

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 August 2023

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office for Boris Johnson's diary for September 2021. The Cabinet Office responded by advising that they considered the request to be vexatious and therefore they refused to comply with it on the basis of section 14(1) of FOIA.
2. The Commissioner's decision is that the Cabinet Office was entitled to rely on section 14(1) to refuse to comply with the request.
3. No steps are required.

Request and response

4. On 7 October 2021, the complainant wrote to the Cabinet Office and requested information in the following terms:

'Please provide the following under the Freedom of Information Act:

1. *Boris Johnson's diary for the whole of September 2021. You may wish to take note of ICO decision notice FS50629605, which concerned an FOI request for James Wharton's diary.*

2. *The dates of any meetings Mr Johnson had with the 'advisory board'¹ of Conservative Party donors in September 2021 and whether these were held in person or remotely.*
3. *Any briefing notes, agendas, minutes and correspondence in respect of the meetings identified in (2) above to the extent that this information is held by the Cabinet Office'.*
5. The Cabinet Office responded on 2 November 2021 and stated that they did not hold information in relation to the second and third parts of the request *'which are requests for party political material'*. The response advised that this was not a matter for the Cabinet Office but for the Conservative Party.
6. The Cabinet Office confirmed that they did hold information in respect of the first part of the request but that this request was being refused under section 14(1) of FOIA as a vexatious request.
7. The response referenced ICO guidance on section 14(1) and noted that the guidance had set out considerations which may be relevant where a requester has asked for a substantial volume of information, and the public authority has real concerns about potentially exempt information being contained within the requested information, since such potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.
8. The Cabinet Office advised the complainant that his request was *'essentially a very highly speculative endeavour'* in that he had not identified any specific subject matter, event or engagement in which he was interested in respect of the first part of the request, which would reduce the disproportionate burden which his request placed upon the Cabinet Office.
9. The Cabinet Office advised that to comply with the request would require that each and every diary entry that they held for the Prime Minister for the month of September 2021 would need to be individually examined, to discover what information could be disclosed, and what information may engage one or more FOIA exemptions. The Cabinet Office stated that there were almost 700 individual entries.
10. The position of the Prime Minister being what it is, the Cabinet Office advised that it was very highly likely that potentially exempt information was contained within the requested information and that any such

¹ [Elite Tory donors club holds secret meetings with Boris Johnson and Rishi Sunak | Financial Times \(ft.com\)](https://www.ft.com/content/2021/09/01/elite-tory-donors-club-holds-secret-meetings-with-boris-johnson-and-rishi-sunak)

potentially exempt information cannot easily be isolated because it is scattered throughout the requested material. The Cabinet Office advised that the following (non-exhaustive) exemptions were likely to be engaged in respect of some of the information:

Section 35 (formulation or development of government policy)

Section 27 (international relations)

Section 29 (the economy)

Section 24 (national security)

11. Having carefully considered the request in light of the ICO guidance and considerations, the Cabinet Office stated that they were of the view that section 14 was engaged to the same.
12. Finally, the response noted that details of official engagements held by the Prime Minister are routinely published by the Prime Minister's Office as part of the Government's overall commitment to transparency. The Cabinet Office advised that data for quarter 3 2021 would be published in due course on the Government website.
13. The complainant requested an internal review of the decision on 5 November 2021.
14. The complainant stated that it was '*troubling*' that the Cabinet Office should characterise his request for one month of Mr Johnson's diary as a 'very speculative endeavour'. He advised that he was interested in the diary entries for September 2021 and asked the Cabinet Office to let him know if they needed to know his reasons for wanting the requested information in order to process the request.
15. The complainant noted that in decision notice FS50629605² (August 2017) the Commissioner had required the then Department for Communities and Local Government (DCLG) to disclose the contents of Mr James Wharton's (formerly Minister for the Northern Powerhouse) diary for a three and a half month period. He also noted that in April 2016, the GLA had provided Mr Johnson's diary for a 4 month period. Neither requester in each of those cases had specified a subject matter, events or engagements.

