

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 September 2023

Public Authority: Department for Science, Innovation & Technology

Address: 1st Floor
100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant requested information from DCMS¹ concerning correspondence and meetings between Daniel Korski and DCMS which concern Public Group or its clients.
2. DCMS confirmed that they held information within scope of the request but that this information was exempt from disclosure under section 36(2)(b)(ii) of FOIA (prejudice to effective conduct of public affairs) and that the balance of the public interest favoured maintaining the exemption.
3. The Commissioner's decision is that section 36 is not engaged in this case as the information withheld by DCMS is not information within scope of the complainant's request. Consequently, the Commissioner

¹ As a result of the machinery of government changes in February 2023, the Department for Digital, Culture, Media & Sport was replaced by the Department for Science, Innovation and Technology (DSIT) and the Department for Culture, Media & Sport (DCMS). The former body retained responsibility for the policy area which is the focus of this request and this notice is therefore served on that body. However, the decision notice refers to DCMS throughout as that was the public authority which handled the request.

has found that DCMS breached section 1(1) of FOIA by not providing a response to the information request made by the complainant. The Commissioner has also found that DCMS breached section 10(1) of FOIA in that they took in excess of 20 working days to provide a response to the request.

4. The Commissioner requires DCMS to take the following steps to ensure compliance with the legislation:
 - Provide the complainant with a fresh response to his request on a correct reading of the same.
5. The public authority 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

6. On 16 August 2022, the complainant wrote to Department for Digital, Culture, Media & Sport (DCMS) and requested information in the following terms:

'Please provide a copy of all correspondence (sent and received) between

- *The secretary of state*
- *Ministers of state*
- *The permanent secretary*

And

- *Daniel Korski*
- *Staff of Public Group² (with the search limited only to a keyword search of inboxes by the email domain for company staff, @public.io)*

Concerning Public Group or its clients.

² Described on their website as a market-leader in the digital transformation of the public sector. [PUBLIC Bolsters Executive Leadership Team](#)

Please limit this request to electronic searches of department email accounts, except for the secretary of state and permanent secretary, including any letters sent in electronic form.

For the current secretary of state and permanent secretary, please also search any instant messaging accounts (departmental or private) and any private emails used for government business, and limit the search to correspondence with Korski only.

Please also list the titles of attachments to emails or messages within the scope of this request.

2) Please provide a record of all meetings and calls between ministers or the permanent secretary and Daniel Korski concerning Public Group or its clients.

Please provide

- *A list of these meetings, including topics.*
- *A copy of the minutes recorded of these meetings*
- *A copy of briefings prepared ahead of these meetings for the minister concerned.*
- *A list of the titles of any documents considered at these meetings.*

I am happy to limit my request to electronically held records.

Please provide information held from 1 March 2020 to date'.

7. DCMS belatedly responded on 13 October 2022. They advised that they held information within scope of the request. DCMS noted that Daniel Korski is a member of the Digital Economy Council, chaired by the DCMS Secretary of State, and they provided the complainant with a link to publicly available information regarding the Council's meetings.
8. DCMS advised the complainant that they held internal readouts related to meetings between the Secretary of State (then Oliver Dowden) and Daniel Korski. However, this information was exempt from disclosure under section 36(2)(b)(ii) of FOIA, because its disclosure would or would be likely to inhibit the free and frank exchange of views for the purposes of deliberation.
9. DCMS advised that they had sought and obtained the required reasonable opinion of the qualified person, in this case a Minister of the Crown.
10. The complainant wrote to DCMS and requested an internal review on 14 October 2022.

11. The complainant contended that the department had *'misapplied section 36 in a blanket manner, without considering whether parts of the information could be released'*. He noted that FOIA is an information regime, and can only be used to exempt information in a blanket manner if every part of that information was exempt after a full and proper public interest test. The complainant stated that that seemed highly unlikely to be the case in this instance and he requested that DCMS review the withheld information and release a redacted copy of it at a minimum.

12. The complainant stated that:

'Secondly, whilst Korski may have an official role in the department, he also owns a private concern, Public Group, which advises companies about obtaining public sector contracts, from which advice Korski earns an income. Korski is a former head of the Number Ten policy unit, a role which has granted him privileged access to government. It is reasonable to assume this access plays a significant reason in making it easier for him to get access to ministers for his clients. It is also reasonable to assume that some lobbying on behalf of his clients has taken place, in addition to any separate policy formulation work with the Digital Economy Council.

In circumstances where someone seeks to earn an income in at least part derived from his access to politicians and officials, there is an inherent public interest in transparency. This transparency would allow the public to assure themselves that Korski's approach is appropriate. A lack of transparency would invite speculation about his and the department's conduct in these contacts'.

