

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 August 2024

Public Authority: Foreign, Commonwealth & Development Office

Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant has requested information relating to complaints about the conduct of Liz Truss in her role as Foreign Secretary.
2. The Foreign, Commonwealth & Development Office (FCDO) initially relied on section 40(5B) of FOIA (third party personal information) to neither confirm or deny the information was held. It later changed its position to rely on section 1 of FOIA (information not held) for information falling in scope of the request for the period up to 23 July 2022. For any information falling in scope of the request for the period from 24 July 2022 to 6 September 2022, it maintained its position of neither confirming or denying that the information was held citing section 40(5B) of FOIA (third party personal information).
3. The Commissioner's decision is that the FCDO has correctly relied on section 1 for the requested information for the period up to 23 July 2022 and on section 40(5B) for information falling in scope of the request relating to the period from 24 July 2022 to 6 September 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.
6. 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

7. On 5 October 2023, the complainant wrote to the FCDO and requested information in the following terms:

“This request concerns the conduct of Liz Truss in relation to her role as Foreign Secretary.

Please state the number of formal complaints received by the department concerning the conduct of Liz Truss.

Please state the number of these complaints that were upheld by the department.

Please state, if any, the number of these complaints which alleged sexual harassment, or other sexual misconduct, by Liz Truss.

Please state, if there were any of these complaints relating to sexual misconduct by Liz Truss, the number that were upheld by the department.”

8. FCDO responded on 8 December 2023 and neither confirmed nor denied that it held information falling within the scope of the request by virtue of section 40(5B)(a)(i) of FOIA.
9. On 11 December 2023, the complainant requested an internal review. He argued that section 40 had been misapplied.

10. FCDO provided the outcome of that internal review on 25 March 2024. It referred to a statement made in a news item on 23 July 2022¹, by Simon Case (the Cabinet Secretary) on behalf of the Cabinet Office.
11. The news item reported that on 23 July 2022 the Cabinet Secretary had made the following press 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’)
12. In light of the Statement, FCDO changed its position in its internal review response to rely on section 1 (information not held) to information in scope of the request for the time period of Liz Truss's ministerial career up to 23 July 2022 but, from 24 July 2022, onwards it maintained its position to neither confirm nor deny (NCND) whether it held the requested information under section 40(5) FOIA.

Scope of the case

13. The complainant contacted the Commissioner on 2 April 2024 to complain about the way his request for information had been handled. He said:

“For background, I am trying to stand up suggestions I have heard about Liz Truss’ conduct. 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.”

14. The Commissioner determined that he needed to be satisfied, on the balance of probabilities, that no relevant information was held by FCDO for the first period in question. Therefore, during the course of his investigation, the Commissioner wrote to FCDO and asked it to provide

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

its own reasoned account, carry out its own searches, and to provide sufficient evidence to enable the Commissioner to reach a decision about whether FCDO does or does not hold information falling within the scope of the request. This was to allow the Commissioner to be satisfied that, on the (civil standard of the) balance of probabilities, the information is/is not held by FCDO for the time period of Liz Truss's ministerial career at FCDO (which was covered by the Cabinet Office/Simon Case Statement). FCDO duly provided submissions to the Commissioner.

15. The Commissioner considers that the scope of his investigation is to establish whether the requested information is held by the FCDO for the time period of Liz Truss's ministerial career up to 23 July 2022. And as regards the time period of the request from 24 July 2022 onwards, the scope of his investigation is to determine if the FCDO is entitled to rely on section 40(5B) to refuse to confirm or deny that the requested information is held.

Reasons for decision

Section 1 – information not held

16. The complainant requested information about formal complaints concerning the conduct of Liz Truss received, considered and formally investigated by FCDO.
17. During the course of the Commissioner's investigation, as set out above, FCDO revised its position and stated that it did not hold the requested information up to 23 July 2022 (when Simon Case, the Cabinet Secretary, issued the Statement), citing section 1 (information not held) of FOIA.
18. 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.
19. 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.

