

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2024

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information relating to correspondence between The Rt Hon Michael Gove MP and Baroness Michelle Mone OBE sent from their private email accounts. The Cabinet Office's position is that the information is not held.
2. The Commissioner's decision is that the Cabinet Office failed to comply with section 1(1) of FOIA due to it omitting to ask Mr Gove whether he holds information falling within the scope of the request at the time the request was made.
3. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation:
 - Ask Mr Gove to confirm whether he holds information falling within the scope of the request and whether he held any such information at the time the request was made.
 - If no information is held (or was held at the time of the request), the Cabinet Office must confirm this in writing to the complainant.
 - If information is held (or was held at the time of the request), the Cabinet Office must issue the complainant with a fresh response.
4. 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

5. On 24 March 2022, the complainant made the following request for information to the Cabinet Office:

"My request relates to correspondence between Michael Gove, the then Chancellor of the Duchy of Lancaster, and Michelle Mone (who sits in the House of Lords as Baroness Mone). My request relates to correspondence that was sent between Michael Gove, using his email account [email address redacted], and Baroness Mone, using her email account [email address redacted].

I would like to limit my request to the period March 1 2020 to April 1 2021.

Under the act, I would like to ask:

- 1) How many times did Michael Gove, using his email account [email address redacted], email Baroness Mone, at her email account [email address redacted], during that period.
- 2) on what dates was each email sent;
- 3) How many times did Baroness Mone, using her email account [email address redacted], email Michael Gove, at his email account [email address redacted], during that period;
- 4) on what dates was each email sent;

Under the act, I would like to request complete copies of each of the emails referred to in the questions 1) to 4).

I would like to make it clear that I am solely requesting emails that relate to official government business and specifically excluding emails that relate to private matters. I would like to draw your attention to the guidance published by the Information Commissioner on official information held in private email accounts <https://ico.org.uk/media/for-organisations/documents/1147/official-information-held-in-private-email-accounts.pdf>

This guidance for instance states that "information held in non-work personal email accounts (e.g. Hotmail, Yahoo and Gmail) may be subject to FOIA if it relates to the official business of the public authority." I would therefore like to ask the Cabinet Office to search the [email address redacted] email account of Michael

Gove for responsive material relating to Baroness Mone's email account [email address redacted].

In addition to this Information Commissioner's guidance, I believe that the Cabinet Office is justified in searching these email accounts as there is evidence that both individuals have used these email accounts for official business. On March 2, the Cabinet Office responded to my freedom of information requests (FOI References: FOI2022/00313 & 00142) regarding PPE Medpro, releasing some emails. However as you are aware, the emails were not redacted fully, and they showed that Baroness Mone corresponded with Lord Agnew, copying in Michael Gove, on May 8 2020, using the above personal email accounts, about official government matters, namely the supply of PPE.

We believe that any emails sent via these private email accounts are disclosable under the freedom of information act if they relate to official government business as they qualify under section 3 of the act as being held by another person on behalf of the authority.

I would also like to ask the Cabinet Office, on answering this request, to provide a schedule of documents which are relevant to this request. I believe that there should be a brief description of each relevant document including the nature of the document, the date of the document, and whether the document is being released or not. I believe that providing such a schedule would clarify what documents are being released and what is being withheld, and would also represent best practice in open government.

Attached is guidance from the Information Commissioner outlining how the creation of an itemised list of documents, or a schedule, is "simply a case of extracting the relevant information (the individual building blocks) from the correspondence and organising them into a schedule. The extraction of existing information and presenting it as a schedule is not the creation of new information."

<https://ico.org.uk/media/1169/determining Whether information is held foi eir.pdf>

6. The Cabinet Office responded on 25 April 2022. It stated that following a search of its paper and electronic records, it did not hold the requested information. It advised the complainant that they may wish to contact the Department for Levelling Up, Housing & Communities, which may have been able to help with their request for information.

