

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 August 2024

Public Authority: Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information relating to complaints about the conduct of Liz Truss in her ministerial roles and as Prime Minister.
2. The Cabinet Office initially relied on section 12 of FOIA (cost of compliance) to refuse the request. It later relied on section 1 (information not held) for information falling in scope of the request relating to the period up to 23 July 2022. For any information falling in scope of the request relating to the period from 24 July 2022 to 25 October 2022, it neither confirmed or denied the information was held citing section 40(5B) of FOIA (third party personal information) and section 36(3) (prejudice to the effective conduct of public affairs).
3. The Commissioner's decision is that the Cabinet Office has correctly relied on section 1 for the requested information relating to the period up to 23 July 2022 and on section 40(5B) for any information falling in scope of the request relating to the period from 24 July 2022 to 25 October 2022.
4. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Background

5. The Commissioner is aware that Liz Truss was elected as an MP in 2010 and held various ministerial and cabinet positions from 2012 to 2022. She served as Foreign Secretary from 15 September 2021 to 6 September 2022 and as Prime Minister and Leader of the Conservative Party from 6 September 2022 to 25 October 2022. Truss then remained a backbencher until the July 2024 general election.

Request and response

6. On 5 October 2023, the complainant wrote to the public authority and requested information in the following terms:

“This request concerns the conduct of Liz Truss in relation to her role as Prime Minister, and any complaints received by the Cabinet Office in her previous ministerial roles.

 1. Please state the number of formal complaints received by the department concerning the conduct of Liz Truss.
 2. Please state the number of these complaints that were upheld by the department.
 3. Please state, if any, the number of these complaints which alleged sexual harassment, or other sexual misconduct, by Liz Truss.
 4. Please state, if there were any of these complaints relating to sexual misconduct by Liz Truss, the number that were upheld by the department.”
7. The Cabinet Office responded on 2 November 2023 and argued that the request exceeded the cost limit by virtue of section 12 of FOIA.
8. On 2 November 2023, the complainant requested an internal review. He argued that section 12 did not apply as his request concerned formal complaints, not just any public complaint. He therefore made it clear that the scope of the request is “complaints considered and formally investigated by the Cabinet Office”.
9. The Cabinet Office provided the outcome of that internal review on 18 December 2023, amending its position to neither confirm nor deny (NCND) whether it held the requested information under section 40(5) FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 19 December 2023 to complain about the way his request for information had been handled.
11. During the course of his investigation the Commissioner provided the Cabinet Office with a link to a news article¹ from July 2022 and asked it if, in light of this, it wished to maintain its NCND position.
12. The news item reported that on 23 July 2022 the Cabinet Secretary, Simon Case, had made the following statement:

“After hearing about media queries relating to the alleged existence of complaints about the foreign secretary’s conduct, the cabinet secretary sought confirmation from colleagues that there had been no formal or informal complaints raised with officials about the foreign secretary. We can confirm that neither the Foreign Office nor the Cabinet Office have received any such complaints. Claims that the cabinet secretary has discussed with colleagues ‘personal issues’ surrounding Ms Truss are not true.”
(the ‘Statement’)

13. The Cabinet Office responded to the Commissioner and revised its position in light of the Statement. It explained that “the statement made by the Cabinet Office was an exceptional action, where public interest arguments were weighed in the specific context of the time in which it was made”. In its accompanying section 36 submissions to its Qualified Person, the Cabinet Office further explained that the Statement was “an exceptional step in the circumstances of a leadership election within the governing party...” It revised its position as follows:
 - section 1 (information not held) - to the scope of the request for the time period of Liz Truss's ministerial career [ie from September 2012] up to 23 July 2022 [ie the date of the Statement];
 - section 40(5B)(a)(i) to any information that may or may not be in scope of the request from 24 July 2022 to 25 October 2022 [ie the date Liz Truss resigned as Prime Minister]; and

¹ <https://www.independent.co.uk/news/uk/politics/liz-truss-tory-leadership-complaints-b2129814.html>

