'There is a clear public interest in transparency, given widespread concerns raised in recent reporting, around the potential for the central*

*management of freedom of information disclosures from other departments in a manner not in keeping with the spirit of public records law'.*

25. The complainant stated that whether the documents are administrative and were not drafted with the intention of publication has no bearing on the public interest in their disclosure, *'indeed, greater transparency around how cases are referred to and handled by the Clearing House could only serve the public interest in allowing the public to see the spirit of FOIA legislation is being upheld'.*
26. In addition, the complainant noted that the documents had been withheld in a blanket manner, which he contended was a breach of the Act. He stated that *'all the information must be considered for release with specific parts redacted if they are found to trigger an exemption, and this has not been done in this case'.* The complainant stated his belief that it was highly unlikely that the documents are exempt in their entirety.
27. The Cabinet Office provided the complainant with their internal review on 4 June 2021. The review upheld the not held response to parts 1, 2 and 4 of the request and the use of section 36 to part 3 of the request.
28. Having considered the points which the complainant has made about no information being held for parts 1, 2 and 4 of the request, the review stated that it might be helpful if it clarified that there is not a set team of staff that work within the Clearing House, and for that reason, there is no budget assigned to the Clearing House, nor is there an organogram or organisational structure. The Clearing House does not employ staff in and of itself. Therefore, the Cabinet Office confirmed that they did not hold information pertaining to the relevant parts of the request.
29. The Cabinet Office advised that they had considered the concerns raised by the complainant about the application of section 36 having been allegedly applied in a blanket manner, but that they disagreed with this assessment as the information in scope which the exemption had been applied to, is very narrow, consisting of two handover documents. The Cabinet Office advised that all parts of the documents were withheld under sections 36(2)(b)(i) and 2(c) due to their administrative nature and due to the fact that the documents were written up between junior officials, with no expectation that they would be published, particularly so soon after they were created.
30. The review contended that disclosure of the documents, even in part, *'would prejudice the effective operation of government as handover documents require frank guidance and advice in order to ensure that the role is carried out effectively'.* The review stated that although there is



a public interest in transparency, that did not override the strong public interest in maintaining the effective conduct of public affairs.

31. The Cabinet Office advised the complainant that they appreciated his concerns around transparency being in the public interest '*with regards to how cases are referred to and handled by Clearing House*'. Agreeing that greater transparency around the Clearing House is beneficial for the public interest, the Cabinet Office provided the complainant with a link to public domain information concerning the Clearing House published by the Government<sup>1</sup>. This information post-dated the complainant's request.
32. The Cabinet Office advised that they considered that the published public domain information about the Clearing House '*weakens any public interest arguments for the release of more technical details, as the interests of informing the public on how the Clearing House handles cases has already been met*'.

### Scope of the case

---

33. The complainant contacted the Commissioner on 8 June 2021 to complain about the way his request for information had been handled.
34. In submissions to the Commissioner, the complainant contended that the Cabinet Office had '*failed to provide tenable arguments as to why this information would breach the cost limit*'. He stated that it seemed '*highly unlikely that no assessment of the size and budget of the Clearing House team is held within the Cabinet Office, such information would be required for basic business management purposes*'. The complainant contended that the Cabinet Office had provided no credible cost estimate as to why obtaining the figures requested would breach the cost limit.
35. In respect of section 36, the complainant contended that the Cabinet Office '*had not advanced strong reasons as to why there would be a damaging infringement of policy safe space in relation to the release of the guidance material requested*'. The complainant noted that the Cabinet Office had withheld this guidance material in full, rather than releasing a redacted version of the documents.
36. The complainant stated that there is very little information on the operation of the Clearing House in the public domain and therefore he

---

<sup>1</sup> [Cabinet Office and Freedom of Information - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

contended that there is 'a very strong public interest in additional disclosure about how the unit operates, which the Cabinet Office has so far failed to take into account'.