20. Accordingly the investigation will consider the scope, quality, thoroughness and results of searches, and/or other explanations offered by FCDO 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).
21. This part of the decision notice deals with the complainant's request for information about complaints concerning the conduct of Liz Truss in respect of the period from 15 September 2021 to 23 July 2022. Although Liz Truss's tenure as Foreign Secretary ended on 6 September 2022, the Cabinet Office/Simon Case issued the Statement on 23 July 2022 confirming that neither the Foreign Office nor the Cabinet Office had received any such complaints.
22. The complainant set out in his correspondence with the Commissioner that:

“ Based on the FCDO internal review response, it does not seem like an adequate search has been conducted, and it seems likely that further searches are required to establish whether the department holds the requested information.

...

The department initially tried to argue that the records were subject to section 40. The department has now instead argued that before July 2022, no information is held, apparently on the basis of a statement by Simon Case that this was the case.

...

However, they have provided no indication that they have checked their own records, or checked what analysis was done before the Cabinet Secretary made this claim.

...

As such, it is clear a search process needs to take place before the department can accurately claim that no information is held, or issue a valid NCND response, and would ask the Commissioner to request from the FCDO evidence of what searches have actually been carried out to assess whether any information is held.”

23. During the course of his investigation, FCDO responded to the Commissioner's specific questions about the searches undertaken for the time period of Liz Truss's ministerial career up to Simon Case's statement of 23 July 2022. FCDO confirmed that it did not hold any information within scope of the request up to 23 July 2022.

24. FCDO explained to the Commissioner that searches were overseen by the Information Right Unit (IRU) who liaised directly with the Principle Private Secretary of the Permanent Under Secretary (PUS) as well as their small Private office team.
25. FCDO went on to explain that complaints of this nature are restricted to a very small group of individuals within FCDO and that thorough local searches of the PUS's Office were carried out to identify information that would only be held in that specific area [further supporting information was provided to the Commissioner in relation to this]. In addition, FCDO also explained that it had, in addition, confirmed with its HR Management advisory service that no complaints had come to that team and subsequently been directed to the PUS's office as they would not handle complaints about ministerial conduct but would signpost any individual to the PUS's office.
26. FCDO explained that electronic searches have been carried out searching the Outlook accounts of the PUS Private Office using the following search terms:
 - a. "Liz Truss" + "Complaint"
 - b. "Liz Truss" + "Sexual harassment"
 - c. "Liz Truss" + "Sexual misconduct"
27. FCDO also explained that, as information could also potentially be held in manual records, the IRU consulted directly with the Principle Private Secretary of the PUS who would have had oversight of complaints of this nature.
28. FCDO explained to the Commissioner that the searches resulted in no records being found. FCDO said it considered that reasonable and thorough searches have been carried out.
29. FCDO provided the Commissioner with a link to FCDO's records retention and disposal policy² and said that all HR Personnel records for UK based staff are kept in line with this policy. It is not clear which part of the policy FCDO wished to direct the Commissioner to. However, the Commissioner notes that the retention period is 100 years from date of birth or 5 years after death for "HRD personnel information: UK-based staff".

² <https://www.gov.uk/government/publications/foreign-commonwealth-development-office-fcdo-retention-schedule/fcdo-records-retention-and-disposal-policy>

30. Therefore, FCDO is of the view that it does not hold any information requested for the time period up to 23 July 2022 (the date of the Statement).
31. The Commissioner has carefully considered the points made by the complainant and FCDO.
32. Having reviewed the submissions of both parties, the Commissioner is persuaded that, on the balance of probabilities, FCDO does not hold information falling within the scope of the request. The Commissioner is satisfied that adequate and appropriate searches of FCDO electronic records were carried out by FCDO to determine whether recorded information within the scope of the request was held for the period up to 23 July 2022. Furthermore, the Commissioner is satisfied that appropriate consultations took place with FCDO 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.
33. The Commissioner therefore accepts that FCDO's conclusion that it does not hold information falling within the scope of the request is acceptable in the circumstances. No evidence is available to the Commissioner which would indicate that FCDO holds recorded information falling within the scope of the request.
34. Having considered all the circumstances, on the balance of probabilities, the Commissioner therefore accepts FCDO's position that it does not hold any recorded information falling within the scope of the request up to 23 July 2024 (the date of the Statement). As such, the Commissioner has decided that FCDO has complied with section 1(1)(a) of FOIA in relation to that period.