- section 36(3) to any information that may or may not be in scope of the request from 24 July 2022 to 25 October 2022.
14. The Commissioner recognises from the wording of the complainant's request that the time period of the complainant's request is "in relation to her role as Prime Minister, and any complaints received by the Cabinet Office in her previous ministerial roles." However, the Commissioner notes for completeness the possibility that complaints may have been submitted after 25 October 2022 about Liz Truss's conduct (as Prime Minister or as a minister) for the time period preceding that date. Therefore, for the avoidance of doubt, the Commissioner's interpretation of the request is that it covers the time period of 2012 up to 25 October 2022, as well as any complaints relating to Liz Truss's conduct in the period up to 25 October 2022 even if received by the Cabinet Office up to the date of the complainant's request on 5 October 2023.
 15. The complainant indicated he was not satisfied with the Cabinet Office's revised response and so the Commissioner wrote to the Cabinet Office about its revised position and also requested its substantive submissions regarding section 1, as none had been provided.
 16. The Cabinet Office provided the Commissioner with some background about the official Statement made by the Cabinet Office/Simon Case on 23 July 2022. On the basis of this the Cabinet Office invited the Commissioner to conclude that the balance of probabilities clearly lied in favour of the Cabinet Office not holding information in scope of the request relating to the period up to 23 July 2022.
 17. The Commissioner advised the Cabinet Office that he had not been provided with sufficient evidence, on the (civil standard of the) balance of probabilities in the circumstances of this particular case, that the requested information up to 23 July 2022 was not held by the Cabinet Office – as the Cabinet Office had not itself confirmed it had undertaken any searches in order to re-confirm that it does not hold the information. The Commissioner again invited the Cabinet Office to provide submissions about section 1 and these were provided.
 18. The Commissioner considers that the scope of his investigation is to establish whether the requested information is held by the Cabinet Office for the time period of Liz Truss's ministerial career up to 23 July 2022. As regards the time period of the request from 24 July 2022 - 25 October 2022 (with the caveat set out in para 14 above), the scope of his investigation is to determine if the Cabinet Office is entitled to rely on sections 40(5B) of FOIA and, if necessary, section

36(3) to refuse to confirm or deny that the requested information is held.

Reasons for decision

Section 1 – information not held

19. The complainant requested information about complaints regarding the conduct of Liz Truss in her ministerial roles and as Prime Minister.
20. During the course of the Commissioner's investigation, as set out above, the Cabinet Office revised its position and stated that, for the time period of Liz Truss's ministerial career from 2012 up to 23 July 2022 (when Simon Case, the Cabinet Secretary, issued the Statement), it did not hold the requested information, citing section 1 (information not held) of FOIA.
21. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
22. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, i.e. the balance of probabilities. In order to determine such complaints the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request. His remit is not to determine whether information should be held, but only whether, on the balance of probabilities, the requested information was held at the date of the request.
23. Accordingly the investigation will consider the scope, quality, thoroughness and results of searches, and/or other explanations offered by the Cabinet Office as to why the information is not held. The Commissioner will also consider any arguments put forward by the complainant as to why the information is likely to be held (as opposed to why it ought to be held).
24. This part of the decision notice deals with the complainant's request for information about complaints concerning the conduct of Liz Truss considered and formally investigated by the Cabinet Office in her ministerial roles from 2012 to 23 July 2022. Simon Case, the Cabinet Secretary, issued the Statement on 23 July 2022, confirming that there had been no formal or informal complaints raised with officials

and neither the Foreign Office nor the Cabinet Office had received any such complaints.

25. The complainant set out in his correspondence with the Commissioner that he wished to know:

“what searches the Cabinet Office has conducted to assure themselves no information is held in relation to her pre-PM roles, or if the Cabinet Office is relying on Case's statement alone. That would not constitute a reasonable search in and of itself, I would argue. The public interest in knowing if complaints had been made, and most importantly, upheld against a serving prime minister is very clear, especially as she is still playing an active role in public life.”
26. The Cabinet Office provided submissions to the Commissioner advising that the Statement, alongside internal checks that had been done to confirm the understanding of this statement, represented official confirmation that the information is not held by the Cabinet Office for the period up to 23 July 2022. The Cabinet Office invited the Commissioner to accept this without fresh searches being undertaken to confirm this.
27. The Commissioner considered this response to be of assistance but was not able to accept the Cabinet Office's assurances as sufficient for the purposes of satisfying section 1 FOIA. Therefore, the Commissioner advised that he had not been provided with sufficient evidence, on the (civil standard of the) balance of probabilities, that the information is not held by the Cabinet Office. The Commissioner noted that the Cabinet Office itself confirmed it had not undertaken any searches (ie further to the 'internal checks' made) in order to re-confirm that it does not hold the information.
28. The Commissioner explained to the Cabinet Office that if he receives a complaint disputing whether or not the information is held, the onus is on the public authority to provide a reasoned and detailed account and to provide sufficient evidence of how it determined that it does not hold the information. This is to allow the Commissioner to be satisfied that, on the balance of probabilities, the information is not held.
29. In the circumstances, therefore, the Commissioner again invited the Cabinet Office to provide further submissions for section 1 and to provide a well-reasoned and detailed account of how it determined that it does not hold the information. The Cabinet Office subsequently furnished further submissions to the Commissioner.
30. The Cabinet Office explained to the Commissioner that it had conducted further searches and found no information in scope of the

request held by the Cabinet Office, in accordance with the Statement of 23 July 2022.