37. The Commissioner notes that the Cabinet Office were no longer relying on section 12 to refuse the request (they having provided the complainant with the information requested in part 5 of his refined request). Therefore, the Commissioner considers that the scope of his investigation is to determine whether the Cabinet Office, on the balance of probabilities, holds relevant information within parts 1, 2 and 4 of the request and whether the Cabinet Office were correct to withhold the information requested in part 3 of the request under section 36 of the FOIA.

## Reasons for decision

---

### ***Held/Not held*** – parts 1, 2 and 4 of the request

38. In cases where there is some dispute as to whether information falling within scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
39. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, the public authority holds any information which falls within the scope of the request.
40. In applying this test, the Commissioner will consider the extent and quality of the searches carried out by the public authority, or other explanations offered as to why the information is not held.

### The Cabinet Office's position

41. In order to investigate this complaint, the Commissioner asked the Cabinet Office to respond to a number of questions. The Commissioner has set out below what these questions were and the Cabinet Office's response to them:

**Question:** *Please confirm the actual number of staff members carrying out the coordination function of the Clearing House, and their civil service grades?*

**Question:** *Since there is a reasonable presumption that the Cabinet Office would hold the information requested, please explain why it is not held?*



**Question:** *As the Cabinet Office has advised that there is no stand alone Clearing House team as such, it seems likely that the Cabinet Office would not hold an organogram of the type envisaged and requested by the complainant. For the avoidance of doubt, please confirm whether any such organogram is held by the Cabinet Office?*

**Answers:** Responsibility for the operation of the Clearing House function sits with the Freedom of Information and Transparency Data Team within the Cabinet Office. Accountability for the effective running of the function rests with the Senior Civil Servant (Deputy Director, FOI and Transparency) for the Team. The Clearing House function sits within the overall Team.

However, the Clearing House function is not discrete. The operating model is one of matrix management rather than a discrete hierarchical team. Therefore, as there are not staff employed by 'the Clearing House' it follows that there is no organogram for the Clearing House.

**Question:** *Whilst the Commissioner appreciates that there will not be a specific annual budget for the Clearing House, since its function is not carried out by a stand alone team, there would be a reasonable presumption that the Cabinet Office would hold at least some financial information as to the annual cost of the Clearing House function (e.g. the costs/expense of the staff assigned to the Clearing House). Please confirm the annual cost of the Clearing House function, including the staff time and expenditure. If no exact figures are possible, please provide a reliable estimate of the percentage of the Cabinet Office annual budget which is (on average) spent on the Clearing House function?*

**Answer:** The budget for the FOI and Transparency Data Team, and therefore operating costs for the Clearing House function, are met within the departmental budget. We do not hold information on the annual cost of operating the Clearing House function, nor do we hold an estimate.

#### The Commissioner's position

42. As noted above, if the Clearing House comprised a discrete or dedicated team within the Cabinet Office (or a unit within the department's Freedom of Information and Transparency Data Team) then the Commissioner considers that there would, as the complainant has contended, be a reasonable presumption that the Cabinet Office would hold such organisational (and possibly budgetary) information as that requested.
43. However, the Cabinet Office have been clear that the Clearing House function is not discrete, and no staff are employed by 'the Clearing House'. Rather, staff operating the Clearing House function are those

staff employed with the Cabinet Office Freedom of Information and Transparency Data Team, for whom operating the Clearing House function will form just part of their roles and responsibilities.

44. The Commissioner notes that this clarification followed on from a previous and published letter dated 18 March 2021 from the then Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, Michael Gove, to the Director of Editorial Legal Services at Guardian News & Media. In that letter, Mr Gove stated that *'the Clearing House **function** (Commissioner's highlight) is not new. It was established in 2004 and has operated in different forms since the Freedom of Information Act came into force in January 2005<sup>2</sup>. This letter corrected a slightly earlier letter sent by Mr Gove to the Chair of the Public Administration and Constitutional Affairs Committee on 9 March 2021, in which it was stated that 'the Clearing House function is not new. It is a simple three person team designed to co-ordinate timely and effective responses to FOI<sup>3</sup>.*
45. In addition, the FOI Clearing House Review, carried out by Sue Langley OBE and published in late August 2022<sup>4</sup> (the Langley Review), provided the following background information about the Clearing House:

*'Since 2004 an FOI Clearing House function has provided FOI guidance for departments; first, when cross-government FOI responsibility was under the Department for Constitutional Affairs, the Ministry for Justice and then moving to the Cabinet Office, where it remains to date'.*

*These coordination functions remain in place and are carried out by a small number of staff members, who have a range of wider responsibilities which have made it difficult for a consistent approach. They extend to ministerial and non-ministerial departments; non-departmental public bodies are not normally covered, although it may be that requests to those bodies are referred to the Cabinet Office through sponsor departments'.*

---

<sup>2</sup> [CDL letter to the Guardian.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>3</sup> [2021.03.09 - CDL to PACAC Chair \(parliament.uk\)](https://parliament.uk)

<sup>4</sup> [Freedom of Information - FOI Clearing House Review \(HTML\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

Although the Langley Review post dates the complainant's request, the information it confirmed about the background of the Clearing House function does not.

46. At the time of the complainant's request, however, the Commissioner is mindful that there was significantly less information about the Clearing House in the public domain than there is now. Furthermore, the name given to this particular function of the Freedom of Information and Transparency Data Team – the Clearing *House*, does tend to suggest/imply a discrete and stand alone team or unit so the Commissioner considers that it is quite understandable, in the absence of clarification, that at the time of his request, the complainant should have taken the Clearing House to be structured as such and therefore for such information to be held by the Cabinet Office.
47. However, given that the Clearing House is a *function* of the Cabinet Office Freedom of Information and Data Transparency Team, rather than a discrete team or unit of departmental staff itself, the Commissioner is satisfied, on the balance of probabilities, that the Cabinet Office do not (and could not) hold the information requested in parts 1, 2 and 4 of the complainant's request.

**Section 36(2)(b)(i) and (2)(c) – part 3 of the request**

48. Section 36(2) states that:

*'(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act –*

*(b) would, or would be likely to, inhibit –*

*(i) the free and frank provision of advice, or*

*(ii) the free and frank exchange of views for the purposes of deliberation, or*

*(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs'.*

49. In deciding whether section 36(2) is engaged, the Commissioner must determine whether the qualified person's opinion was a reasonable one.
50. Further, in determining whether the opinion is a reasonable one, the Commissioner takes the approach that if the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable person could hold – then it is reasonable. This is not the same as saying that it is the only reasonable opinion that could be held on the matter. The qualified person's opinion is not rendered

unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It is not reasonable if it is an opinion that no reasonable person in the qualified person's position could hold. Nor does the qualified person's opinion have to be the most reasonable opinion that could be held; it only has to be a reasonable opinion.

51. In submissions to the Commissioner the Cabinet Office provided a copy of the reasonable opinion given by the qualified person, Chloe Smith, the then Minister of State for the Constitution and Devolution on 24 February 2021. The Cabinet Office also provided the submissions for the qualified person's consideration which were provided to Ms Smith on 19 February 2021. The Minister's reasonable opinion was that the exemption was engaged as disclosure of the information in scope of the request would be likely to inhibit the free and frank provision of advice, and would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

52. In her reasonable opinion the Minister stated that:

*'It is my opinion that disclosure of the requested information would be likely to cause prejudice, for the purposes of s.36(2)(b)(i) and s.36(2)(c) because it would inhibit the ability of junior members of staff to provide effective handovers to each other if they have to weight every comment or wording as a result of an expectation that this might subsequently become public. If handover documents were drawn up with a view to publication it is likely the content would be altered thus inhibiting the wider ability of the departments to ensure that administrative processes run smoothly and effectively.*

*Release of this information would inhibit future advice on the subject of the Clearing House. The quality of advice given to officials would be likely to diminish. Release of this information would be likely to prejudice the free and frank provision of advice in future because officials would be likely to be constrained in the level of frank and candid advice they provide. The quality and administrative effectiveness of handovers between junior members of staff would also diminish'.*

53. Having considered the content of the withheld information and taking into account the qualified person's reasonable opinion, the Commissioner is satisfied that sections 36(2)(b)(i) and 36(2)(c) are engaged to the withheld information. In respect to the prejudice threshold, the Commissioner considers that disclosure of the withheld information would be likely to inhibit the free and frank provision of advice and would be likely otherwise to prejudice the effective conduct of public affairs.