Section 40 - personal information

35. In light of the Statement, as set out above, the FCDO revised its position and applied section 40(5B)(a)(i) for the time period of the request from 24 July 2022 to 6 September 2022 (the date when Liz Truss's tenure as Foreign Secretary ended).
36. 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',
37. 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 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').

38. 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.
39. The FCDO has taken the position of NCND on whether it holds any of the requested information only relating to the time period of 24 July 2022 to 6 September 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 FCDO is entitled to NCND whether it holds any information of the type requested by the complainant.
40. 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.
41. Secondly, and only if the Commissioner is satisfied that confirming or denying would reveal personal data, he must establish whether that revelation would breach any of the DP principles.
42. The Commissioner notes his decision notice in **IC-277904-H5D0**³ on an identical request for information to the Cabinet Office. He therefore adopts in full the reasoning in that case in the section 40(5B) part of that decision notice from para 51 onwards, save that the time period of the request as regards the FCDO relates to 24 July 2022 to 6 September 2022 - a six week period - after which Liz Truss's role as Foreign Secretary ended.

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4030713/ic-277904-h5d0.pdf>

Would confirmation or denial reveal personal data?

43. In his consideration of this complaint, while the FCDO simply applied section 40(5B) to the request as a whole for the time period of the request after the Statement (ie 24 July 2022 to 6 September 2022), 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.”

44. The Commissioner observes that 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.

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

“any information relating to an identified or identifiable living individual”.

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

47. 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.

48. 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.
49. In the circumstances of this case, for the time period of 24 July 2022 to 6 September 2022, the Commissioner is satisfied that providing a confirmation or a denial that the information any of the four parts of the request is held would reveal personal data. This is because the former Foreign Secretary, Liz Truss, is specifically named in the request and the request is for information about her.
50. The Commissioner is satisfied that if the FCDO were to either confirm or deny it held 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. This clearly relates to her and she can be identified from this.
51. The Commissioner further agrees with the FCDO's position for the following reasons: If the FCDO did not hold any information for the time period 24 July 2022 to 6 September 2022, then confirmation of that fact would reveal that Liz Truss had not been the subject of any such complaints. Conversely, if the FCDO did hold any information for the time period 24 July 2022 to 6 September 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 therefore is her personal data.
52. 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.
53. The fact that confirming or denying that information is held would reveal the personal data of Liz Truss does not automatically prevent the FCDO 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.
54. The most relevant DP principle in this case is principle (a).

Would confirming or denying that the information is held contravene principle (a)?

55. 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”.

56. 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.
57. 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

58. 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.

59. 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.

60. 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;

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”.

- 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.
61. 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

62. 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.
63. 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.
64. The complainant argued that there is a legitimate interest in public scrutiny of a senior politician, former foreign secretary and minister's conduct in public office, especially, he argued as Liz Truss is still playing an active role in public life. He said: "disclosure about whether a former prime minister has been the subject of formal complaints is a matter of very clear and obvious public interest." And that: "Should Liz Truss have been promoted repeatedly despite prime ministers or the civil service being aware that serious complaints about her had been upheld, it would raise further serious questions about how proposed ministerial appointments are vetted." [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.]
65. The FCDO explained that there is a legitimate interest in high standards in public life, particularly in those who occupy high office, as the former prime minister did.
66. The Commissioner agrees with this assessment and considers this limb of the test to be met.
67. 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. He believes that

compliance with section (1)(a) in the circumstance of this case will help to serve these legitimate interests.

Is confirming or denying that the information is held necessary?

68. '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.
69. In this specific case, the FCDO stress that the Statement was an exceptional action where public interest arguments were weighed in the specific context of the time in which it was made (ie in the circumstances of a leadership election within the governing party). FCDO argue that the Statement satisfies any legitimate interests by confirming that information is not held for the period up to 23 July 2022. It therefore argued that there are not compelling reasons to confirm under FOIA whether or not information exists outside the scope of that Statement, which make disclosure necessary, proportionate or warranted.
70. Therefore, the FCDO maintain that the bar for necessity is not met in confirming or denying whether information is held beyond the scope of that Statement (ie after 23 July 2022).
71. However, the complainant argues that there is no obvious way of obtaining the requested information for the time period from 24 July 2022 onwards, other than by the FCDO disclosing whether or not the requested information is held.
72. The Commissioner has considered the various points above and concluded that disclosure is reasonably necessary to meet the identified legitimate interests in the circumstances of this case. In his view there is no other way to achieve that other than by providing a confirmation or denial that the information requested is held by FCDO.
73. The Commissioner is satisfied in this case that there are no less intrusive means of sufficiently achieving the legitimate aims identified.

