

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

### **Decision notice**

**Date:** 6 September 2023

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

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

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1. The complainant requested from the Home Office information regarding correspondence held by and from Suella Braverman relating to Just Stop Oil, protests, and journalists. The Home Office stated the information at part one of the request was exempt from disclosure under section 35(1)(d) (operation of Ministerial private office) of FOIA.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 35(1)(d) of FOIA to the information for part one of the request, and he is satisfied the public interest favours maintaining the exemption. The Commissioner also finds the Home Office breached section 10 (time limits for compliance) of FOIA by not responding to the request within 20 working days.
3. The Commissioner does not require the Home Office to take any steps as a result of this decision.

#### **Request and response**

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4. On 10 November 2022, the complainant wrote to the Home Office and requested information in the following terms:

"This is a request for information under the Freedom of Information Act. Please note there are several parts to this request:

(1) Since Monday 7th November, please provide all internal correspondence held by Suella Braverman which refers to, or relates to (a) Just Stop Oil (b) protests (c) journalists (d) the arrests of journalists. I would expect this to include any internal communications between Suella Braverman and Home Office staff.

(2) Since Monday 7th November, please provide all external correspondence from Suella Braverman which refers to, or relates to (a) Just Stop Oil (b) protests (c) journalists (d) the arrests of journalists. I would expect this to include any communications with Hertfordshire Constabulary, Hertfordshire's Police and Crime Commissioner and the National Police Chief's Council.

By "correspondence and communications", I expect this to cover - but not limited to - emails (and their attachments), briefings, minutes of meetings, notes taken during telephone conversations, text and WhatsApp messages."

5. On 29 March 2023 the Home Office responded and confirmed it holds some of the information requested. For part one of the request, the Home Office cited section 35(1)(d) (operation of Ministerial private office) of FOIA and for part two, it stated there is no information held by the Home Office.
6. On 30 March 2023 the complainant requested an internal review and on 7 June 2023 the Home Office provided its review response and maintained its original position.
7. The complainant contacted the Commissioner on 6 July 2023 to complain about the way their request for information had been handled. Specifically, the complainant argued against the Home Office's reasons for applying section 35(1)(d) of FOIA to the request, and they asked the Commissioner to assess how the Home Office decided to withhold the information as they believe it should have been released.
8. During the investigation, the Home Office provided the Commissioner with the withheld information, its final submissions and confirmed its position that section 35(1)(d) of FOIA is engaged in respect of all the information. It also cited other exemptions: sections 35(1)(b) (ministerial communications); 38(1)(b) (health and safety) and 40 (personal information) of FOIA and said that these are engaged for some parts of the information.

## Reasons for decision

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9. This reasoning covers why the Home Office was entitled to rely on sections 35(1)(d) of the FOIA to refuse to provide the information to part one of this request.

### **Section 35(1)(d) – operation of Ministerial private office**

10. Section 35(1) of FOIA states:

“Information held by a government department or by the Welsh Government is exempt information if it relates to-

(d) the operation of any Ministerial private office.”

11. Section 35(5) defines ‘Ministerial private office’ as meaning:

“any part of a government department which provides personal administrative support to a Minister of the Crown, to a Northern Ireland Minister or a Northern Ireland junior Minister, or any part of the administration of the Welsh Government providing personal administrative support to the members of the Welsh Government.”

12. The exemption covers information that ‘relates to’ the operation of the private office with the phrase being interpreted broadly. However, this does not mean that all information with any link to a Ministerial private office is covered. Section 35(1)(d) refers specifically to the operation of a Ministerial private office, which itself is defined as providing administrative support. In other words, it covers information relating to the administrative support provided to a Minister.
13. As a consequence, this exemption is interpreted fairly narrowly. In effect, it is limited to information about routine administrative and management processes, the allocation of responsibilities, internal decisions about ministerial priorities and similar issues.
14. The exemption is likely to cover information such as routine emails, circulation lists, procedures for handling ministerial papers or prioritising issues, travel expenses, information about staffing, the minister’s diary, and any purely internal documents or discussions that have not been circulated outside the private office.
15. In the circumstances of this case, the Home Office stated the exemption was engaged for part one of the request, because the information relates to the operation of any Ministerial private office.

16. The Home Office said these 'daily notes' are (as their name suggests) daily notes to the Home Secretary providing a brief summary about ministerial priorities (on a given day) that merit attention. It explained "they are produced by the Home Secretary's private office staff and circulated around the Home Secretary's private office on a daily basis: they are administrative and internal in nature and assist the officials in their duty of providing administrative support to the Home Secretary."
17. The Commissioner has viewed the withheld information and is satisfied that it relates to the operation of the Ministerial private office. Therefore, he finds section 35(1)(d) of FOIA is engaged in this instance.

### **Public interest test**

18. The Commissioner has considered the context of the information, in order to determine whether the public interest in maintaining the exemption outweighs the public interest in favour of disclosure.

### **Public interest arguments in favour of disclosing the information**

19. The Home Office recognises that there is a public interest in knowing how the Home Secretary's private office operates, and disclosure may help build confidence in how the Home Secretary is supported. It said, the work of the Home Office has a 'real world' impact on the lives of people in the UK, so it is accepted there is a public interest in gaining an insight into the Home Secretary's priorities on any given day(s), or over any given time, such as in this case, correspondences in relation to 'Just Stop Oil' (JSO), 'protests', 'journalists' or 'arrest of 'journalists'.

### **Public interest arguments in maintaining the exemption**

20. The Home Office argued that in order for officials to carry out the Home Secretary's priorities, it is important that such 'in-house' information is protected to preserve a 'safe space' for the private office to focus on managing the Home Secretary's work efficiently.
21. It stated there is a requirement for the Home Secretary to be informed on key matters on a daily basis. The Home Office said if the requested information was disclosed, it would create a 'chilling effect' as officials would be less likely to compile and present the daily notes in the current format, for fear they would be disclosed as a result of an information request. It explained that not having adequate daily notes would make it more difficult for the Home Secretary to prioritise their work, which in turn would make it more difficult for officials in their private offices to organise the diaries, schedule meetings, make travel or accommodation plans etc. In effect, the Home Office argued, disclosure would hinder the ability of the private office to function effectively.

22. The Home Office said officials in the Home Secretary's private office must be free to provide the Home Secretary with all available facts and information to ensure ministerial business is managed effectively and efficiently. The Home Office highlighted to the Commissioner that the request which related to 'JSO', 'protests' 'journalists' and 'arrests of journalists' from Monday 7 November was made on 10 November 2022, i.e. a three day period.
23. Therefore, JSO and their protests were very much a 'live' issue at the time of the request and gained much media coverage. The Home Office's view is disclosure of the requested information at the height of the issues in question, would have inhibited the frankness in which Private Office officials may put issues to the Home Secretary. It said disclosure would be likely to lead to external interference and distraction.
24. This, the Home Office said, "would result in the Home Secretary not being fully on top of the issues of the day, in an effective way, and would not provide for the effective support that the Home Secretary expects and relies upon from her private office."

### **Balance of the public interest arguments**

25. The Commissioner accepts there will always be a public interest in disclosure of this type of information to promote government transparency and accountability and to increase public awareness.
26. The Commissioner, however, accepts significant weight should be given to safe space arguments. In this instance the importance of providing the minister's office with a safe space to manage her work diary and commitments. Also, the importance of a safe space for a private office to focus on managing a minister's work efficiently without external interference and distraction. There is a public interest in the protection of officials, since public accountability for decisions should remain with ministers and should not fall on civil servants providing administrative support.
27. Another factor to be taken into account is the timing of the request and the age of the information. At the time of this request, the information was only three days old and therefore very recent. The Commissioner considers there was still a need for safe space to manage the minister's work around the topics under discussion at this time. He accepts that disclosure would reveal information concerning ongoing and live processes and any potential future events.
28. The Commissioner finds that the public interest in maintaining the exemption outweighs the public interest in favour of disclosure.

## Conclusion

29. The Commissioner concludes section 35(1)(d) of FOIA is engaged in respect of all the information, and the Home Office was entitled to refuse to disclose the information at part one of this request.
30. In light of his findings, the Commissioner has not gone on to consider the additional exemptions which the Home Office subsequently cited.

## Procedural matters

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31. Section 10(1) of FOIA says that a public authority should comply with section 1(1) promptly and no later than the twentieth working day following the date of receipt of the request.
32. In this case, the Home Office provided its response to the request of 10 November 2022 on 29 March 2023, which is significantly outside the 20 working day time limit. Therefore, the Home Office breached section 10(1) of FOIA.

## Other matters

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33. The Commissioner notes the time taken for the Home Office to respond to the complainant's internal review request of 30 March 2023 exceeded 40 working days. The Home Office provided its review response on 7 June 2023. Although there is no statutory time limit for carrying out a review, it is best practice<sup>1</sup> to do so within 20 working days, or in exceptional circumstances, 40 working days.
34. The delayed responses from the Home Office have been noted, the Commissioner considers 45 working days from receiving the internal review request is unreasonable. The Home Office should ensure that future reviews conform to the recommendations of the section 45<sup>2</sup> Code of Practice.

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<sup>1</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

<sup>2</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-45-code-of-practice-request-handling/>

## Right of appeal

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35. 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: 0300 1234504

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)

36. 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.
37. 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 .....**

**Joanna Marshall**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**