54. To be clear, the Commissioner accepts that the 'otherwise' prejudice in this case would be the inhibition of the wider ability of departments to ensure that administrative processes run smoothly and effectively (if handover documents were designed with a view to publication rather than operational efficiency).
55. Section 36 is a qualified exemption and in accordance with the requirements of section 2 of the FOIA, the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption cited outweighs the public interest in disclosing the information.

### **Public interest test**

56. In considering complaints regarding section 36, where the Commissioner finds that the qualified person's opinion was reasonable, he will consider the weight of that opinion in applying the public interest test. This means that the Commissioner accepts that a reasonable opinion has been expressed that prejudice or inhibition would, or would be likely to occur, but he will go on to consider the severity, extent and frequency of that prejudice or inhibition in forming his own assessment of whether the public interest test dictates disclosure.
57. It is important to be clear that the exemptions contained in section 36 focus on the processes that may be inhibited, rather than what is in the withheld information. The issue is whether disclosure would inhibit the processes of providing advice or would otherwise prejudice the effective conduct of public affairs. In order to engage the exemption, the information requested does not necessarily have to contain advice that is in itself notably free and frank. On the other hand, if the information only consists of relatively neutral statements, then it may not be reasonable to think that its disclosure could inhibit the provision of advice or otherwise prejudice the effective conduct of public affairs.

### *The position of the Cabinet Office*

58. In submissions to the Commissioner, the Cabinet Office acknowledged the general interest in disclosure of public information and they recognised that openness in government may increase public trust in and engagement with the government. Specifically, the Cabinet Office recognised that *'there is a public interest in how the Cabinet Office Clearing House function operates, particularly given the important contribution the Freedom of Information Act makes'*.
59. However, in favour of withholding the information under section 36(2)(b)(i), the Cabinet Office stated that there is a public interest that officials are able to receive free and frank advice from departmental colleagues. *'At a junior level, handover documents need to explain administrative procedures without the concern that the documents could*

*be published. This ensures that they are as frank and as useful as possible to assist with the administrative process of handover between roles'. Furthermore, the Cabinet Office noted that the documents 'are highly administrative in nature' and so contended that the public interest in disclosing them versus the harm disclosure could cause 'is not convincing'.*

60. The Cabinet Office stated that they considered that there is little public interest in disclosure, and what public interest there is is not sufficiently compelling to override the public interest in maintaining the confidentiality of the information.
61. In favour of withholding the information under section 36(2)(c) the Cabinet Office stated that there is a public interest that the Clearing House function is able to operate effectively. They advised that thorough handover processes need to be in place between officials and contended that these would be made significantly more difficult if the information needed to be presented in a way that was appropriate for release.
62. The Cabinet Office also stated that there is a public interest in the effective operation of government departments' compliance with the FOIA, which would be likely to be prejudiced by the disclosure of handover documents. For example, the Cabinet Office advised that disclosure of the list of contacts in one of the documents could lead to unfiltered referrals, meaning that the recipient contacts might end up dealing with initial queries from government departments which the current administration and previous administrations had decided were best directed to and managed through the Clearing House function.
63. The Cabinet Office advised that on 18 March 2021 they published new information on gov.uk in respect of the Clearing House *'to ease concerns which had been aired by a number of individuals, and in recognition of the public interest in greater transparency about the function'*. The Cabinet Office drew the Commissioner's attention to the ICO's then guidance on the public interest test, which stated that, *'if an authority is carrying out an internal review then it may consider the circumstances up to the time the review is completed'*.
64. The Cabinet Office were therefore of the view that the publication of the information on gov.uk can be taken into account when considering the public interest in this case, as the publication took place prior to the completion of the internal review on 4 June 2021 and was referred to in that internal review. The Cabinet Office contended that the information which they had published at the time *'gives transparency to the operation of the Clearing House'* and they considered that this significantly reduces the public interest in disclosure of the withheld information in the present case.