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

74. 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 that 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.

75. In considering this balancing test, the Commissioner has taken into account the following factors:
- 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.
76. 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.
77. The complainant explained that disclosure about whether a former prime minister has been the subject of formal complaints 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."
78. Furthermore, the complainant emphasised that prominent public figures, such as former 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.
79. Further, he 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.

80. 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 of Liz Truss.
81. The FCDO did not provide the Commissioner with further submissions regarding section 40(5B) (although it was invited to do so) but did provide the complainant with an explanation of its section 40(5B) position in its internal review response.
82. In its internal review response FCDO acknowledged the Commissioner's guidance about section 40 that ministers and former ministers should expect greater scrutiny than members of the public. However, they noted the following part of the Commissioner's guidance that:

"... even for senior posts, there may be a reasonable expectation that information relating to some personal matters is not disclosed ...[including] internal disciplinary information..." "In such cases the rights of the individual are likely to override the legitimate interests in disclosing the information."
83. The FCDO also argued in its internal review response that confirming or denying the existence of information in scope of the request about this area of work would have a detrimental effect on the decisions to commission or provide advice, and subsequently the quality of any advice that may be provided. FCDO further explained to the complainant that confirming or denying the existence of information in scope of the request would have a prejudicial effect on the complaints process in the future. Consequently, FCDO said the effectiveness of deliberations and decision making would be harmed generally. FCDO also said that confirmation or denial of the information sought in this case would or would be likely to cause prejudice to the effective conduct of the government's ability to handle complaints against Ministers, as well as inhibiting discussion and/or advice provided to Ministers in dealing with complaints alleging misconduct more generally. Any diminution of the quality of advice as a result would have a prejudicial effect.
84. The Commissioner notes that the arguments above are usually provided in relation to section 36 of FOIA and not section 40(5B), so the Commissioner does not attribute weight to them in this current consideration.
85. The FCDO concluded by stating that it determined that the balancing test favours neither confirming nor denying whether the FCDO holds information in scope of this request relating to the period from 24 July 2022 to 6 September 2022.

86. As set out above the Commissioner notes that the NCND response adopted by FCDO in this case for the time period of the request from 24 July 2022 to 6 September 2022 is same response provided by the Cabinet Office in a similar case involving Liz Truss complaints in **IC-277904-H5D0**⁵. The Commissioner therefore adopts in full the reasoning in that case as regards the balancing test for section 40(5B) at paragraphs 95 onwards.
87. The Commissioner therefore considers that analysis should be referred to in order to fully understand the basis for this decision in this case.
88. For the reasons set out above and in IC-277904-H5D0, the Commissioner considers that a confirmation or denial for the period relating 24 July 2022 to 6 September 2022 as to whether the FCDO hold the requested information would, in the circumstances of this case, cause adverse harm and distress to Liz Truss.
89. The Commissioner therefore considers that, in the circumstances of this particular case, the legitimate interests in transparency around senior government figures and ministerial conduct – including in respect of Liz Truss specifically, are not sufficiently strong enough to override the fundamental interests and rights 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.
90. The Commissioner's decision is therefore to uphold the FCDO's use of section 40(5B) NCND in the circumstances of this case for the short remaining period relating to 24 July 2022 to 6 September 2022.

Procedural matters

91. Section 10(1) of FOIA requires that the public authority comply with section 1 promptly, and in any event no later than 20 working days after the date of receiving the request. Section 17(1) requires a refusal notice to be issued within the same period.

⁵ <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4030713/ic-277904-h5d0.pdf>

92. In this case the FCDO took more than 45 working days to issue its initial response to the request.

Other matters

93. FOIA does not contain a time limit within which public authorities have to complete internal reviews. However, the Commissioner's guidance explains that in most cases an internal review should take no longer than 20 working days, or 40 working days in exceptional circumstances. In this case FCDO took just under 70 working days to complete its internal review response.

Right of appeal

94. 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

95. 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.
96. 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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