7. The complainant wrote to the Cabinet Office on 4 May 2022, asking it to conduct an internal review. They stated the following:

"In your response on April 25, the Cabinet Office FOI team stated that it had "established that the information you requested is not held by the Cabinet Office."

I would like to ask for an internal review of this request as it is unclear whether the Cabinet Office has carried out a proper search for responsive records. I would like to ask the Cabinet Office specifically if it carried out a search of Michael Gove's email account [email address redacted] as part of its work to answer this request.

As I set out in my request, I believe that any emails communicated via this email account are disclosable under the Freedom of Information Act if they relate to official government business, as they qualify under s3 of the act as being held by another person on behalf of the authority. I have previously made it clear that I am solely requesting emails that relate to official government business and specifically excluding emails that relate to private matters."

8. The Cabinet Office provided the complainant with the outcome of its internal review on 14 June 2022, maintaining its original position. It included the following:

"The Cabinet Office does not have access to Mr Gove's personal email account. As he is no longer a Cabinet Office Minister we suggested you redirect your request to the Department for Levelling Up, Housing & Communities. We provided the contact email address in our response of 25 April.

I can confirm however that we have conducted a search of the private office mailbox from when Mr Gove was Chancellor of the Duchy of Lancaster. We searched for emails forwarded to it from Mr Gove's personal email account within the date range of your request. This search did not locate any information in scope of your request. Our reason for searching the private office mailbox was that any emails relating to official government business would have been forwarded to it so that officials could save the emails into the official record. This is in accordance with the [guidance on use of personal email accounts](#)."

Scope of the case

9. The complainant contacted the Commissioner on 10 August 2022 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of his investigation is to consider whether the Cabinet Office holds the requested information.

Reasons for decision

Section 1 – Information not held

11. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled to:
 - a) to be told if the authority holds the information and,
 - b) to have the information communicated to them if it is held and is not exempt information.
12. Where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of “the balance of probabilities”.
13. In other words, in order to determine such complaints, the Commissioner must decide whether it is more likely than not that the public authority holds any information which falls within the scope of the request (or held it at the time of the request).
14. In this case, the request relates to correspondence between Mr Gove and Baroness Mone sent from their private email accounts.

The Cabinet Office’s position

15. In response to the request, the Cabinet Office has stated that it does not hold the information sought by the request, and that the relevant teams have undertaken searches to establish this.
16. The Cabinet Office has confirmed that its Digital Knowledge and Information Management (DKIM) Team holds the department’s digital legacy records and carried out searches to identify any information falling within the scope of the request.

17. The Cabinet Office stated that its DKIM Team confirmed that if relevant information was held, it **may** [Commissioner's emphasis] have been forwarded from Mr Gove's personal email account, by him, to his official ministerial email accounts.
18. The Cabinet Office stated that this is the only means that it would be able to identify any correspondence between the specified personal email addresses of Mr Gove and Baroness Mone. It confirmed that the Cabinet Office does not have access to Mr Gove's nor Baroness Mone's personal email accounts.
19. The Cabinet Office stated that its DKIM Team confirmed it does not hold any correspondence between Mr Gove, using his personal email account, and Baroness Mone, using her personal email account, within the dates specified in the request.
20. The Cabinet Office also stated that Mr Gove's previous Ministerial Private Office in the Cabinet Office also carried out searches of emails that were forwarded to his official ministerial email account from his personal email account which returned no results within scope of the request.
21. The Cabinet Office explained that it is standard process that all digital legacy records from ministerial private offices are transferred to the DKIM Team once a minister departs from their ministerial role within the Cabinet Office. It confirmed that these digital records are held in digital form and would not be held in paper form.
22. The Cabinet Office stated that its DKIM Team used the search terms "Baroness Mone", "Michelle Mone" and Michelle Mone's personal email address for digital searches on networked resources (including emails) for Mr Gove. These searches were across all of the mailboxes the Cabinet Office holds for Mr Gove and returned no results which were in scope of the request for information.
23. The Cabinet Office confirmed that if the requested information were held, it would be held for the official record and would not have been destroyed.
24. The Cabinet Office advised that its Information and Records Retention and Destruction Policy states that staff are required to identify emails required for the departmental record and ensure they are appropriately filed in the relevant team shared drive. It stated that individual email accounts must not be used for long-term record storage. It also stated that before leaving a team or the department, staff must file into the team shared drive all the emails from their email account that they consider are important and /or would be required for the departmental record.