31. The searches of the following individual and group mailboxes folders were undertaken from September 2012, when Liz Truss was first appointed as a junior minister to 23 July 2022, the date on which the Statement was issued confirming that there had been no complaints to date about her as a minister.
32. The Cabinet Office advised the Commissioner that it does not believe that anyone in the Cabinet Office apart from the below named group is likely to hold the requested information. Further, the Cabinet Office advised that searching all these inboxes means that the period from 2012-2022 is continuously covered by a relevant senior official who would be likely to hold such records, if they existed.
33. They searched the following active mailboxes: - Darren Tierney, Director General of Propriety and Constitution Group; Simon Madden, Director of Propriety and Ethics; Propriety and Ethics Team Mailboxes (including historic mailboxes); Darren Tierney's Private Office; The Cabinet Secretary and the Cabinet Secretary's Private Office. They also searched two mailboxes of former members of staff, to make sure the full period from 2012-2022 was covered: - Tristan Pedelty, former Director of Propriety and Ethics and Sue Gray, former Director General of Propriety and Ethics. They also searched the following computer folders: - owned by the Propriety and Ethics Team (including archived folders) and The Director General of Propriety and Constitution Group's Business Management Team.
34. The Cabinet Office advised that the following search terms were used:
 - "Liz Truss" + "Complaint"
 - "Liz Truss" + "Sexual harassment"
 - "Liz Truss" + "Sexual misconduct"
35. The Cabinet Office explained to the Commissioner that it then reviewed any information found within these search terms, to assess whether it fell within the scope of the request. They confirmed that all such searches found no information in scope of the request.
36. The Cabinet Office explained to the Commissioner that it considered that reasonable and thorough searches have been carried out in all locations where it believed that relevant information would be stored if held.

37. The Cabinet Office also stated that, as far as they are aware, there is no information which has ever existed and which has been previously destroyed in scope of the relevant part of this request.
38. The Cabinet Office further advised that "all files are handled in line with the Cabinet Office's Security and Integrity Standards Privacy Notice², which states that "your personal data will be kept by us for as long as is necessary for the purposes for which it was collected". It added that data is also handled in line with the Cabinet Office's retention policy³.
39. Therefore, the Cabinet Office is of the view that it does not hold any information requested relating to the time period of Liz Truss's ministerial career from 2012 up to 23 July 2022, the date of the Statement.
40. The Commissioner has carefully considered the points made by the complainant and the Cabinet Office.
41. Having reviewed the submissions of both parties, the Commissioner is persuaded that, on the balance of probabilities, the Cabinet Office does not hold information falling within the scope of the request for the period up to 23 July 2022. The Commissioner is satisfied that adequate and appropriate searches of the Cabinet Office electronic records were carried out by the relevant part of the Cabinet Office to determine whether recorded information within the scope of the request was held up to 23 July 2022. Furthermore, the Commissioner is satisfied that appropriate consultations took place in respect of Cabinet Office staff (and former staff) and that should information within scope of the request have been held, those staff who were consulted would have been aware of such information.
42. The Commissioner accepts that the Cabinet Office's conclusion that it does not hold information falling within the scope of the request

² <https://www.gov.uk/government/publications/security-and-integrity-standards-privacy-notice/cabinet-office-security-and-integrity-standards-privacy-notice>

³ https://www.whatdotheyknow.com/request/cabinet_office_email_retention_c/response/2378014/attach/3/2023%2007%2028%20FOI2023%2006810%20CO%20Information%20Records%20Retention%20Destruction%20Policy%20v1.1%20Feb%202021.pdf?cookie_passthrou gh=1

relating to the period up to 23 July 2022, the date of the Statement, is an acceptable one in the circumstances.

43. Having considered all the circumstances, on the balance of probabilities, the Commissioner therefore accepts the Cabinet Office's position that it does not hold any recorded information falling within the scope of the request up to 23 July 2022. As such, the Commissioner has decided that the Cabinet Office has complied with section 1(1)(a) of FOIA in this respect.