² [fs50629605.pdf \(ico.org.uk\)](https://ico.org.uk/foi/foia/50629605.pdf)

16. The complainant asked the Cabinet Office (if his request would impose a disproportionate burden), to please provide him with advice and assistance.
17. The complainant stated that his understanding was that the information which he had requested in parts 2 and 3 of the request was, in addition to being a matter for the Conservative Party, also a matter for the Cabinet Office. He contended that there was a significant public interest in the information requested.
18. The complainant noted that it would be helpful if the Cabinet Office could explain how they had confirmed that they did not hold the dates of Mr Johnson's meetings with the 'advisory board' in September 2021 if they had not examined Mr Johnson's diary entries. The complainant asked the Cabinet Office if it would exceed the cost threshold to check Mr Johnson's diary for September in order to confirm the position.
19. The Cabinet Office provided their internal review on 23 December 2021. The review upheld the section 14 refusal.
20. The Cabinet Office stated that in order to comply with the request, a considerable amount of time would need to be spent determining what exemptions apply to the information and weighing up the relevant public interest factors. The review stated that *'the work involved determining whether, and if so, how, they are exempt would be considerable and involve a diversion of Prime Minister's Office staff away from their normal duties'*. The review noted that those duties already included preparing information held in the diary about the Prime Minister's official meetings with external organisations, hospitality, overseas travel and domestic visits for publication as part of the Government's commitment to transparency.
21. In respect of what the Cabinet Office described as the complainant's requests for *'party political information'*, the review advised that FOIA applies to official information held by a public authority, in this case the Cabinet Office (which encompasses the Prime Minister's Office) for official purposes. The Cabinet Office stated that they did not hold the information requested and advised the complainant that:

'Events that Mr Johnson holds or attends in his capacity as a constituency MP or as the Leader of the Conservative Party are not a matter for the Cabinet Office. You may wish to contact the Conservative Party about these parts of your request but should be advised that Members of Parliament and political parties are not public bodies for the purposes of the Act'.

Scope of the case

22. The complainant contacted the Commissioner on 7 February 2022 to complain about the Cabinet Office's refusal of his request.

23. In his complaint to the Commissioner the complainant stated:

'Mr Johnson's diary is already reviewed to feed into transparency releases, as the internal review confirmed. If collating the information would impose a significant burden (beyond the existing analysis), which is not accepted, then ICO guidance strongly recommends using Section 12'.

24. In respect of the second and third parts of his request the complainant stated:

'If the Cabinet Office has not reviewed the diary entries, it cannot have determined that it does not have the dates of meetings. Nor is it clear whether the Cabinet Office checked whether it has the rest of the requested information. The rejection appears to have been predicated on an assumption that donors invest £250,000 for a meeting with the MP for Uxbridge and South Ruislip and/or leader of the Conservative Party. Clearly, this is not the case. The requested information cannot be dismissed as 'party political'. There is a significant public interest in transparency around unknown individuals meeting the Prime Minister – on dates which are unknown, discussing matters which are unknown, and receiving benefits which are unknown – in exchange for significant donations'.

25. In submissions to the Commissioner, the complainant advised that he made his request to the Cabinet Office 'days after the Pandora papers³ led to reports about alleged links to corruption of some advisory board members⁴. Serious concerns about other members have been reported elsewhere'. The complainant advised that he had made a request for similar information to HM Treasury (HMT) and provided the Commissioner with copies of the responses which HMT had given. HMT had advised that for the purposes of FOIA, they did not hold the

³ The Pandora Papers was the name given to the biggest (at that point in time) leak of offshore data which revealed the financial arrangements of more than 100 billionaires, 30 world leaders and 300 public officials.

⁴ [Pandora papers: Tory donor Mohamed Amersi 'involved in £162m corruption scandal' | The Independent](#)

information requested, *'because the FOI Act only relates to official departmental business'*.

26. The complainant provided the Commissioner with a link to an article in the Sunday Times dated 19 February 2022⁵ (post-dating the request), which the complainant noted *'identified how members of the 'advisory board' had access to Boris Johnson and other senior ministers, and sought to influence official business/government decision-making'*.
27. The complainant stated that, *'if the advisory board is essentially a portal for donors to lobby government in private, as has been reported, then the weaknesses in election finance rules make the Cabinet Office's (and HM Treasury's) lack of insight into these arrangements, and awareness of those meeting senior Ministers, all the more problematic'*.
28. The complainant contended that, *'in my view, a proper assessment of donor access arrangements is needed, including the extent to which official business is discussed, before it can be determined that the information I requested is 'party political material' – a conclusion that the Cabinet Office reached without any apparent scrutiny'*.
29. The Commissioner has considered whether the Cabinet Office were correct in stating that they did not hold information in respect of the second and third parts of the complainant's information request and whether they were entitled to rely on section 14(1) to refuse to comply with the first part of the request.