13. The complainant contended that *'if Korski has used this access inappropriately to benefit his clients, it is also very clearly in the public interest that he is held accountable for this, a further clear public interest in disclosure'*.

14. The complainant stated that it was concerning that the department had not recognised the above public interests in its balancing test, *'which suggests that a proper balancing test has not been completed in this case, despite the department taking an extended period to respond to this request'*.

15. Referencing the First Tier Tribunal decision in *Corderoy v Information Commissioner & Department for Exiting the European Union* (EA/2019/0109 & 0111), the complainant contended that, *'Korski can have no reasonable expectation lobbying correspondence would be kept secret'*. He noted that in the above case the Tribunal had held that:

'Organisations which seek to influence policy formulation can, under normal circumstances, expect to see their contributions summarised and

publicly disclosed or disclosed by the organisations themselves as part of their own direct engagement with the public or their own widespread stakeholders from which it readily moves into the public domain'.

16. The complainant contended that the Tribunal's ruling in the Corderoy case contradicted the department's view that the public interest balance lay in withholding the requested information. On the basis of the Tribunal's decision in *Corderoy*, he contended that, *'given the nature of Korski's correspondence, there is an inherent assumption in favour of disclosure in relation to correspondence. No party can reasonably expect this kind of information to be withheld, and therefore cannot have the chilling effect purported to be likely by the department'*.
17. The complainant concluded his internal review request by stating that the public interest, *'clearly therefore lies in release'*.
18. DCMS provided the complainant with their internal review on 4 November 2022. The review found that the department had followed ICO guidance in their application of section 36 and that the information held was duly exempt from disclosure under the same.

Scope of the case

19. The complainant contacted the Commissioner on 4 November 2022 to complain about the way his request for information had been handled.
20. The Commissioner considers that the scope of his investigation is to determine whether DCMS were correct to apply section 36 to the complainant's request.

Reasons for decision

21. The Commissioner notes that the first part of the complainant's request was very specific in that he asked for all correspondence between the Secretary of State, Ministers of State, the Permanent Secretary and Daniel Korski and/or staff of Public Group, **'concerning Public Group or its clients'** (Commissioner's emboldening).
22. Similarly, the second part of the request was very specific in that it concerned records of all meetings and calls between Ministers or the Permanent Secretary and Mr Korski, **'concerning Public Group or its clients'** (Commissioner's emboldening).
23. In his subsequent request for an internal review, the complainant reaffirmed the type of information which he was seeking from the request when he stated that, *'it is also reasonable to assume that some*

lobbying on behalf of his clients has taken place, in addition to any separate policy formulation work with the Digital Economy Council' (Commissioner's emboldening).

24. The Commissioner has had sight of the withheld information (internal meeting readouts) in this matter. The Commissioner is satisfied that the withheld information is not within the scope of the complainant's request as set out above. This is because whilst the readouts do contain information pertaining to Mr Korski, this information is not in the context of, or in connection with, '*Public Group or its clients*'.
25. In submissions to the Commissioner during the Commissioner's investigation, DCMS accepted and agreed with the Commissioner's interpretation of the request. Therefore DCMS have effectively withdrawn their reliance on Section 36 in this case and the Commissioner is satisfied that the exemption is not engaged.
26. The Commissioner is satisfied that DCMS breached section 1(1) of FOIA as they failed to provide a response to the actual information request made by the complainant.
27. DCMS are required to provide the complainant with a fresh response to his request (on its correct interpretation).
28. The Commissioner would note that, if this has not been done already, DCMS will need to carry out sufficiently thorough and targeted checks and searches for the specific information requested by the complainant, prior to issuing the fresh response.

Procedural matters

29. Section 10(1) of FOIA requires that public authorities respond to an information request promptly and in any event not later than 20 working days following the date of the request. The complainant submitted his request to DCMS on 16 August 2022, but DCMS did not provide a response (and then an erroneous one as detailed above) until 13 October 2022, almost two months later. Consequently, the Commissioner has found that DCMS breached section 10(1).
30. Although DCMS breached section 1(1) of the Act in this case, the Commissioner does not consider that there was a breach of the section 16 duty to provide advice and assistance, as the information erroneously identified as being in scope of the request was significantly removed from the information which the complainant was actually seeking.

Other matters

31. The Commissioner is concerned by DCMS handling of this request. As noted above, the complainant's request was clear and specific. Even if it was misread in the original refusal notice, the Commissioner would have expected the scope error to have been identified at the internal review (especially given the complainant's submissions in requesting a review).
32. The fact that it took the Commissioner to correctly identify the scope of the request (which to be fair, DCMS readily accepted) has obviously led to significant and unsatisfactory delay and inconvenience to the complainant in this matter. The Commissioner would remind DCMS of the importance of correctly reading and considering information requests received, so that such scope errors do not arise in future.

Right of appeal

33. 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

34. 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.

35. 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**