Section 40(5B) - personal information

44. In light of the Statement, as set out above, the Cabinet Office revised its position and applied section 40(5B)(a)(i) for the time period of the request relating to the period from 24 July 2022 to 25 October 2022. For the avoidance of doubt, it is this specific time period of the request that the Commissioner is considering in this part of the decision notice.
45. Section 1(1)(a) of FOIA provides that where a public authority receives a request for information, it is obliged to tell the applicant whether it holds that information. This is commonly known as 'the duty to confirm or deny'.
46. Section 40(5B)(a)(i) of the FOIA allows a public authority to refuse to confirm or deny that particular information is held. It will apply where the mere act of confirming or denying would itself reveal the personal data relating to an individual other than the requester and that revelation would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
47. The decision to use a 'neither confirm nor deny' response will not be affected by whether a public authority does or does not in fact hold the requested information. The starting point, and main focus for a 'neither confirm nor deny' (NCND) response in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not particular information is held. The Commissioner's guidance explains that there may be circumstances in which merely confirming or denying whether or not a public authority holds information about an individual can itself reveal something about that individual.
48. The Cabinet Office has taken the position of NCND on whether it holds any of the requested information only for the time period of 24 July 2022 to 25 October 2022. The issue that the Commissioner has to consider is not one of the disclosure of any requested information if held. It is solely the issue of whether or not the Cabinet Office is

entitled to NCND whether it holds any information of the type requested by the complainant.

49. The first step for the Commissioner is to determine whether just confirming or denying that the information is held would reveal personal data as defined by the Data Protection Act 2018 ('DPA'). If it would not, section 40(5B) of FOIA cannot be relied upon.
50. The Commissioner has to take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the public. He must therefore consider the wider public interest issues and fairness to Liz Truss when deciding whether or not to confirm or deny the information is held. The second element of the test is, therefore, to determine whether such a confirmation or denial would contravene any of the data protection principles.

Would confirmation or denial reveal personal data?

51. In his consideration of this complaint, while the Cabinet Office simply applied section 40(5B) to the request for this period as a whole, at the outset the Commissioner wishes to place on record that, as part of his decision, he has carefully considered and paid particular and separate regard when reaching his decision to each of the four questions in the request for information, namely:
 - “1. Please state the number of formal complaints received by the department concerning the conduct of Liz Truss.
 2. Please state the number of these complaints that were upheld by the department.
 3. Please state, if any, the number of these complaints which alleged sexual harassment, or other sexual misconduct, by Liz Truss.
 4. Please state, if there were any of these complaints relating to sexual misconduct by Liz Truss, the number that were upheld by the department.”
52. The Commissioner observes that the questions one to four above become increasingly more specific and precise as to the information requested, and that the information requested becomes more sensitive, intrusive and invasive as the questions progress from number one to four. The first question being the least specific and sensitive and the third and fourth being requests for the most sensitive and intrusive information. It is also noted that, while at first glance, it appears that question one is a request for the same information contained in the Statement, on further analysis however, the Commissioner notes that question one of the request is more

specific than the Statement as it requests the 'number' of formal complaints received.

53. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

54. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

55. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

56. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

57. In the circumstances of this case, the Commissioner is satisfied that providing a confirmation or a denial that information falling within any of the four questions in the request is held would reveal personal data. This is because the former Prime Minister, Liz Truss, is specifically named in the request and the request is for information relating to her.

58. Specifically, the Commissioner is satisfied that if the Cabinet Office were to either confirm or deny it held any of the information, it would involve the disclosure of personal data of a third party i.e. it would reveal something about Liz Truss and whether she was the subject of any complaints received and investigated by the Cabinet Office. This clearly relates to her and she could be identified from this.

59. The Commissioner further agrees with the Cabinet Office's position for the following reasons: If the Cabinet Office did not hold any information for the time period 24 July 2022 to 25 October 2022, then confirmation of that fact would reveal that Liz Truss had not been the subject of any such complaints. Conversely, if the Cabinet Office did hold any information for the time period 24 July 2022 to 25 October 2022, then confirmation of that fact would reveal that Liz Truss had been the subject of a complaint, or complaints. In either scenario such information clearly relates to Liz Truss and is biographically significant to her; it is therefore her personal data.

60. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA. The first criterion set out is therefore met.
61. The fact that confirming or denying that information is held would reveal the personal data of Liz Truss does not automatically prevent the Cabinet Office from refusing to confirm whether or not it holds this information. The second element of the test is to determine whether confirming or denying that the information is held would contravene any of the DP principles.

Would confirming or denying that the information is held contravene any of the DP principles?

62. Article 5(1)(a) of the UK GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

63. In the case of an FOIA request, the personal data is processed when the confirmation or the denial is provided. This means that confirmation or denial can only be provided where it would be lawful, fair and transparent to do so.
64. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the UK GDPR

65. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that "processing shall be lawful only if and to the extent that at least one of the" conditions listed in the Article applies. One of the conditions in Article 6(1) must therefore be met before disclosure of the information in response to the request would be considered lawful.
66. The Commissioner considers that the lawful basis most applicable is the basis in Article 6(1)(f) of the UK GDPR which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which

require protection of personal data, in particular where the data subject is a child”⁴.

67. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii) **Necessity test:** Whether confirming or denying that the information is held is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
68. The Commissioner considers that the test of ‘necessity’ under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

69. In considering any legitimate interest(s) in confirming or denying that the information is held, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
70. Further, a wide range of interests may be legitimate interests. They can be the requester’s own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
71. The complainant argued that his request is “trying to stand up suggestions.. about Liz Truss’ conduct [...] rather than reporting based on rumour or a single source”. He argued that there is

⁴ Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the confirming or denying that the information is held of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

therefore a legitimate interest in public scrutiny of a senior politician, former Prime Minister and minister's conduct in public office, especially, he argued as Liz Truss is still playing an active role in public life. [Note that the complainant made this point prior to the 2024 general election, and in any event the Commissioner considers these points in relation to the circumstances at the time the request was submitted in October 2023.]

72. The Cabinet Office did not consider that the legitimate interests in this case trumped Liz Truss's right and expectation as to how her data will be treated in respect of the DP principles.
73. However, the Cabinet Office agreed that nevertheless there is a legitimate interest in high standards in public life, particularly in those who occupy high office, as the former Prime Minister did. The Cabinet Office also recognised that there is a legitimate interest in information about complaints against ministers and in the public being reassured that allegations of improper behaviour are investigated properly.
74. The Commissioner considers that there are clear legitimate interests in public scrutiny and transparency around the conduct of ministers and Prime Ministers and that allegations of improper behaviour by ministers and Prime Ministers are investigated properly. The Commissioner agrees with this assessment and therefore considers this limb of the test to be met.

Is confirming or denying that the information is held necessary?

75. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make confirming or denying that the information is held unnecessary. Confirming or denying that the information is held must therefore be the least intrusive means of achieving the legitimate aim in question.
76. The Cabinet Office explained that it is not the case that confirmation or denial via the FOIA is the only way that the legitimate interests in this case could be met in this specific case. The Cabinet Office argued that a confirmation or denial of the requested information is not reasonably necessary because the legitimate aims of transparency and accountability can be achieved by less intrusive means.
77. It argued that the Cabinet Office had met any legitimate interests by confirming that information is not held for the period up to 23 July 2022.

78. Further, the Cabinet Office argued that there are numerous recent examples of the publication of detailed reports regarding complaints about ministers or ministerial misconduct – such as the high profile reports into Dominic Raab⁵ and Nadhim Zahawi⁶. The Cabinet Office therefore considered that because of this confirmation or denial is not necessary in order to meet the legitimate interests in transparency and accountability around issues of ministerial conduct.
79. The Commissioner is aware it is normal practice to publicly release the outcome of complaints which have been upheld where there has been a serious breach of the Ministerial Code. The Commissioner therefore acknowledges, as he did in his decision notice FS50849464⁷, that the Cabinet Office does publish some information on complaints that have been upheld against ministers. He also notes that, to date, no such reports into Liz Truss's conduct or allegations of improper behaviour have been published. However, the Cabinet Office has also previously advised the Commissioner that it only publishes such reports where there has been a serious breach of the Ministerial Code, rather than in all cases where a complaint is received or upheld. As a result the Commissioner is not persuaded that the publication of reports regarding some high profile complaints about ministers or ministerial misconduct provides for full public scrutiny of Ministerial conduct or the robustness and effectiveness of the complaints investigation process. There is also no guidance available publicly which defines what constitutes a serious breach of the Code.
80. Furthermore, the Cabinet Office argue that the bar for necessity is not met in this case as it is not reasonably necessary for the Cabinet Office to override Liz Truss's personal data rights in order to substantiate 'rumour' and 'suggestions'. This is discussed further below.

⁵ <https://www.gov.uk/government/publications/investigation-report-to-the-prime-minister>

⁶ <https://www.gov.uk/government/publications/advice-from-the-independent-adviser-on-ministers-interests-january-2023>

⁷ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617398/fs50849464.pdf>

81. The complainant argues in contrast that “as a responsible investigative journalist, rather than reporting based on rumour or a single source, I am attempting to stand up whether any official information is held by government departments that could confirm this suggestion...” He therefore argued that there is no other way of obtaining the requested information other than by the Cabinet Office confirming or denying whether or not the requested information is held. He considers that obtaining a full response from the Cabinet Office would be the least intrusive means of achieving the legitimate aims of transparency and accountability.
82. Having considered the various points above, the Commissioner has concluded that confirmation or denial is reasonably necessary to meet the legitimate interests identified. He accepts that the explanations provided by the Cabinet Office are all relevant and go some way in doing that, but, in his view, there is no other way to sufficiently meet the identified legitimate interests other than by providing a confirmation or denial as to whether the information requested is held by the Cabinet Office.