25. The Cabinet Office confirmed that email accounts are permanently deleted 365 days after receiving notification that a person has permanently left the Cabinet Office. It stated that the email accounts of people on extended leave or on secondment will not be deleted nor will accounts that are subject to a temporary suspension.
26. The Cabinet Office explained that shared mailboxes which are set up to support a private office of a minister, permanent secretary or other senior staff are retained in their entirety.
27. The Cabinet Office stated that it is the responsibility of individual users to manage the fair processing of their own and other's personal data in their mailboxes and this includes the deletion of any personal data once the reason for its creation or receipt has expired.
28. The Cabinet Office confirmed that there is no statutory requirement for private or government email accounts to be retained. It referred the Commissioner to Section 3.1 of The Public Records Act 1958 which requires the Departmental Records Officer to put in place arrangements for the selection of records of long-term value. It stated that its Information and Records Retention and Destruction Policy explains how this is achieved in practice.

The Commissioner's decision

29. As the complainant noted in their information request, on 8 May 2020, Baroness Mone emailed Lord Theodore Agnew, a fellow Conservative peer and at that time a Cabinet Office minister whose responsibilities included procurement and proposed supplying large quantities of PPE face masks to the Government, stating that they could be sourced through 'my team in Hong Kong'. The email was sent from Baroness Mone's private email address to Lord Agnew's private email address and was copied to Mr Gove's private email address¹.
30. Given that Mr Gove had been contacted by Baroness Mone via his private email account on 8 May 2020, and taking into consideration that particular communication, the Commissioner considers that this was reasonable evidence to suggest that other such communications may have taken place between Baroness Mone and Mr Gove, via their private

¹ [Private emails reveal Gove's role in Tory-linked firm's PPE deals | Michael Gove | The Guardian](#)

email addresses, during the period covered by the request (1 March 2020 to 1 April 2021).

31. The Commissioner recognises and accepts that the responsibility for ensuring that important and non-trivial information about official government business contained in private email accounts or other personal devices or platforms is safely and securely retained lies very much upon the individual who holds those accounts or owns those devices.
32. The Commissioner notes that at the time of the request, the complainant referred to the Commissioner's guidance on official information held in private email accounts² which confirmed that FOIA applies to official information held in private email accounts (and other media formats) when held on behalf of the public authority.
33. The Commissioner has also issued new and updated guidance on Official Information Held in Non-Corporate Communications³. The more recent guidance reflects the emergence of new technology since FOIA came into force and the practical realities of how some working within public authorities have, at times, communicated. This new and updated guidance was in place at the time of the request that this decision notice relates to. Consequently, the Commissioner's decision in this case has been made with reference to his new and updated guidance (the Guidance).
34. The Guidance states that "You will need to ask an individual to search their accounts and/or devices, if you decide that their personal email account, messaging accounts or personal mobile device may include information which falls within the scope of the request, and which your system does not hold elsewhere."
35. The Cabinet Office confirmed it does not have access to Mr Gove's nor Baroness Mone's personal email accounts⁴, and its DKIM Team confirmed that it did not carry out any staff consultations in respect of this request.
36. At the time of the request, Mr Gove had left his post at the Cabinet Office, and the Cabinet Office's Records and Retention Policy required

² [official information held in private email accounts.pdf \(ico.org.uk\)](https://ico.org.uk/official-information-held-in-private-email-accounts.pdf)

³ [Official information held in non-corporate communications channels | ICO](https://ico.org.uk/official-information-held-in-non-corporate-communications-channels)

⁴ The Commissioner is satisfied that the Cabinet Office did not need to identify what information was held in Baroness Mone's personal email account, as any such information would not be held by the Cabinet Office for the purposes of FOIA.

him to forward any relevant emails about official government business, sent from or received by his personal mailbox, to his official Cabinet Office email mailbox.

37. The searches carried out were therefore for emails that were forwarded to Mr Gove's official ministerial email account. In addition, the Cabinet Office's DKIM Team carried out digital searches on networked resources, including all mailboxes held for Mr Gove and these searches returned no results which were in scope of the request for information.
38. The Commissioner is satisfied that the Cabinet Office has conducted appropriate searches of its own systems and can find no information falling within the scope of the request. There is no evidence available to the Commissioner that suggests that these searches have been deficient or to suggest that information falling within the scope of the request is likely to be held on the Cabinet Office's own systems.
39. However, the Commissioner notes that the Cabinet Office does not appear to have contacted Mr Gove to establish whether any communications falling within the scope of the request are held within his personal email account and/or retained in other records by him, nor has it demonstrated that it asked Mr Gove to confirm that he had forwarded any emails required for the departmental record at and/or by the time he left the Cabinet Office. The Cabinet Office is therefore relying on an assumption that Mr Gove followed these procedures when it states that no information is held.
40. The Commissioner recognises and appreciates that under the Cabinet Office's Records and Retention Policy, Mr Gove would have been required to forward any private emails about official government business to his official Cabinet Office email mailbox. However, for the purposes of section 1(1) of FOIA, what must be ascertained, on the balance of probabilities, is what relevant information is *actually* held, rather than what relevant information would have been held if appropriate procedures had been followed. That is to say, rather than assume that an absence of information in official records means that no relevant information is held, a public authority should take all reasonable steps and measures to positively establish whether that is the case.

41. In this instance, as Mr Gove remained in Government at the time of the request⁵ and was therefore easily contactable by the Cabinet Office, and as there was evidence that Baroness Mone and Mr Gove had email communications via their private email addresses on at least one occasion (8 May 2020) during the period covered by the complainant's request, the Commissioner considers that the Cabinet Office should have contacted Mr Gove and asked him to confirm whether he held any information within scope of the request. By not taking this action, the Commissioner is not satisfied that the Cabinet Office took all reasonable and sufficient steps in the particular circumstances of this request to establish whether relevant information was held. The Commissioner therefore finds that, in this instance, the Cabinet Office breached section 1(1) of FOIA.

Other matters

42. The Commissioner has recently updated his guidance⁶ regarding the FOIA Section 46 code of practice on records management⁷ which now includes guidance on information held in non-corporate channels of communication.

43. In order to be consistent with good record keeping the Commissioner expects government departments to confirm with a departing minister (and then be able to evidence) that, in respect of any information held by them in non-corporate communications channels, they have complied with any applicable policies or guidance on the preservation of official records. This is in line with paragraph 27 of the Government's guidance on the use of non-corporate communications channels⁸.

⁵ Notwithstanding that the Cabinet Office advised the Commissioner that "We note that the FOI and Internal Review responses suggested that the requester might wish to ask the DLUHC for this information. We acknowledge this advice was not relevant to the request as Mr Gove took up his role as Secretary of State for DLUHC five months after the scope covered by the request."

⁶ [Section 46 Code of Practice – records management | ICO](#)

⁷ [Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000 \(publishing.service.gov.uk\)](#)

⁸ Paragraph 27 of [this guidance](#) states "Departments should ensure that offboarding procedures remind individuals of their obligations regarding any government information that individuals may have in NCCCs when they leave their department. Ministers leaving office should be reminded of the provisions of the Ministerial Code regarding the return of departmental papers."

Right of appeal

44. 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

45. 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.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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