Reasons for decision

Diary entries for meetings with the Advisory Board of Conservative Party donors (parts 2 and 3 of the request).

30. Based on confidential information provided in submissions to the Commissioner by the Cabinet Office during his investigation, the Commissioner is satisfied that this information is not held by the Cabinet Office. These confidential submissions are contained in a Confidential Annex attached to this notice.

⁵ [The Tory donors with access to Boris Johnson's top team \(thetimes.co.uk\)](https://www.thetimes.co.uk/article/the-tory-donors-with-access-to-boris-johnson-s-top-team)

Section 14(1)(vexatious request) refusal

31. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
32. Whilst the term 'vexatious' is not defined in FOIA, in *Information Commissioner v Devon CC and Dransfield*⁶, the Upper Tribunal stated that the term could be defined as the '*manifestly unjustified, inappropriate or improper use of a formal procedure*'. The Tribunal's definition clearly established that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
33. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues; (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request, and (4) harassment or distress of, and to, staff.
34. However, the Upper Tribunal did also caution that these considerations were not meant to be exhaustive. Rather, they stressed the importance of:

'Adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests'. (paragraph 45).
35. The Commissioner's guidance on dealing with vexatious requests sets out a number of indicators that may apply in the case of a vexatious request⁷. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All of the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious, including the context of the request and the history of the public authority's relationship with the requester, when this is relevant.
36. The Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time

⁶ 1 [2016] UKUT 0273 (AAC)

https://assets.publishing.service.gov.uk/media/578f2b5aed915d3cfd000179/GIA_0246_2015-00.pdf

⁷ [Dealing with vexatious requests \(section 14\) | ICO](#)

required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is the position adopted by the Cabinet Office in this case.

37. The Commissioner considers that there is a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where:
- The requester has asked for a substantial volume of information **and**
 - the public authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the Commissioner **and**
 - any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

The complainant's position

38. The complainant stated that he did not believe that complying with his request would exceed the cost threshold and that the Commissioner's high threshold of grossly oppressive burden had not been met. The complainant observed that, *'the Cabinet Office position appears to be that 1 month entries of Mr Johnson's diary will necessarily be exempt from disclosure and that any such request will be vexatious'*.

The Cabinet Office's position

39. During his investigation, the Commissioner noted that in IC-71150-B0L7 (the Cummings case), which concerned a request to the Cabinet Office for copies of Mr Dominic Cummings' diary for January to March 2020, the Cabinet Office had not refused that request as vexatious under section 14(1) but rather they had initially withheld the information under substantive exemptions (mainly sections 35(1)(a) and 40(2)). Given that the period of time covered by that request was lengthier (three months rather than one) than the period of time covered in the complainant's current request, the Commissioner asked the Cabinet Office to explain why they had taken a different approach in refusing the request as vexatious.
40. In submissions to the Commissioner the Cabinet Office noted that the previous request had been for Mr Cummings' diary appointments rather than the Prime Minister's and *'there is therefore a significant difference in regards to the contents of these diaries and the time and wide considerations'* which the Cabinet Office expanded upon. The Cabinet Office also advised the Commissioner that their dealing of the Cummings case substantively under FOIA had reinforced their views and concerns as to the amount of time it takes to consider the contents of Ministerial

diaries, particularly where significant periods of time are covered in a request, against exemptions under FOIA. The Cabinet Office stated that they and No.10 had expended significant time and resource in considering the Cummings case, *'which resulted in very limited information being disclosed to the public'*⁸.

41. In submissions to the Commissioner the Cabinet Office confirmed that the information which they held within scope of the complainant's request was the definitive diary for former Prime Minister Johnson covering the entirety of September 2021. The Cabinet Office advised that the diary captures every aspect of the Prime Minister's life, whether official, political or personal, and that this is because *'unlike other Ministers, the Prime Minister is effectively "on duty" 24 hours a day, 365 days a year'*. The Cabinet Office noted that the pressures on a Prime Minister's time are significantly greater than the pressures on other Ministers and that *'the Prime Minister's Office has to be able to contact the PM at any moment of the day and in order to ensure that this can be done as effectively and efficiently as possible, members of staff need to know where and who they are with at all times – regardless of whether it is for official, private or political reasons'*.
42. The Cabinet Office stated that the Government is already committed to proactively publishing transparent and comprehensive information about the Prime Minister's official diary. *'That includes official meetings with external organisations and individuals, overseas travel, UK official travel, official receptions and official hospitality'*. The Cabinet Office advised that the Prime Minister's Office also makes public official information about meetings of the Cabinet and meetings with foreign heads of state and government, and they stated that *'significant time and resource is already deployed for this work'*.
43. The Cabinet Office explained that:

'The process for identifying official information in the diary that will form part of the transparency release is undertaken by a member of the Prime Minister's Private Office Support Team (PMPOST). The diary may not readily identify whether an entry is for an official, political or personal engagement. The member of PMPOST will assess each diary entry alongside existing guidance on transparency declarations. Once an entry is identified as declarable, the team consult a wide range of people within the Prime Minister's Office to clear the relevant entry for publication. This will include, for example, the Prime Minister's senior

⁸ The Cabinet Office disclosed most of Mr Cummings' diary appointments for the period in question, following the Commissioner's decision notice in March 2023 ordering such disclosure.

staff and Private Secretaries, the Business Engagement Team, the Events and Visits Team. Other people and teams may also be consulted depending on the topic'.

44. The Cabinet Office stated that the purpose of proactively publishing this information is to ensure that, while continuing to meet its commitment to openness, the Cabinet Office also continues to make best use of public resources in carrying out this activity which is still resource intensive, as efficiently as possible, and in accordance with established procedures.
45. The Cabinet Office contended that *'it is partly against the above processes that Freedom of Information requests for the whole of the Prime Minister's official diary must be considered'*. The Cabinet Office also made clear that the proactively released information does not provide granular information contained in the Prime Minister's diary, and *'as such, the diaries must be reviewed afresh as part of any FOI request asking for them in full'*.
46. The Commissioner noted that when previous requests for ministerial diaries have been processed by government departments, the departments have exported the information contained in Microsoft Outlook to an Excel spreadsheet to assist with the processing of the request. The Commissioner asked if this method, as opposed to simply reviewing the information within Outlook, had been considered by the Cabinet Office. The Cabinet Office confirmed that the Prime Minister's definitive diary is recorded within No.10 in a Microsoft Word document and it is those entries that would need to be considered and reviewed as described above.
47. The Cabinet Office advised that the information in scope would potentially attract a wide variety of exemptions. They advised that they believed that the following exemptions could be applicable to the information, though these were not exhaustive, as the relevant exemptions would depend on the background of the engagements and the circumstances:
 - Section 23 (security bodies)
 - Section 24 (National Security)
 - Section 27 (International Relations)
 - Section 31 (Law enforcement)
 - Section 38 (Health and safety)
 - Section 35(1)(a)(government policy)

- Section 35(1)(b)(Ministerial communications)
- Section 35(1)(c)(Law Officers)
- Section 35(1)(d)(operation of any Ministerial private office)
- Section 40(Personal information)

Consequently, the Cabinet Office stated that the requested information, were it to be disclosed, would be heavily redacted, reducing its limited value.

48. The Commissioner asked the Cabinet Office what methods they had considered to remove (or at least substantially reduce) exempt material (for example, using a 'Find & Replace' function to remove phone numbers) and how effective these methods had been. The Cabinet Office advised that the entries within the diaries would need to be checked one by one for the reasons explained.
49. The Commissioner asked the Cabinet Office to detail what sampling exercises they had carried out to determine the time needed to redact individual entries. The Cabinet Office responded that:

'We emphasise that the Prime Minister is engaged in the highest level of statecraft. Along with information about routine meetings, the Prime Minister's diary contains information about highly classified domestic and international issues. The Prime Minister also receives Parliamentary and Diplomatic Protection. The Prime Minister's diary contains information about his or her travel (and his or her family). Therefore, while some Departments may unilaterally be able to make assessments at pace about entries in other Ministerial diaries, that would not be the case for the FOI team in the Prime Minister's Office when considering release of information from the Prime Minister's diary that potentially engage a wide range of exemptions in the Act. Indeed, given the sensitive nature of the Prime Minister's diary, the people who can access it are very limited. That does not include the FOI team. That would further complicate and add more time to the process of accessing, reviewing and referring for consultation the information in scope'.

50. The Cabinet Office noted that the Commissioner had previously upheld section 14 refusals for other government departments for similar requests, specifically citing the Commissioner's decision in a case involving the Attorney General's Office (AGO) – IC-129067-F2L3⁹, which was also referenced in another case with a similar time frame involving

⁹ [ic-129067-f2l3.pdf \(ico.org.uk\)](https://ico.org.uk/foi/cases/129067-f2l3)

Defra – IC-199129-V7V7¹⁰. The Cabinet Office strongly argued that the reasoning and estimates per diary entry which they had described were *'very reasonably applicable to the Prime Minister's diary'*.

51. The Cabinet Office advised that whilst there might be seemingly anodyne entries contained in the diary at first glance, consultation would still be required with senior officials, and where sections 23 (security bodies) and 24 (National Security) might be engaged, the National Security Liaison Group (NSLG). Entries may also include details on sensitive sites and meetings with individuals from sensitive backgrounds, for example from the military or the UK intelligence agencies, with further consultation and possible redactions required. Given the nature of the Prime Minister's role, the Cabinet Office noted that it is more likely that such meetings will be in his diary when compared to most other Ministers, and that other entries may require wider consultations depending on any given topic within them.
52. The Cabinet Office explained that as the Prime Minister's Office does not lead on policy in a way other Government departments do, a cross Government exercise would need to be undertaken to determine which policy issues remain under development. The Cabinet Office noted that this was recognised by the Commissioner in the aforementioned AGO case.
53. In addition to needing to consider the various diary entries based on the topics of the discussions and attendance, the Cabinet Office advised that the Prime Minister's Office *'must also give very significant consideration to more mosaic matters to the diary'*. The primary consideration would, of course, be that related to the security of the Prime Minister. The Cabinet Office stated that the Commissioner would not be surprised to know that considerable efforts are made in regards to the security and protection of the Prime Minister, those he spends time with (including his family) and the information he may be considering at any given time. This means that the Prime Minister's Office, when considering the potential disclosure or withholding of any information contained within the diary, *'must give great consideration towards any discernible pattern of movements of the Prime Minister that might be of use to anyone that might wish to target them specifically, or for the purposes of undermining the security of them generally (including cyber security, national security, information security)'*.
54. The Cabinet Office contended that the disclosure of the information requested would be harmful alone, but with some other information,

¹⁰ [ic-199129-v7v7.pdf \(ico.org.uk\)](https://www.ico.org.uk/for-the-public/subject-access-requests/subject-access-requests-2019-2020/subject-access-requests-2019-2020-199129-v7v7.pdf)

someone with hostile intent could build up a useful picture of the pattern of the Prime Minister's official, political and personal life. They stated that consideration of such mosaic matters would clearly be time consuming and burdensome. The Cabinet Office advised the Commissioner that they had consulted the Prime Minister's Office security team, and they had confirmed the releasing the information requested and providing detailed commentary would cause a mosaic effect in which a hostile actor could use the information to deduce future movements and cause harm to the Prime Minister. Potential disclosure of diary entries would require consideration with the No.10 Security Team, who would in turn likely need to consult with the Metropolitan Police Service and other partners.

55. In addition to security considerations, the Cabinet Office advised that the Prime Minister's Office would also have to consider how any particular disclosure might be interpreted when compared to other events that have happened at those times. This would include, for instance, consideration of global, international, national and potentially local events that have occurred over the time period in question. The Cabinet Office suggested that if a significant event occurs but the diary shows the Prime Minister was busy with something completely unrelated (even evidenced by unrelated redactions) offence could be caused to communities or countries. This would potentially hinder the work of the Prime Minister's Office.
56. The Cabinet Office advised that they had calculated the total amount of diary entries captured within the period requested to be 679. They stated that '*for the reasons above*' they maintained that it would take on average, ten minutes to assess each entry, totalling 6790 minutes, or 113 hours. This estimate did not include the time that would be needed to consider mosaic arguments.
57. The Cabinet Office highlighted the definition of a 'fishing expedition' as given in the Commissioner's guidance¹¹, and advised that they considered that such characteristics applied to the complainant's request. The Cabinet Office contended that part one of the request was at odds with parts two and three since it requested all diary entries for September 2021, rather than being targeted at the advisory board of Conservative Party donors. The Cabinet Office contended that part one of the complainant's request '*lacks a genuine line of inquiry and does not go beyond requesting all diary entries for the specified period. The*

¹¹ [Are random and speculative requests vexatious? | ICO](#)

mere assertion that it is in the public's interest to know these details does not mean the complainant is not 'fishing' for information'.

58. Furthermore, the Cabinet Office noted that the complainant has requested full detail of the diary entries, *'however, the diary will not contain details of what occurred during a specific call or meeting, but rather it will state what took place at what time'*. The Cabinet Office stated that this was not to suggest that the content would not be sensitive, but that it would, by itself, not be particularly informative to the complainant or the public at large.
59. The Cabinet Office contended that *'as the complainant's request is a fishing expedition, it diminishes any value of the request due to the burden it imposes on the department to prepare the information for disclosure'*. The Cabinet Office stated that the effort and the considerable amount of time to review and then consider any applicable exemptions and redactions in the requested information is therefore oppressive in terms of the strain on time and resources, and they cannot reasonably be expected to comply, despite the subject matter or intentions of the requester. They contended that there would also be very minimal public interest in the limited disclosure of any remaining information that is not redacted.
60. Finally, the Cabinet Office maintained their belief that *'it is entirely rational and clear'* as to why they would have *'great concerns about disclosing the full movements of the Prime Minister for any given period of time like this'*. The Cabinet Office stated that they did not believe that there is an overriding public interest in processing *'such a request'* that would outweigh the impact that processing it would have on themselves and No.10.

The Commissioner's position

61. Given that the Cabinet Office have expressed concerns about disclosing the full movements of a Prime Minister *'for any given period of time like this'* and that they do not consider that there is an overriding public interest in processing *'such a request'*, the Commissioner would agree with the complainant's assessment that the Cabinet Office's position appears to be that **any** request for 1 month's entries of the Prime Minister's diary will necessarily be vexatious and therefore they would not be required to comply with it.
62. The Commissioner would therefore take this opportunity to make clear that there is no special protection or exemption afforded to the Prime Minister's diary when compared to other Ministerial diaries, although obviously the considerations which apply to the Prime Minister's diary will be different and more onerous in some respects to those which apply to other Ministers. Each request for information must be

considered and assessed on its own facts and circumstances, including, in the context of section 14, the particular strength and weight of the serious legitimate purpose or interests which lie behind the request.

63. In this case the Cabinet Office have relied for support and comparison on two previous decisions of the Commissioner, one concerning the AGO and one concerning Defra, issued in October 2022 and February 2023 respectively.
64. In the AGO case, the request was for the then Attorney General, Suella Braverman's ministerial diary for the period February 2020 to March 2021, a 12 month period of time which is considerably longer than the 1 month of diary entries requested in the present case. In the Defra case, the request was for the then Secretary of State for Environment, Food and Rural Affairs, George Eustice's, diary for between 1 March 2020 and 16 April 2020, a period of time much more comparable to that in the present case.
65. However, in both of the above two cases, the government departments each undertook appropriate and expected sampling exercises to evidence the grossly oppressive burden which complying with the requests would impose. Defra undertook a sampling exercise and obtained entries from a 5 day period of Mr Eustice's ministerial diary, which contained 66 entries. They also carried out a timed sampling exercise on some of the actions that would be needed to check each diary entry.
66. The AGO considered a sample of two weeks from the Attorney General's diary and reviewed a two month period of diary entries as part of their consideration of the level of burden which complying with the request would impose. The AGO advised the Commissioner that they estimated that it would take an average of 5 to 10 minutes per entry to consider whether an exemption applies to each entry, although, importantly, they acknowledged that some entries would take considerably less time where it is immediately obvious that an exemption applies.
67. By contrast, in the present case the Cabinet Office carried out no such detailed sampling exercises, which is disappointing and unsatisfactory. In addition, the Commissioner does not consider that the Cabinet Office's estimate that it would take, on average, '*conservative ten minutes*' to assess each entry in the Prime Minister's diary to be reasonable or realistic.
68. As the Cabinet Office made clear in submissions, the diary entries do not contain details of what occurred during a specific call or meeting but rather what took place at what time. The entries will therefore be brief rather than detailed. Given the high level nature of the Prime Minister's role and daily diary, the Commissioner considers that in many cases (as

the AGO recognised above) it will be immediately obvious from the entry which exemption or exemptions applies to the same. The Commissioner accepts that the entries in the Prime Minister's diary will (given the nature of the Prime Minister's role) attract a wide range of FOIA exemptions, and whilst consideration of the respective public interest considerations may take some time, matching the entries to the relevant exemption(s) would not.

69. To give hypothetical examples, were the diary to record a meeting between the Prime Minister and the head of one of the intelligence agencies, it will be immediately obvious that such information may attract the exemptions contained in sections 23 and 24. Similarly, a meeting between the Prime Minister and another party or parties to discuss a particular country (e.g. Iran or Ukraine) would obviously potentially attract section 27 (international relations).
70. The Commissioner is reinforced in this view by his sight of the requested information in the Cummings case (IC-71150-B0L7). In that case, it was immediately apparent from many of the entries in Mr Cummings' calendar, which exemption or exemptions would apply to the same. Given that Mr Cummings was involved in the very highest levels of the government's work whilst serving as Prime Minister Johnson's chief adviser, the Commissioner considers that his calendar is a reasonable comparator to the entries in the Prime Minister's own diary.
71. The Commissioner would draw an analogy here with the approach which public authorities are required to take with those requests which are refused under section 12 (costs limit). As the Commissioner's guidance on section 12 makes clear, a public authority does not have to make a precise calculation of the costs of complying with a request, rather only an estimate is required. That estimate must be sensible and realistic and does not mean that a public authority has to consider every possible means of obtaining the information in order to produce a reasonable estimate.
72. Similarly, in this case, when estimating the time that would be required to decide whether some of the entries in the Prime Minister's diary would attract certain exemptions, it would not be required or reasonable for the Cabinet Office to carry out exhaustive checks to decide whether a particular exemption(s) applied. Providing the Cabinet Office had reasonable grounds for believing that a particular entry or entries were exempt under a particular exemption or exemptions (such as the hypothetical examples given by the Commissioner above) the Cabinet Office would not need to make (more time consuming) double or triple checks to ascertain that that was in fact the case.
73. In addition, the Commissioner would note that as the Cabinet Office has held responsibility for FOIA policy since 2015, officials within the

department are regularly consulted by other government departments for advice and expertise regarding the application of exemptions to requested information (e.g. through what was previously called the Clearing House function). Consequently, the Cabinet Office would be expected to be able to more readily recognise whether certain information would be exempt under a particular exemption(s).

74. However, the Commissioner recognises that not every entry in the Prime Minister's diary would lend itself to such immediate exemption recognition/relevance and even if the Cabinet Office's inflated estimate of 113 hours were to be halved (56 and a half hours), this would still be significantly in excess of 24 hours of staff time (even without the additional time that would be needed to consider mosaic matters).
75. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations) set the appropriate limit of £600 for central government departments. The Regulations specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12 of FOIA effectively imposes a time limit of 24 hours for the public authority. Although the Regulations are not directly applicable to section 14 of FOIA, they do give a clear indication of what Parliament considered to be a reasonable charge for staff time.
76. The Commissioner considers that the Cabinet Office did not fully explore the potential for automating their review of individual diary entries, such as by exporting the diary into Excel or using a 'Find & Replace' function – which would allow individual entries to be scanned electronically for regularly recurring items such as names, email addresses or appointments. Recurring entries may not need reviewing line by line. Whilst the Commissioner accepts that not all entries in the diary would follow a standard format, there would be certain key words or staff names that the Cabinet Office could have searched for to identify entries which would need redacting. This could have potentially reduced the average amount of time which the Cabinet Office would need to review each entry.
77. Notwithstanding the Commissioner's doubts and dissatisfaction with the estimates provided by the Cabinet Office in this case, he recognises and accepts that information recorded in the Prime Minister's diary will attract additional and further considerations to those which will apply in requests for copies of other ministerial diaries. The Commissioner considers that in their submissions the Cabinet Office have advanced reasonable and cogent arguments on these points.
78. As in the AGO case, the Commissioner recognises that as the Prime Minister's Office does not lead on policy in a way which other Government departments do, some level of cross Government exercises

would need to be undertaken to determine which policy issues remain under development. The Commissioner says 'some level' because he is satisfied that in many cases officials will not need to carry out such checks and enquiries to ascertain whether a particular entry is or is not sensitive or will attract a particular exemption(s). The Commissioner considers that the background and context of many of these policy matters will be known or readily apparent to officials in the Prime Minister's Office, given the media reporting which would surround the same.

79. The Commissioner recognises and accepts that a particular aggravating factor in this case, in terms of the burden that the request would impose on time and resources, is the very limited number of people who have access to the Prime Minister's diary, these not including the FOI team. The Commissioner accepts that this restriction will inevitably add more time to the process of accessing, reviewing and referring for consultation the information in scope.
80. In support of their arguments on this issue, the Cabinet Office provided the Commissioner with two example diary entries to illustrate the consultations which would need to take place in each instance. The Commissioner considers that in the main, these examples and the consultations which they detail, are reasonable and necessary.
81. The Commissioner also recognises that the Prime Minister's Office would need, as the Cabinet Office have explained, to give consideration to more mosaic matters to the diary. The security of the Prime Minister and his family is obviously a very important concern and the Commissioner accepts that the potential disclosure of diary entries would require consultation with the No.10 Security Team, who may possibly themselves need to consult with the Metropolitan Police Service and other partners. Such processes would add to the expenditure of time and resources.
82. However, the Commissioner's acceptance of such mosaic arguments is modulated to some degree by the fact that appropriate redactions (e.g. not disclosing the exact time, duration or location of a particular meeting or attendance) to disclosed diary entries could significantly reduce the need for such consultations and any risk to the Prime Minister and/or his family. The Cabinet Office have advised that the Prime Minister's Office security team have confirmed that releasing the requested information '*and providing detailed commentary*' would cause a mosaic effect in which a hostile actor could use the information to deduce future movements and cause harm to the Prime Minister. However, there is no requirement for the Cabinet Office to provide such detailed commentary in addition to the information requested, and nor would the Commissioner expect the Cabinet Office to provide such commentary.

83. The Commissioner is somewhat sceptical of the Cabinet Office's contention that the Prime Minister's Office would need to consider how any particular disclosure might be interpreted by communities or countries, and the risk of causing offence to the same. Significant events can occur at anytime and sometimes without warning, whereas the Prime Minister's diary will necessarily need to have been planned and fixed in advance. Given this reality, and the demands on the Prime Minister's time, the Commissioner does not consider that the disclosure of the diary entries would pose any significant risk in terms of causing such offence.
84. The Commissioner does not agree with the Cabinet Office contention that the complainant's request is a fishing expedition. As the complainant explained to the Commissioner in submissions (which in fairness to the Cabinet Office they had not seen) he made his request in the days after the Pandora Papers were reported by the press, along with their connection to some members of the Conservative Party advisory board. The complainant also specified his particular interest in any meetings which Mr Johnson may have had with the advisory board in parts two and three of his request.
85. Whilst the Commissioner does not consider that parts two and three of the request are 'at odds' with part one of the request, he does consider that given the complainant's particular interest in the advisory board information, he could have limited part one of his request to any entries which only concerned such information, rather than diary entries for the whole of September 2021. The wider scope of the request which part one provides is what has imposed the burden in this case.
86. The Commissioner notes that when making his request to the Cabinet Office, the complainant specifically referenced the Commissioner's decision in FS50629605¹² (August 2017), a case which concerned a request to the DCLG for the diary of Mr James Wharton, formerly Minister for the Northern Powerhouse, between 1 January to 15 April 2016. In that case the Commissioner found that the estimate provided by DCLG was not sufficiently adequate for the Commissioner to agree with the department's arguments. The Commissioner therefore found that DCLG were not entitled to rely on section 14 in respect of parts 2 and 3 of that request.
87. By contrast, in the present case, whilst the Commissioner considers that the estimates provided by the Cabinet Office to substantiate the burden which would be imposed by complying with the complainant's request

¹² [fs50629605.pdf \(ico.org.uk\)](https://ico.org.uk/fs50629605.pdf)

are inflated or exaggerated in some respects, most notably in the average ten minutes which the Cabinet Office contends they would need to check each individual diary entry, he accepts that the actual burden which would be imposed would still be considerable.

88. As noted above, even if the estimated time for checking each entry (113 hours) were reduced by half (56 and a half hours), this would still be significantly in excess of 24 hours of staff time. When the time which would be needed for appropriate and necessary consultation and consideration of mosaic matters is added to this, the Commissioner is satisfied that the burden which would be imposed upon the Cabinet Office to comply with the complainant's request would be a grossly oppressive one.
 89. The Commissioner considers that such is the weight of the burden which would be imposed upon the Cabinet Office in terms of the expenditure of time and resources, and distraction and diversion of the same, that this would be heavily disproportionate to the legitimate purpose and value which would be served by responding to the request. Consequently, the Commissioner is satisfied that the Cabinet Office were entitled to rely on section 14(1) FOIA to refuse the complainant's request.
 90. The Commissioner notes that when refusing a request as vexatious under section 14, unlike in section 12 (costs limit) refusals, public authorities are not required to provide advice and assistance under section 16 of FOIA.
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Right of appeal

91. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

92. 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.

93. 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**