

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

### **Decision notice**

**Date:** 16 October 2023

**Public Authority:** Cabinet Office  
**Address:** 70 Whitehall  
London SW1A 2AS

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

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1. The Cabinet Office has advised the complainant that it doesn't hold the information they requested about a COVID-19 test that former Prime Minister Boris Johnson had in 2020.
2. The Commissioner's decision is that, on the balance of probabilities, the Cabinet Office doesn't hold the requested information and complied with section 1(1) of FOIA. He doesn't require any steps to be taken.

### **Request and response**

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3. The complainant made the following information request to the Cabinet Office on 31 August 2022:  

"This is a request for the time of visit and specific organisation represented by NHS staff whom attended no10 to administer a covid test for Boris Johnson in March 2020."
4. In its initial response to the request, Cabinet Office advised that FOIA provides access to information that public authorities hold for official purposes only. It said it didn't hold personal medical information and didn't hold any information in relation to the request.

5. In its internal review response, the Cabinet Office advised that the conduct of a COVID-19 test on any public official is a private medical matter. As such, it said, any information relating to it isn't official information even if it had been recorded. The Cabinet Office confirmed that it followed that it doesn't hold the requested information.

## **Reasons for decision**

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6. This reasoning covers how the Cabinet Office interpreted the request, and how it's satisfied that it doesn't hold any recorded information relevant to the request.

### **Section 1: general right of access to information held by a public authority**

### **Section 3: information held by or on behalf of a public authority**

7. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled to be told if the authority holds the information and to have the information communicated to them if it's held and isn't exempt from disclosure.
8. Section 3(2)(a) of FOIA, which is relevant here, states that information is held by a public authority if:  

“it is held by the authority, otherwise than on behalf of another person...”
9. If a public authority doesn't hold recorded information that falls within the scope of a request, the Commissioner can't require the authority to take any further action.
10. In deciding whether a public authority holds information that has been requested, the Commissioner follows the lead of a number of First-Tier Tribunal decisions and the civil standard of proof based on the balance of probabilities.
11. In its submission to the Commissioner the Cabinet Office:
  - confirmed that “this information is not held for the purposes of the Act”
  - in response to a question the Commissioner had put to it, said that it wasn't apparent to it whether, at the time of the request, it would have held any relevant information in any capacity; and
  - confirmed that “No official information is held on such matters.”

12. The Cabinet Office observed that the principles of doctor-patient confidentiality are well-established in both common law and as a fundamental principle of medical practice. The Cabinet Office went on to say that it considers that this includes the circumstances surrounding the testing of an individual for a medical condition, saying that "Such information is private and relates to the very being of that individual and is not connected to any role they may fulfil."
13. The Cabinet Office noted that the BBC reported on 27 March 2020 that Mr Johnson had tested positive for COVID-19. It said that that was a private medical matter and not one that relates to official government business. It relates to him personally and not to his (then) role of Prime Minister. The Cabinet Office said that it considers that testing a public official for any medical condition, irrespective of grade or status, is a private matter to them which does not touch upon their role within Government.
14. The privacy notice in relation to COVID-19 that Public Health England publishes extends, the Cabinet Office said, to 'treatment information' including 'test results and treatments.' This would also include details surrounding testing individuals such as Mr Johnson. The Cabinet Office confirmed that it considers that this underlines that the matter is a private one and isn't official business of the Government.
15. Concluding its submission, the Cabinet Office emphasised that FOIA was devised to give people the right to have access to official information. It wasn't devised, "to give people the right to circumvent well-established conventions surrounding patient confidentiality in order to access private medical information simply because the patient happens to hold public office."

### **The Commissioner's conclusion**

16. In relation to section 3(2)(a) of FOIA, in its submission the Cabinet Office had stated that it wasn't apparent to it that it would have held the requested information in any capacity. By this the Commissioner understood the Cabinet Office to mean that it didn't consider it would have held the information either for its own purposes or held it on behalf of Boris Johnson.
17. Regarding whether the Cabinet Office held the information for its own purposes, in their complaint to the Commissioner, the complainant argued that, for security reasons, the Cabinet Office would be likely to hold records of who enters and leaves 10 Downing Street. If such a relevant record were held, it would be held for the Cabinet Office's own purposes. The Commissioner therefore asked the Cabinet Office for further explanation on its position. On the basis of the Cabinet Office's

response, which he doesn't intend to detail in this notice, the Commissioner is satisfied that the Cabinet Office doesn't hold the requested information for its own purposes.

18. The Commissioner has next considered whether the Cabinet Office held the information on behalf of another person; namely Boris Johnson. As an MP and Prime Minister Boris Johnson wasn't a public authority; he was a private citizen. As such, he wasn't personally subject to FOIA. He would have also had a COVID-19 test as a private citizen. Had the Cabinet Office therefore held the requested information on Boris Johnson's behalf – and there's no obvious reason why it would have done so – because Boris Johnson isn't subject to FOIA, the Cabinet Office couldn't have been said to hold the information itself.
19. In light of the above the Commissioner's conclusion is that the Cabinet Office was entitled to deny that it held the requested information, since it wouldn't be caught by section 3(2) of FOIA.
20. The Commissioner has nonetheless considered whether, if he were to uphold the complaint, he could require the Cabinet Office to take any further steps.
21. The request is for the name of the organisation that administered the COVID-19 test to Boris Johnson and the time the organisation's representatives visited 10 Downing Street. If this information **were** held – and, to repeat, the Commissioner has found that it was not – it's very likely that the information would be exempt from disclosure under section 40(2) of FOIA as it would be Boris Johnson's personal data.
22. However, the Commissioner's decision is that, on the balance of probabilities, the Cabinet Office doesn't hold the requested information in this case. Therefore he couldn't instruct the Cabinet Office to take any further action in respect of the request of 31 August 2022.

## Right of appeal

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23. 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)

24. 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.
25. 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

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**