Balance between legitimate interests and the data subject’s interests or fundamental rights and freedoms

83. It is necessary to balance the legitimate interests in confirming or denying that the information is held against the data subject’s interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of confirming or denying whether the information is held. For example, if the data subject would not reasonably expect that the public would be told that such information was or was not held, or if confirming or denying that the information is held would cause unjustified harm, their interests or rights are likely to override any legitimate interests in confirming or denying that the information is held.
84. In considering this balancing test, the Commissioner has taken into account the following factors in relation to all four parts of the request relating to the time period 24 July 2022 to 25 October 2022:
- the potential harm or distress that confirming or denying that the information is held may cause;
 - whether the information that would be revealed by a confirmation or a denial is already in the public domain;
 - whether the information that would be revealed by a confirmation or a denial is already known to some individuals;
 - whether the individual expressed concern about the possible confirmation or denial that the information is held; and

- the reasonable expectations of the individual.
85. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that the public authority would not reveal whether such information was or was not held. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they would have provided their personal data (if indeed any was provided). It is also important to consider whether confirming or denying that the information is held would be likely to result in unwarranted damage or distress to that individual.
 86. The complainant explained that disclosure about whether a former Prime Minister has been the subject of formal complaints about her conduct is a matter of very clear and obvious public interest. He said: "As a responsible investigative journalist, rather than reporting based on rumour or a single source, I am attempting to stand up whether any official information is held by government departments that could confirm this suggestion."
 87. Furthermore, the complainant emphasised that prominent public figures, such as Prime Ministers, do not have a reasonable expectation of privacy around their professional affairs. He argued that very high-profile public figures who continue to play a significant role in public life, can expect a very high degree of scrutiny.
 88. He also argued that Liz Truss as a senior politician and minister for many years could be expected to know that her personal information is subject to FOIA and that in many cases, she would not have the reasonable expectation of privacy that a more junior member of staff would have.
 89. In addition, he stressed that the public had a right to know if there were failures in the current ministerial appointment system. He stated: "should Liz Truss have been promoted repeatedly despite former prime ministers or the civil service being aware that serious complaints about her conduct having been upheld, it would raise further questions about how proposed ministerial appointments are vetted, and inform the ongoing public debate about how our political system is regulated."
 90. In summary, taking all of these points together, the complainant explained in his view that in terms of the balancing test, the above interests taken together outweigh the interests and rights of Liz Truss.
 91. The Cabinet Office, in submissions to the Commissioner, started by stating that "the statement made by the Cabinet Office was an

exceptional action, where public interest arguments were weighed in the specific context of the time in which it was made”.

92. As regards the information falling in scope of the request for the period after the Statement, the Cabinet Office acknowledged the Commissioner’s guidance⁸ about section 40 that ministers and former ministers should expect greater scrutiny than members of the public. However it argued that there are no compelling reasons for the Cabinet Office to go any further than the Statement of 23 July 2022 via confirmation or denial of information held in the context of this FOI request.
93. The Cabinet Office argued that this was because of the way parts of the request is worded (in particular alluding to ‘sexual misconduct’), so confirmation or denial of whether it held information in scope of the request “could be inferred to shed light on the personal actions of Liz Truss in an intrusive and potentially harmful way, even though such information could include vexatious or unsubstantiated complaints”.
94. The Cabinet Office also drew the Commissioner’s attention to para 48 of his decision in FS50849464⁹. This case involved a request for information on the number and distribution of ministerial misconduct complaints for a number of specified years. The Commissioner concluded that disclosure was not necessary and that section 40(2) was engaged. The Commissioner appreciates that there are parallels between the information requested in FS50849464 and the present case. However, he also notes that the focus of the request in this current case is a named person so confirming/denying is more revealing than a request simply for the number ministerial complaints.
95. The Cabinet Office also reiterated its earlier point that there is recent and high-profile precedent of the Cabinet Office setting out detailed reports about investigations into serious ministerial misconduct

⁸ <https://ico.org.uk/for-organisations/foi/section-40-and-regulation-13-personal-information/>