65. On balance, the Cabinet Office confirmed that they concluded that the public interest in withholding the information outweighs those factors in favour of disclosure. They also confirmed that in respect of the level of prejudice asserted, this was that disclosure 'would be likely' to give rise to the prejudicial effects contended.

*The position of the complainant*

66. As previously noted, in submissions to the Commissioner the complainant contended that the Cabinet Office had not advanced strong reasons '*as to why there would be a damaging infringement of policy safe space in relation to the release of the guidance material requested*'.  
67. The complainant also stated that there is very little information on the operation of the Clearing House in the public domain and therefore he contended that there '*is a very strong public interest in additional disclosure about how the unit operates, which the Cabinet Office has so far failed to take into account*'.

*Balance of the public interest arguments*

68. The Commissioner acknowledges and sympathises with the Cabinet Office that at the time of the complainant's request, ICO guidance on the timing of the public interest test was as referenced by the Cabinet Office in submissions.  
69. However, as the Upper Tribunal recently confirmed in *Montague v The Information Commissioner and The Department of Trade* (UA -2020 000324 & UA-2020-000325)[13 April 2022], the time for judging the competing public interests in a request is at the date of the public authority's decision on the request under Part 1 of the FOIA and prior to any internal review of the initial decision. The Commissioner notes that the *Montague* decision pre-dated the Cabinet Office submissions in this case (albeit by less than two months).  
70. As the ICO's current guidance to public authorities on the public interest test makes clear<sup>5</sup>, the *Montague* decision means that if a public authority offers an internal review, they cannot reassess the balance of competing public interests at that stage. Rather, the public authority must look back at their decision to establish if – at that time – they dealt appropriately with the request, including the balance of the public interest. This means that the Commissioner assesses such public interest

---

<sup>5</sup> [The public interest test | ICO](#)

cases by reference to the time of the public authority's decision, which will **not** include the time of the internal review, if conducted.

71. However, as the ICO guidance also notes, it is sometimes possible that during the Commissioner's investigation or at Tribunal, new facts and evidence emerge since the time of the public authority's decision on a request. In such instances, the Commissioner can take into account the new evidence in so far as this can inform the grounds of exemption(s) which the public authority can rely on.
72. The above being the case, the Commissioner cannot take into account, for the purposes of the public interest test, the publishing of information concerning the Clearing House by the Government on 18 March 2021. Rather, the time for assessing the public interest test in this case is 2 February 2021, this being the time by which the Cabinet Office were statutorily required to provide a response to the complainant's refined request of 5 January 2021.
73. At that time (2 February 2021) as the complainant has correctly stated, there was very little information in the public domain about the Clearing House. That lack of transparency was one reason why the Clearing House had attracted such concern and criticism in some quarters and what the Government sought to address by their later publishing of information on the role and purpose of the Clearing House.
74. In submissions to the Commissioner the complainant referenced the decision of the First Tier Tribunal (FTT) in *Cabinet Office v Information Commissioner and Jenna Corderoy* (EA/2020/0240) [19 May 2021]<sup>6</sup> whereby the FTT upheld the Commissioner's decision ordering the Cabinet Office to disclose 'round robin' lists operated by the Clearing House. In that case Judge Hughes noted that given the circumstances prevailing at the time of Ms Corderoy's FOI request, *'a lack of accurate publicly available information about the constitutionally significant role (of the Clearing House) in co-ordinating FOI responses, there is real weight in the public interest in disclosure'*.
75. Similarly, at the time of the complainant's request in this case, for the same reasons given by the FTT in the *Corderoy* case above, the Commissioner considers that there was a legitimate and substantial public interest in the disclosure of information which would provide transparency and insight into the role and influence of the Clearing House function. The Commissioner recognises and appreciates that following the Langley Review (and the inquiry into the Clearing House by the House of Commons Public Administration and Constitutional Affairs

---

<sup>6</sup> [Cabinet Office EA.2020.0240 Open Decision.pdf \(tribunals.gov.uk\)](#)

Committee which preceded it) there is now considerably more information in the public domain about the Clearing House. However, that was not the case at the time of the complainant's request or at the statutorily required response time by the Cabinet Office.

76. The Commissioner has long been of the view that information about how the Clearing House operates carries a strong public interest in disclosure. In FS50121686 (March 2010), a case which concerned a request to the Ministry of Justice (MOJ) for information relating to requests which had been referred to the Clearing House (at that time located within the MOJ) by various government departments, the Commissioner stated (at paragraph 33 of his decision):

*'The Commissioner also considers that there is a more specific public interest in knowing the reasons behind the advice that the Clearing House issues to Government departments on how to respond to Freedom of Information requests. This is because the Clearing House advice directly affects the amount and nature of information that is put into the public domain'.*

77. More recently, in IC-102300-D7W4 (December 2022)<sup>7</sup>, which concerned a request for round robin lists issued by the Clearing House, the Commissioner found that the Tribunal's comments in *Corderoy* regarding the lack of transparency about the Clearing House, were equally applicable in that case *'given that the request which is the subject of this complaint was submitted prior to the publication of the information about the Clearing House in March 2021'*. In light of this, the Commissioner found that there was a particular public interest in the disclosure of the information in scope of that request. In IC-102300-D7W4 the Commissioner found that the public interest in disclosure outweighed the public interest in maintaining section 36.

78. The situation in the present case is the same in that at the time of the complainant's request there was a lack of official information in the public domain about the operation of the Clearing House. Given this lack of transparency, the Commissioner considers that the public interest in disclosure of *some* of the information within scope of the complainant's request (specifically some of the information contained in Annex B) outweighs the public interest in maintaining sections 36(2)(b)(i) and (2)(c). The Commissioner is not persuaded that the disclosure of the relevant information would risk a significant inhibition in the provision of advice on the Clearing House (for reasons which the

---

<sup>7</sup> [ic-102300-d7w4.pdf \(ico.org.uk\)](https://ico.org.uk/ics/102300-d7w4.pdf)

Commissioner expands on further in the Confidential Annex attached to this notice).

79. However, the Commissioner agrees with the Cabinet Office that disclosure of the list of contacts in one of the documents would risk unfiltered referrals and this would cause additional and unnecessary work and disruption to recipient contacts. Therefore, the Commissioner considers that in respect of the information concerning the details of the recipient contacts, the public interest in maintaining the exemption outweighs the public interest in disclosure of that information.
80. The Commissioner also agrees with the Cabinet Office that *some* of the information within scope of the request is highly administrative in nature and its public interest weight and value, in terms of the transparency its disclosure would provide about the operation and remit of the Clearing House, is minimal at best.
81. The Commissioner is satisfied that the important and wider public interest in protecting a safe space for junior members of staff to provide effective administrative handovers to each other outweighs the public interest in disclosure which this information carries. Therefore, the Commissioner also considers that in respect of this administrative information, the public interest in maintaining the exemption outweighs the public interest in disclosure.
82. In conclusion therefore, the Commissioner has found that in respect to some of the information in scope of the request, the public interest in disclosure outweighs the public interest in maintaining sections 36(2)(b)(i) and (c). In respect to all other information within scope the Commissioner considers that the public interest in maintaining the exemptions outweighs the public interest in disclosure. The Commissioner's public interest findings in respect of the respective information are detailed in the Confidential Annex.

## Right of appeal

---

83. 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)

84. 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.
85. 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 .....**

**Gerrard Tracey  
Principal Adviser  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**