⁹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617398/fs50849464.pdf>

96. In considering the balance between the legitimate interests and those of Liz Truss, in this particular case, the Commissioner first must acknowledge that when reaching his decision he has taken into account the very specific facts of this case.
97. In particular, he refers to the release by the Cabinet Office of the Statement. He considers it to be of relevance that the Cabinet Office chose not to provide the usual type of standard response given to most ministerial conduct queries of NCND (ie outside of the standard publication processes set out above), but chose instead to provide a confirmation that no information was held (albeit that the Statement was not released in the context of an FOIA request).
98. The Statement covers the period of Liz Truss's ten year ministerial career up to 23 July 2022 and confirms that no formal or informal complaints had been received by the Cabinet Office or Foreign Office about Liz Truss during that time. The Commissioner agrees with the Cabinet Office that the release of the Statement was an exceptional step taken by the Cabinet Secretary in the very specific circumstances of a leadership election within the Conservative Party at that very specific time. Liz Truss was standing to be Prime Minister at that stage and so it was presumably felt there was more need to issue such a statement at that particular time so others could assess her suitability for the role and to ensure that Liz Truss (then one of only two candidates to be Prime Minister) was not unfairly prejudiced by unsubstantiated suggestions, rumour and innuendo.
99. The Commissioner also notes that the Statement does go some way to address some of the complainant's concerns about the ministerial appointment system as set out in above in the specific circumstances of this case.
100. The Commissioner also acknowledges that when reaching his decision he has taken into account each of the four different questions asked by the complainant in the request and any harm which would result from confirmation or denial. As set out above, questions one to four of the request become increasingly more specific and precise as to the information requested, and the information requested becomes more sensitive, intrusive and invasive as the questions progress from number one to four. In particular, the Commissioner notes that the second to fourth questions are requests for very sensitive and intrusive information.
101. With that background in mind, this part of the Commissioner's decision must now determine whether the Cabinet Office was correct to confirm or deny whether information is held beyond the scope of

that Statement (i.e. relating to the three month period 23 July 2022 to 25 October 2022).

102. It is acknowledged by the Commissioner that this period is short and that from 6 September 2022 to 25 October 2022 Liz Truss then held the position of Prime Minister. The possibility is also acknowledged that Liz Truss may have reasonably expected that the Cabinet Office would want to be similarly clear, for consistency purposes, about the position regarding complaints about her in the later period 23 July 2022 to 25 October 2022. The Commissioner has considered a possible argument that confirmation or denial for this short time period in this case would not have resulted in any significant harm, distress or reputational damage to Liz Truss. These issues are discussed further below.
103. In considering the balance between the legitimate interests in confirmation/denial and those of Liz Truss's rights, the Commissioner accepts the usual position which is that a minister or in this case, (former) prime minister, will have a reasonable expectation that details of any complaints that may be made against them would not be disclosed to the world at large under an FOI request.
104. Moreover, the Commissioner also accepts the usual position is that confirmation or denial of information concerning such misconduct matters could cause a significant invasion of privacy for such individuals, particularly in cases where any allegation are based on rumour or proved to be vexatious or unfounded.
105. In this case the Commissioner is of the view that, due to the specific and increasingly intrusive nature of the questions in the request (in particular alluding to 'sexual misconduct'), compliance with section 1(1)(a) would be intrusive and potentially harmful to Liz Truss.
106. The Commissioner understands that a confirmation or denial might satisfy public curiosity or media speculation in relation to Liz Truss. However, in the circumstances of this case, he is not persuaded that the reasonable necessity to confirm or deny the existence or otherwise of the requested information in order to meet the identified legitimate interests outweighs the interests in protecting Liz Truss's rights and freedoms.
107. The Commissioner acknowledges that the overarching purpose of an NCND response in misconduct complaint cases is to leave entirely open the position about whether a public authority holds the requested information so that no inferences, adverse or otherwise, can be drawn from an acknowledgement of the fact that information is held or not held.

108. The Commissioner also notes that his guidance on section 40 FOIA makes it clear that the consequences of confirmation/denial may be less serious if the same or similar information is already in the public domain. The Commissioner has therefore considered whether any already publicly available information on the subject may affect the reasonable expectations of Liz Truss.
109. The Commissioner is unaware of any public or official record of information which would give rise to an expectation of disclosure. This is also a valid argument for not providing a confirmation or denial. The Commissioner is not aware of any published information in the public domain dated prior to the request (or at all) relating to Liz Truss's misconduct in relation to similar matters to those contained in the complainant's request. For example, no official report has been published by Cabinet Office or any other official in relation to complaint(s) upheld against Liz Truss or for a serious breach of the Ministerial Code.
110. It is also noted that the request was made one year after Liz Truss resigned as Prime Minister (and ten months have passed since then) and, as far as the Commissioner is aware, no official information has been made public in relation to similar matters to those contained in the complainant's request.
111. For completeness, the Commissioner is aware from his own research of some public speculation and rumour connected to matters to which the request relates.
112. However, the Commissioner's guidance explains that where there has merely been rumour and speculation about the information requested then the argument that it would be appropriate to confirm/deny the same information under FOIA carries less weight if it has not been confirmed in an official source.
113. That information considered by the Commissioner cannot be considered an official source of information. Furthermore, it is unverified speculation and may contain potentially malicious claims of misconduct or impropriety. Therefore, the fact that some unconfirmed information is in the public domain does not prejudice the Cabinet Office's ability, in the circumstances of this case, to give an NCND response for the time period after the Statement.
114. The Commissioner has concluded that information currently in the public domain does not provide any reasonable or reliable basis for overriding Liz Truss's data protection rights.
115. As regards the specifics of question one of the request, the Commissioner did give careful consideration to whether the Cabinet Office should provide a confirmation or denial of this question only –

as on its face, question one appears less intrusive than the other three questions.

116. However, on balance, the Commissioner has decided that a confirmation or denial was not required of question one. This is because question one of the request is more specific than the information disclosed in the Statement as it requests the 'number' of formal complaints received. In addition, the Commissioner's well established position is that the existence of a complaint against a named individual in itself (or of the number of complaints received) can be suggestive to the wider public of misconduct or impropriety. He understands that it is not necessarily indicative of either as complaints can be made for a variety of reasons and cannot be relied on as evidence or basis for a finding of an automatic finding of misconduct even if they are upheld. However, the Commissioner accepts that many members of the public may share a misconceived view that a senior political figure subjected to a formal complaint is in itself suggestive of impropriety or misconduct. Therefore were (hypothetically) the Cabinet Office to confirm that it had received one or a number of complaints associated with Liz Truss then the Commissioner considers that this would still cause her significant prejudice and reputational damage.
117. In reaching his decision, the Commissioner also acknowledges that from 6 September 2022 to 25 October 2022 Liz Truss held the high position of the Prime Minister and that the complainant considered that "very high-profile public figures ... can expect a very high degree of scrutiny." However, the fact that an individual may have a high and occasionally controversial profile does not mean that they give up their right to privacy in respect to matters of this nature or that they should not have a reasonable expectation that this right will be protected.
118. The Commissioner also considered when reaching his decision whether it is tenable for the Cabinet Office to maintain a 'neither confirm nor deny' response given the information in the public domain through the Cabinet Secretary's Statement and the short period (from 24 July 2022 to 25 October 2022) that Liz Truss remained in office thereafter. It is also acknowledged the possibility that Liz Truss may have herself reasonably expected that the Cabinet Office would want to be similarly clear, for consistency purposes, about the position regarding complaints about her in the later period 23 July 2022 to 25 October 2022. However, for the reasons set out above relating to the reasons behind the exceptional issuing of the Statement, the Commissioner considers that the Cabinet Office is entitled to rely on its NCND position for the later period – this is because by then it was no longer the case that the event in the context of which the Statement was made (the leadership election)

was underway. Due to the unusual circumstances of this case, the Commissioner considers therefore that the Cabinet Office has not undermined the aim and effectiveness of an NCND response for the later period of the request.

119. Finally, for completeness, the Commissioner has considered the argument that confirmation or denial for this short time period in this case would not result in any significant harm, distress or reputational damage to Liz Truss. However, as discussed above given the wording and overall scope of all four parts of the request, the Commissioner is not persuaded by this argument.
120. For the reasons set out above, the Commissioner considers that a confirmation or denial for the period 24 July 2022 to 25 October 2022 as to whether the Cabinet Office holds requested information in this particular case would cause adverse harm and distress to Liz Truss.
121. The Commissioner therefore considers that, in the circumstances of this particular case, the legitimate interests in transparency around senior government figures and ministerial misconduct, are not sufficiently strong enough to override the fundamental interests of Liz Truss for the period after the Statement. He does not consider that there is a lawful basis for the processing of this personal data and, accordingly, confirmation or denial under the FOIA would be unlawful.
122. The Commissioner's decision is therefore to uphold the Cabinet Office's use of section 40(5B) NCND relating to the short remaining period of 24 July 2022 to 6 September 2022 (while Foreign Secretary) and 6 September 2022 to 25 October 2022 (while Prime Minister).
123. In light of this the Commissioner has not gone on to consider the Cabinet Office's reliance on 36(3) by virtue of the effects of confirming or denying in respect of the prejudice described in sections 36(2)(b)(i) and 36(2)(c).

Right of appeal

124. 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

125. 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.

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

Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF