

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 October 2024

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

Decision (including any steps ordered)

1. The complainant has requested a copy of any Propriety and Ethics Team assessments or guidance relating to Peter Bone's appointment as Deputy Leader of the House of Commons.
2. The Cabinet Office refused to confirm or deny whether 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 section 40(5B) and section 36(3) by virtue of sections 36(2)(b)(i) and 36(2)(b)(ii) do not apply. Section 36(3) by virtue of section 36(2)(c) is engaged but the public interest balance in confirming or denying whether the information is held is greater than the public interest in maintaining the exemption.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Confirm or deny whether it holds the requested information; and, if it does:
 - Either provide the information to the complainant or issue a fresh refusal notice that complies with section 17 of FOIA.
5. The public authority must take these steps within 30 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.

Background

6. The Commissioner is aware that Peter Bone was elected as an MP in 2005 and was MP for Wellingborough from 2005 until a successful recall petition vacated his seat on 19 December 2023.
7. On 7 July 2022, the then Prime Minister, Boris Johnson announced his resignation as Prime Minister. He remained as Prime Minister until 5 September 2022, while the Conservative Party chose a new leader.
8. On 8 July 2022, serving until 27 September 2022, Mr Bone was promoted to the frontbench for the first time by Boris Johnson, as Deputy Leader of the House of Commons¹.
9. On 16 October 2023, Mr Bone was recommended to be suspended from the House of Commons by the Independent Expert Panel after a report² (the "Report") upheld five allegations relating to bullying and harassment, and one of sexual misconduct by Mr Bone against a male member of his staff.
10. The Independent Expert Panel hears appeals against decisions made by the Parliamentary Commissioner for Standards, considers referrals from the Parliamentary Commissioner and determines sanctions in cases involving an allegation against an MP of a breach of Parliament's Sexual Misconduct Policy or the Bullying and Harassment policy, under the Independent Complaints and Grievance Scheme (ICGS).
11. The male member of staff referred to in para 9 was employed in Mr Bone's Westminster office.
12. He made a complaint to the ICGS helpline on 8 October 2021, making five allegations, three of bullying and harassment, and two of conduct

¹ https://en.wikipedia.org/wiki/Leader_of_the_House_of_Commons;
<https://www.gov.uk/government/ministers/parliamentary-secretary-deputy-leader-of-the-house-of-commons>

² <https://www.parliament.uk/globalassets/mps-lords--offices/standards-and-financial-interests/independent-expert-panel/hc-1904---the-conduct-of-mr-peter-bone-mp.pdf>

breaching both the sexual misconduct, and bullying and harassment policies. The allegations covered behaviour in 2012 and 2013.

13. As set out in the Report, the male member of staff first made a complaint to the Conservative Party by way of a signed statement on 4 September 2017. He also complained to the then Prime Minister (Theresa May) by letter on 14 November 2017. In addition, his father had complained to Prime Minister (David Cameron) on his son's behalf by letter dated 22 December 2015 (having learned about the misconduct some 12 months earlier).
14. A Conservative Party investigation was commenced in February 2018. However, as set out in detail in the Report, the complaint to the Conservative Party had not been resolved by October 2021 (almost five years since the first signed statement of complaint) when the ICGS complaint was made.
15. In addition, the Report noted that, on 12 August 2022, the Conservative Party investigation was revived and the male staff member was notified that an oral hearing in the Conservative Party Headquarters was scheduled for 5 September 2022. However, he withdrew from the Party investigation process on 24 August 2022 and proceeded with the ICGS process.
16. The allegations were investigated by an independent investigator on behalf of the ICGS. He reported to the Parliamentary Commissioner on 8 March 2023, recommending that most of the allegations should be upheld. The Parliamentary Commissioner agreed with all but one of the recommendations in his Memorandum of 4 May 2023.
17. The Parliamentary Commissioner found the following allegations upheld:
 - Allegation 1: Mr Bone "verbally belittled, ridiculed, abused and humiliated" the complainant, and this was bullying.
 - Allegation 2: Mr Bone "repeatedly physically struck and threw things at" the complainant, and this was bullying.
 - Allegation 3: Mr Bone "imposed an unwanted and humiliating ritual on" the complainant, namely instructing, or physically forcing, the complainant to put his hands in his lap when Mr Bone was unhappy with him or his work; and this was bullying.
 - Allegation 4.2: Mr Bone "repeatedly pressurised [the staff member] to give him a massage in the office" and this was bullying, but not sexual misconduct.
 - Allegation 4.3: Mr Bone indecently exposed himself to the complainant on an overseas trip, initially in the bathroom of the

hotel room they were sharing and then in the bedroom. The Commissioner concluded this was sexual misconduct.

- Allegation 5: Mr Bone ostracised the complainant following the events subject to Allegation 4.3, and this was bullying.
18. Mr Bone appealed against the Commissioner's decision in July 2023, which was dismissed. The Panel determined that the appropriate sanction was suspension from the House for six weeks. Mr Bone appealed again but the determination that he should be suspended from the service of the House for six weeks was maintained.
 19. The day after the Report was made public, on 17 October 2023, the Conservative Party withdrew the whip from Mr Bone, suspending him from his membership of the Conservative Party. This is the same day the request for information at issue in this case was submitted to the Cabinet Office.
 20. Mr Bone throughout denied all the allegations and appealed the suspension. However, the recommended suspension length of six weeks was subsequently confirmed by the House of Commons on 25 October 2023. This triggered a recall petition under the Recall of MPs Act 2015. After a successful recall petition, Mr Bone ceased to be an MP on 19 December 2023, triggering a by-election to select a replacement.

Request and response

21. On 17 October 2023, the complainant wrote to the Cabinet Office and requested information in the following terms:

“Please provide a copy of any Propriety and Ethics Team assessments or guidance prepared on Peter Bone's suitability for appointment as deputy leader of the House of Commons ahead of his appointment in July 2022.”
22. The Cabinet Office responded on 13 December 2023 and refused to confirm or deny whether the information was held citing section 40(5) of FOIA (third party personal information) and section 36(3) (prejudice to the effective conduct of public affairs).
23. On 13 December 2023, the complainant requested an internal review. He argued:

“Given the seriousness of the misconduct found by the parliamentary commissioner for standards against Mr Bone, there is the clearest of public interests in transparency as to whether the Propriety and Ethics Team [PET] had been aware of any of this at the time at which he was

appointed [as Deputy Leader of the House of Commons on 8 July 2022]. This is very much not "undue" scrutiny. If the PET team had advised the prime minister [Boris Johnson] of the seriousness of the allegations, but no mitigating action was taken, this would strongly suggest the ministerial appointment system is in need of stronger public safeguards." [additions made by the Commissioner]

24. The Cabinet Office provided the outcome of that internal review on 23 April 2024 maintaining its position to neither confirm nor deny (NCND) whether it held the requested information under section 40(5) FOIA and section 36(3) by virtue of section 36(2)(b)(i) & (ii) and 36(2)(c) FOIA.

Scope of the case

25. The complainant contacted the Commissioner on 12 February 2024 to complain about the lack of an internal review response from the Cabinet Office and the way his request for information had been handled.
26. The complainant subsequently provided the Commissioner with the internal review response dated 23 April 2024. The complainant indicated he was not satisfied with the review. Consequently, the Commissioner wrote to Cabinet Office about its position and requested submissions. The Cabinet Office provided the Commissioner with submissions for section 40(5) FOIA and section 36(3).
27. The Commissioner considers that the scope of his investigation is to establish whether the Cabinet Office is entitled to rely on sections 40(5B) and 36(3) by virtue of section 36(2)(b)(i) & (ii) and 36(2)(c) of FOIA to refuse to confirm or deny whether the requested information is held.

Reasons for decision

Section 40 - personal information

28. 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'.
29. Section 40(5B)(a)(i) of 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 of 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').

30. 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' response in most cases, will be 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.
31. The Cabinet Office has taken the position of NCND in respect of whether it holds the requested information – ie any PET assessments or guidance prepared on Peter Bone's suitability for appointment as Deputy Leader of the House of Commons ahead of his appointment on 8 July 2022.
32. The issue that the Commissioner has to consider is therefore 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.
33. The first step for the Commissioner is to determine whether just confirming or denying whether 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.
34. 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.

Would confirmation or denial reveal personal data?

35. Section 3(2) of the DPA defines personal data as:
"any information relating to an identified or identifiable living individual".
36. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
37. 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.

38. 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.
39. In the circumstances of this case, the Commissioner is satisfied that providing a confirmation or a denial as to whether the information is held would reveal personal data. This is because Mr Bone is specifically named in the request.
40. The Commissioner is satisfied that if the Cabinet Office 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 Mr Bone and whether he was the subject of any PET assessments or guidance on his suitability for appointment as Deputy Leader of the House of Commons. This clearly relates to him and he could be identified from this.
41. The Commissioner further agrees with the Cabinet Office's position for the following reasons: If the Cabinet Office did not hold any information, then confirmation of that fact would reveal that Mr Bone had not been the subject of any PET assessment or guidance on his suitability for appointment. Conversely, if the Cabinet Office did hold any information, then confirmation of that fact would reveal that Mr Bone had been the subject of PET assessment or guidance on his suitability for appointment. In either scenario such information clearly relates to Mr Bone and is biographically significant to him, and therefore is his personal data.
42. What would be revealed by confirmation or denial in response to the request therefore falls within the definition of 'personal data' in section 3(2) of the DPA. The first criterion set out is therefore met.
43. The fact that confirming or denying whether information is held would reveal personal data of Mr Bone 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 principle (a)?

44. 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”.
45. 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.

46. 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

47. 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.

48. 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"³.

49. 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;

³ 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".

- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
50. 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

51. 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.
52. 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.
53. The complainant argued that there is a legitimate interest in public scrutiny of Mr Bone's conduct in public office given the seriousness of the misconduct set out in the Report, the public interest in transparency and in holding both PET and the government accountable for its due diligence proceedings when appointing ministers. The complainant argued that, " If the PET team had advised the prime minister of the seriousness of the allegations, but no mitigating action was taken, this would strongly suggest the ministerial appointment system is in need of stronger public safeguards". On the contrary, he argued that, "If the advice about Mr Bone was vague, or no formal advice was given despite the PET being aware of concerns, this is also a clear public interest matter as it suggests prime ministers are not being given robust advice by the civil service, which is their public service duty."
54. The Cabinet Office did not specifically address in its submissions to the Commissioner whether it considered that a legitimate interest is being pursued in the request for information.
55. However, the Commissioner notes that there is a legitimate interest in high standards in public life, particularly in those who occupy the office of an MP or a front bench role as Mr Bone did. The Commissioner also recognises that there is a legitimate interest in information about misconduct complaints against MPs and in proceedings undertaken and provided by PET or the Cabinet Office to the prime minister relating to the suitability of ministerial appointments ahead of such ministerial appointments being made. The Commissioner therefore also considers the particular circumstances of this specific case to add weight to that legitimate interest.

56. The Commissioner therefore considers this limb of the test to be met.

Is confirming or denying that the information is held necessary?

57. '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 whether the information is held unnecessary. Confirming or denying whether the information is held must therefore be the least intrusive means of achieving the legitimate aim in question.
58. The Cabinet Office did not specifically address this issue in its submissions to the Commissioner. However it is clear from the Cabinet Office's overall submissions that the Cabinet Office maintain that the bar for necessity is not met in confirming or denying whether the information is held.
59. However, the Commissioner is of the view that the legitimate interests he has identified cannot be sufficiently met in the circumstances of this case without a confirmation or denial being provided. Specifically, as they apply to the ministerial appointments process, there is no other obvious way of achieving the legitimate aim other than by the Cabinet Office disclosing whether or not the requested information is held.
60. The Commissioner's view is therefore that it is necessary for the Cabinet Office to comply with section 1(1)(a) of FOIA in order to meet the legitimate interests identified above.
61. The Commissioner is satisfied in this case that there are no less intrusive means of achieving the legitimate aims identified.

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

62. It is necessary to balance the legitimate interests in confirming or denying whether 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 whether the information is held.
63. In considering this balancing test, the Commissioner has taken into account the following factors:

- the potential harm or distress that confirming or denying whether 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 as to whether the information is held; and
 - the reasonable expectations of the individual.
64. 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).
65. 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.
66. The complainant explained that confirmation or denial about whether PET assessments or guidance were prepared for the then Prime Minister, Boris Johnson, on Mr Bone's suitability for appointment to Deputy Leader of the House of Commons clearly outweighs the privacy rights of Mr Bone about his professional affairs. He argued that Mr Bone:
- "..must expect that information about their professional life to be routinely disclosed. This is commonly understood to be the price in a democracy of holding power, is that your expectation of privacy is lessened, especially around one's work as minister. Where someone has had a ruling of fact against them of serious wrongdoing upheld, that expectation is even further lessened, as is the case for Mr Bone... If the PET gave clear advice about Bone, and he was appointed despite concerns, this is a matter of public interest, as it raises serious concerns about how the UK public appointment system is managed."
67. Furthermore, the complainant emphasised that prominent public figures do not have a reasonable expectation of privacy around their professional affairs. He argued that public figures who play a significant role in public life can expect a very high degree of scrutiny.

68. Further, he argued that Mr Bone as an MP for many years could be expected to know that his personal information is subject to FOIA and that, in many cases, he would not have the reasonable expectation of privacy that a more junior member of staff would have.
69. In addition, he stressed that the public had a right to know if there were failures in the current ministerial appointment system. He stated: "If the advice about Bone was vague, or no formal advice was given despite the PET being aware of concerns, this is also a clear public interest matter as it suggests prime ministers are not being given robust advice by the civil service, which is their public service duty."
70. In summary, taking all of these points together, the complainant explained that, in his view, in terms of the balancing test, the above interests outweigh the legitimate interests of Mr Bone.
71. The Cabinet Office explained in its internal review response to the complainant the context in which Ministerial appointments are made, namely that Ministers are chosen by the Prime Minister from the members of the House of Commons and House of Lords in their constitutional role as adviser to the Sovereign. The Cabinet Office set out for the complainant that the Cabinet Manual provides a detailed explanation of the ministerial appointments process as follows:
- "3.3 The Prime Minister has few statutory functions but will usually take the lead on significant matters of state. The Prime Minister has certain prerogatives, for example recommending the appointment of ministers... However, in some circumstances the Prime Minister may agree to consult others before exercising those prerogatives. The Ministerial Code states: 'the Prime Minister is responsible for the overall organisation of the Executive and the allocation of functions between Ministers in charge of departments.
- 3.4 It is for the Prime Minister to advise the Sovereign on the exercise of Royal Prerogative powers in relation to government, such as the appointment, dismissal and acceptance of resignation of other ministers and certain statutory powers."
72. Further, the Cabinet Office explained that the Prime Minister can request advice as they sees fit ahead of ministerial appointments, which could take the form of 'assessments or guidance'.
73. The Cabinet Office argued in its submissions to the Commissioner that "the allegations relating to Mr Bone only surfaced after he left ministerial office when he was an MP rather than a minister". The Cabinet Office therefore argue that the "allegations in question related to Mr Bone's conduct as an MP, and not to his conduct as a Minister".

74. The Cabinet Office went on to say that to suggest that because a Member of Parliament, who happens to be a former minister, had been found to have committed misconduct, that the Cabinet Office should confirm or deny the existence of "*assessments of [sic] guidance prepared on... suitability for appointment*", effectively undermines the ability of the government to confirm or deny whether such information is held in any case. This is because it effectively means that for any current or former minister who was found to have committed misconduct, including outside their ministerial role, there would be an automatic expectation that the existence or otherwise of such information would be confirmed. The Cabinet Office explained that this would not be appropriate, and should instead be judged on a case by case basis.
75. In its internal review response, the Cabinet Office also explained to the complainant that the existence of such assessment or guidance (i.e. if it does exist and this is confirmed) could be taken to imply something specific about the individual (for instance, it could be inferred, rightly or wrongly, that the existence of 'assessments or guidance' ahead of a minister's appointment means that there was a specific concern regarding this appointment). The Cabinet Office argued that this would infringe on Mr Bone's expectations and rights, and it would not, therefore, be appropriate to confirm the existence (or otherwise) of such information.
76. The Cabinet Office therefore argued that Mr Bone had a reasonable expectation that confirmation or denial of the existence of assessments and guidance prepared on his suitability for appointment would not be released via FOIA. The Cabinet Office explained that they have not consulted Mr Bone, but believe it to be likely that he would not consent to confirmation or denial.
77. The Cabinet Office set out three main reasons for this:
1. Assessments and guidance prepared on suitability for appointment is likely to contain personal data - some of which may be special category data;
 2. Confirmation or denial of the existence of a particular form of advice around a ministerial appointment could be revelatory about personal data in and of itself. For example, if we revealed that Minister X was the subject of assessments/guidance, but Minister Y was not the subject of this, it would be seen to reveal information about Minister X: there was a specific 'need' for assessments/guidance. In order to avoid this conclusion being drawn which would be detrimental to the individual, the Cabinet Office seeks to neither confirm nor deny whether this type of information exists on a consistent basis.

3. Individuals (irrespective of being a government minister) could have a reasonable expectation that information gathered in the context of the ministerial appointments process would not be released.
78. The Cabinet Office is also of the view that the public interest in confirmation or denial in this case is not comparable to that in a case involving the appointment of Chris Pincher as Deputy Chief Whip – see **IC-198560-H4S3**⁴. The Cabinet Office explained that:
- “We confirmed whether information was held in relation to the case relating to Mr Pincher [ie subsequent to the issuing of the aforementioned Decision Notice] because of the exceptional circumstances relating to that case, due to the apparent link between this appointment and the subsequent resignation of Rt Hon Boris Johnson as Prime Minister... The facts of this case mean that Mr Pincher’s resignation as a minister had implications in terms of who held the role of Prime Minister, which obviously is of considerable consequence to the British public at large. The same does not apply to the case of Mr Bone.”
79. The Cabinet Office concluded by stating that taking these above points into account, it considered that the balance is in favour of protecting the lawful processing of data for Mr Bone and against confirmation/denial.
80. In considering the balance between the legitimate interests and those of Mr Bone, the Commissioner acknowledges there are many circumstances in which a data subject would not expect information confirming or denying the existence of assessments and guidance prepared on their suitability for appointment to be released to the world at large under an FOIA request. He notes that while ministers and MPs might expect greater scrutiny than members of the public, this does not mean that there is a total removal of any expectation of privacy via the FOIA.
81. The Commissioner also acknowledges that a purpose of an NCND response can be to ensure consistency and so that no adverse inferences can be drawn from the fact that the Cabinet Office hold or do not hold the information.
82. However, the Commissioner is not convinced in the specific circumstances of this particular case that confirming or denying the

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4028109/ic-198560-h4s3.pdf>

existence of PET assessments and guidance would reveal any significant personal data.

83. Rather it would only reveal the fact of whether assessment or guidance had or had not been produced by PET in this specific case without confirming the nature, and details of any assessment or guidance. The Cabinet Office suggests that confirming the existence of such assessment or guidance – if held – could suggest a specific concern regarding the appointment of Mr Bone – however, in the Commissioner's view, it is not necessarily indicative of this. Guidance can be produced for a variety of reasons and confirmation cannot be relied on as evidence or basis for a finding of information being held which includes reference to matters of potential concern.
84. Further, in light of the contents of the Report dated 16 October 2023 and the timing of the request, the Commissioner does not consider that confirmation or denial would result in any further significant harm, distress or reputational damage to Mr Bone. Given the serious findings of misconduct set out in the Report which are now in the public domain (and were at the time of the request), the Commissioner considers that Mr Bone in this specific case would likely have a reasonable expectation that the Cabinet Office may indeed confirm or deny whether the requested information was held.
85. The Commissioner also considers, given the serious findings of misconduct set out in the Report and the history of the matter (as set out in the background section above), that there are clear legitimate interests in this case in public scrutiny of the appointment process of Mr Bone to Deputy Leader of the House of Commons. In addition, the Cabinet Office itself noted (in its submissions to the Qualified Person in this case) that there is a higher public interest in the appointment of Mr Bone than there may be for most other ministerial appointments, due to the investigation by the Independent Expert Panel on his conduct and its outcome.
86. The Commissioner's guidance on section 40 FOIA also makes clear that the consequences of confirmation or denial (and disclosure) may be less serious if the same or similar information is already in the public domain via an official source. Where there has merely been public speculation about the information, for example on social media, then the argument that it would be appropriate to confirm or deny the existence of information requested under FOIA will carry less weight. However, in this case, there is information relating to the conduct of Mr Bone in the public domain via the Report – an official source. The Commissioner accepts, however, that it cannot be inferred from this whether similar information is held by the Cabinet Office within the scope of this request. Nevertheless, he does consider it to be an important factor in

considering the sustainability of the NCND position in the particular circumstances of this case.

87. The Commissioner does acknowledge that the usual aim of an NCND response is to leave entirely open the position about whether a public authority holds the requested information so that no inferences can be drawn from an acknowledgement of the fact that information is held or not held. Not doing so could undermine the effectiveness of the exclusion to confirm or deny whether information is held.
88. However, the Commissioner considers that this is not a usual NCND case in that respect, largely due to the contents of the Report which was in the public domain at the time of the request. He therefore disagrees with the Cabinet Office and considers that it needs to be particularly guided by its very specific circumstances. This is because, at the time of the request, the Report had been made public and the serious findings of bullying and sexual misconduct by Mr Bone was in the public domain, Boris Johnson was no longer Prime Minister, and a recommendation had been made that Mr Bone be suspended because of his serious misconduct as a MP. It is therefore of significant legitimate interest, in the Commissioner's opinion, for the Cabinet Office to confirm or deny whether it holds information falling within the scope of the request.
89. The Commissioner's decision is that, in the circumstances of this particular case, the legitimate interests in confirmation or denial outweigh the rights of Mr Bone. The Commissioner considers that the strength of the legitimate interests in confirmation or denial in this case outweigh the data subject's fundamental rights and freedoms.
90. Based on the above factors, the Commissioner therefore considers that there is an Article 6 basis for processing and so confirming or denying whether the information is held would be lawful.

Fairness and transparency

91. Even though it has been demonstrated that complying with section of 1(1)(a) of FOIA is lawful, it is still necessary to show that confirming whether or not the information is held would be fair and transparent under the principle (a).
92. In relation to fairness, the Commissioner considers that if confirming whether or not the information is held passes the test for lawful processing, it is highly likely that providing such a confirmation or denial will be fair for the same reasons.
93. As it has been met, the Commissioner has concluded that the requirement for transparency is met because, as a public authority, the Cabinet Office is subject to FOIA.

94. In this instance, the Commissioner has therefore decided that section 40(5B)(a)(i) is not engaged.

Section 36(3) – prejudice to the effective conduct of public affairs

95. The Cabinet Office refused to confirm or deny whether the requested information was held under section 36(3) by virtue of the effects of confirming or denying in respect of the prejudice described in sections 36(2)(b) and 36(2)(c).

96. Section 36(2)(b) and 36(2)(c) state:

“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act....

(b) would, or would be likely to, inhibit

- i. the free and frank provision of advice, or
- ii. the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.”

97. Section 36(3) states:

“The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).”

98. Section 36(3) envisages circumstances in which it is not appropriate for a public authority to confirm or deny whether requested information is held, which is normally the duty under s1(1)(a) of FOIA. In such cases the qualified person must still give a reasonable opinion that to confirm or deny that the information is held would itself have the effects listed in s36(2).

The qualified person

99. In determining whether section 36(3) applies the Commissioner must determine whether the qualified person’s opinion was given and that it was a reasonable one.

100. In deciding whether the opinion is a reasonable one, the Commissioner takes the approach that if the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable

person could hold – then it is reasonable. This is not the same as saying that it is the only reasonable opinion that could be held on the subject. The qualified person's opinion is not rendered unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It is only not reasonable if it is an opinion that no reasonable person in the qualified person's position could hold. The qualified person's opinion does not have to be the most reasonable opinion that could be held; it only has to be a reasonable opinion.

101. In addressing this the Commissioner has considered the following factors:

- Whether the qualified person has concluded that the relevant prejudices or inhibitions would or would likely occur through the confirmation or denial of the existence of information.
- If the qualified person concludes that confirmation or denial of the existence of information would or would likely give rise to prejudice or inhibition, they then need to form the reasonable opinion as to the severity of that: either the higher threshold that prejudice or inhibition "would" occur, or the lower threshold "would be likely to" occur.
- If the reasonable opinion is that section 36 is engaged, then the second stage is consideration of the public interest for and against confirming or denying if information is held.

102. With regard to the process of seeking this opinion, the Cabinet Office sought the opinion of Baroness Neville-Rolfe, the then Minister for the Cabinet Office, on 21 March 2024 and provided a rationale for the application of section 36(3). The qualified person provided their opinion that section 36(3) was engaged on 25 March 2024 - that to confirm or deny whether information exists within the scope of the request would inhibit the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation, and would also otherwise prejudice the effective conduct of public affairs.

103. In submissions to the Commissioner, the Cabinet Office also explained why the information requested was exempt under the provisions of section 36(3).

104. Qualified persons are described in section 36(5) of FOIA with section 36(5)(a) stating that 'qualified person' ...'in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown'. The Commissioner is therefore satisfied that the Minister for the Cabinet Office was an appropriate qualified person.

105. With regard to the substance of the opinion, in relation to sections 36(2)(b)(i) and (ii), the qualified person confirmed that they considered

that confirming or denying whether information was held 'would' result in the prejudice described by the exemptions. 'Would' refers to a higher level of probability than 'would be likely', and means that it is more likely than not (ie a more than 50% chance) that prejudice would occur.

106. The submissions to the qualified person argued that the work that is undertaken to support the Prime Minister's selection of Ministers for appointment is highly sensitive involving the gathering, assessing and communicating of personal information. It explained that the work relies on officials being able to handle, record and communicate and exchange views on sensitive information, without the threat of media speculation about the quantity, extent or content of that information, or the processes by which it is gathered and communicated.
107. The qualified person has argued that that confirming the existence of information in scope of this request and/or releasing information about this area of work is likely to have a chilling effect on those working in this area. Knowledge that information would be routinely going into the public domain would likely result in less information (or deliberation about that information) being recorded and less effective record keeping. This would mean that knowledge retention and the free and frank provision of advice and exchange of views would be inhibited, adversely affecting decision-making. The qualified person clarified that she was not suggesting that changes in record keeping would be inappropriate, but simply that it would dilute information to a point that would make it less useful and informative for policy and operational decisions.
108. In addition, in submissions to the Commissioner, the Cabinet Office said that the complainant argued that the public interest supports "knowing what advice the prime minister was given on the appointment of such a person to ministerial office, to hold the PET accountable for its actions". In response to this, the Cabinet Office explained that it was important to note that there is already a high level of accountability in relation to ministerial decision making and ministers are expected to account directly to Parliament for their actions and decisions (including the Prime Minister, for their decisions about ministerial appointments). It explained that where there has been a strong parliamentary interest in certain ministerial appointments, this has been reflected in high numbers of Parliamentary Questions, alongside Urgent Questions, on that specific appointment. The Cabinet Office said there are therefore numerous mechanisms for parliamentary (and thus public) accountability on this topic. Therefore, the Cabinet Office said that to suggest that there is no accountability in relation to government decision making on ministerial appointments, is incorrect.
109. The Cabinet Office further explained to the Commissioner that it is incorrect to suggest that responsibility for decision-making on ministerial

appointments rests with officials in the Cabinet Office, when these are decisions that sit solely with the Prime Minister – as set out in the Cabinet Manual.

110. In relation to section 36(2)(c) the qualified person argued that providing a confirmation or denial to the public 'would' encourage media speculation and comment about the ministerial appointments process, officials' roles within this, and erode the ability of future Prime Ministers to perform their constitutional role in ministerial appointments.
111. The qualified person explained that the Prime Minister has sole responsibility for the organisation of the executive, including recommendations on the appointment, retention and dismissal of Ministers. The Cabinet Office said that it is for a Prime Minister to receive information and advice in the manner he or she determines, and to act on that information and advice according to his or her judgement. It went on to explain that the conduct of this aspect of Government relies on provision of information and advice in a range of ways - formal and informal - as suits the Prime Minister and the ability of the Prime Minister to make deliberations in confidence. The Cabinet Office argued that to release information relating to previous appointments made by the Sovereign on the advice of the Prime Minister, including the confirmation or denial that Cabinet Office holds such information, will generate comment and speculation on the operation of the appointments process. The Cabinet Office explained that this type of comment could have the effect of eroding the Prime Minister's flexibility to act in the manner of their choosing on future appointments - an area where they should retain discretion under the UK's constitutional arrangements.
112. Further, the qualified person argued that disclosure would undermine public confidence in the confidential nature of the process if information relating to advice provided to the Prime Minister on Ministerial appointments (i.e. including confirmation or denial as to such information) is disclosed. This was because it was vital that confidence in the Ministerial appointment process is effectively maintained, and that relies on the understanding that any advice that may or may not have been provided to the Prime Minister regarding a potential ministerial appointment is done so in strict confidence. This is particularly important due to the nature and sensitivity of the personal information that could potentially be in scope of that assessment or advice.
113. In addition, the qualified person explained that Ministerial appointments are made public, along with details of any relevant private interests they may hold. The qualified person therefore argued that there is no public interest in publishing information relating to ministerial appointments beyond that already published in this case.

114. The qualified person also explained that confirmation or denial as to whether the Cabinet Office holds the information sought is also crucial here to ensure consistency with any future requests, and to prevent NCND being taken as an indication of whether information is held.
115. In submissions to the Commissioner the Cabinet Office also reiterated its view that it believed the Chris Pincher case referred to above was 'exceptional' and not similar to this current case of Mr Bone.
116. As regards the complainant's view that the level of wrongdoing of Mr Bone alters the balance of the public interest, the Cabinet Office accepted that the Report established that various allegations against Mr Bone were upheld, however, it did not believe that this was of high enough public interest to mean that the Cabinet Office should consequently confirm or deny whether it holds information on assessments of his suitability for ministerial appointment. The Cabinet Office argued that the public interest in this has been met by the Report. Therefore, the Cabinet Office argued that confirming or denying whether it held information would not materially add to the public interest in - or knowledge of any wrongdoing by - Mr Bone.
117. The Commissioner finally notes that the qualified person's submissions acknowledged some contrary arguments to the Cabinet Office position set out above as to why section 36 may not be engaged in this case:

"It could be argued that confirming or denying whether we hold information does not give rise to any prejudicial effect, as officials have a responsibility to provide Ministers with full and impartial advice.....

In addition, there is a higher public interest in the appointment of Mr Bone than there may be for most other Ministerial appointments, due to the investigation by the Independent Expert Panel in the House of Commons on his conduct, and his subsequent suspension and departure from the Commons."

The Commissioner's conclusions

118. In relation to section 36(2)(b)(i) and (ii) the opinion is that there is a need to freely provide advice and exchange views in a frank and open environment.
119. As regards the "chilling effect" that the Cabinet Office has argued that confirmation or denial would be likely to cause, the Commissioner is sceptical about the extent to which this would occur in the circumstances of this case. He therefore treats the Cabinet Office's arguments with some caution.
120. As a general approach the Commissioner recognises that civil servants are expected to be impartial and robust when giving advice, and not

easily deterred from expressing their views by the possibility of future disclosure.

121. In order for the qualified person's opinion to be reasonable, it must be clear as to precisely how the prejudice or inhibition may arise. It is not clear to the Commissioner how, in the particular circumstances of this case, providing a confirmation or denial that the Cabinet Office hold the information requested would – or would be likely – to have a chilling effect.
122. The Commissioner accepts that it is reasonable to expect that if the Cabinet Office were to confirm the existence or otherwise of the assessment/guidance, then the Cabinet Office would be likely to receive requests for the nature (i.e. the details) of that assessment/guidance (if held) or further requests for information in relation to ministerial appointments. However, the Commissioner is not persuaded that this scenario – as a result of the provision of confirmation or denial in the particular circumstances of this case - would necessarily have the chilling effect to the extent contended by the Cabinet Office. There is a great deal of difference in sensitivity and confidentiality between confirmation or denial as to whether such information exists and the nature or details of the assessment or guidance provided. It is also noted that the qualified person herself said that "officials have a responsibility to provide Ministers with full and impartial advice irrespective of the release of this information". In the circumstances of this case, the Commissioner does not consider that the disclosure of whether or not PET had even provided advice would lead to a reasonable assumption or expectation that the details or nature of specific advice would also be disclosed.
123. The Commissioner accepts that there is a longstanding precedent/convention that preserves the confidentiality of advice given to the Prime Minister. However, the Commissioner does not consider that the provision of a confirmation or denial in the particular circumstances of this case would be a significant erosion of the precedent/convention.
124. The Commissioner also notes the Cabinet Office's argument that Ministerial appointments are made public, along with details of any relevant private interests they may hold. However, potential conflicts of interest are not the same as transparency around matters regarding personal conduct as recorded in the Report.
125. Within the context of section 36(3) by virtue of 36(2)(b)(i) and (ii), the Commissioner is not persuaded, in the particular circumstances of this case, that the opinion that confirmation or denial of the existence of the assessment/guidance alone would be likely to result in the inhibitions contained in these exemptions is a reasonable one. Specifically,

although the Commissioner accepts that these inhibitions are conceivable as a result of the provision of confirmation or denial and understands the qualified person's rationale in these regards, he does not consider the opinion to be reasonable when assessed against the severity test of the 'would' or 'would be likely to' thresholds for each of these limbs. Consequently, the Commissioner finds that section 36(3) by virtue of section 36(2)(b)(i) and (ii) is not engaged.

126. In relation to section 36(3) by virtue of 36(2)(c), the Commissioner considers that the arguments provided are more persuasive. In order for section 36(2)(c) to apply, the prejudice claimed must be different to that claimed under section 36(2)(b) (i.e. would or would be likely to 'otherwise prejudice').
127. The 'otherwise' prejudice claimed in this case is the effects of making a confirmation or denial public, namely, media speculation and comment about the ministerial appointments process, officials' roles within this, and the ability of future Prime Ministers to perform their constitutional role in ministerial appointments.
128. In the circumstances of this particular case, the Commissioner is unpersuaded as to the reasonableness of the qualified person's opinion as it applies to the higher "would prejudice" threshold of the exemption. However, he is prepared to accept the opinion as reasonable insofar that it claims that the 'otherwise' prejudice above "would be likely to" apply in the present case. The Commissioner acknowledges that the request relates to a sensitive high-profile issue and that it is reasonable to conclude that confirmation or denial of the existence of the information would be likely to result in additional enquiries and comment about the ministerial appointments process and the diversion of resources in managing this. He also accepts as reasonable the opinion that any speculation and comment would likely be prejudicial as inaccurate inferences could be made. For example, to confirm or deny information is held relating to a previous appointment made by a Prime Minister will generate comment on the operation of the appointments process.
129. Having viewed the opinion given about section 36(2)(c) specifically, the Commissioner also considers it reasonable for the qualified person to hold the view that the 'otherwise' prejudice above regarding comment about the ministerial appointment process, and the long standing precedent of not disclosing information regarding advice to the Prime Minister, "would be likely to" prejudice the effective conduct of the process by the Cabinet Office.
130. The Commissioner considers that section 36(3) by virtue of section 36(2)(c) is therefore engaged in respect to this request.

131. He has therefore gone on to consider whether the public interest in maintaining section 36(3) outweighs the public interest in confirming or denying whether the information is held.

The public interest test

132. In considering a complaint regarding section 36, if the Commissioner finds that the opinion was reasonable, the weight of that opinion in the public interest test will then be considered. This means that the Commissioner accepts that a reasonable opinion has been expressed that prejudice (or inhibition) would or would be likely to occur but he will go on to consider the severity, extent and frequency of that prejudice or inhibition in forming his own assessment of whether the public interest test favours disclosure.

133. It is important to be clear that the exemptions contained in section 36 focus on the processes that may be inhibited or prejudiced. The issue, in this case, is whether confirmation or denial of the existence of the requested information would be likely to otherwise prejudice the effective conduct of public affairs.

Public interest in disclosure

134. The complainant argued that there is a very clear and obvious public interest in transparency and in holding the Cabinet Office accountable for its due diligence processes as regards the suitability of ministerial appointments.

135. The complainant further explained that if the PET team had advised the Prime Minister of the seriousness of the allegations against Mr Bone, but no mitigating action was taken, this would strongly suggest the ministerial appointment system is in need of stronger public safeguards. On the contrary, he argued that "If the advice about Mr Bone was vague, or no formal advice was given despite the PET being aware of concerns, this is also a clear public interest matter as it suggests prime ministers are not being given robust advice by the civil service, which is their public service duty."

136. The Cabinet Office has acknowledged that there is a higher public interest in the appointment of Mr Bone, due to the investigation by the Independent Expert Panel in the House of Commons on his conduct, and his subsequent suspension and departure from the Commons.

Public interest in maintaining the exemption

137. The Cabinet Office has argued that it is important to the processes relating to ministerial appointment that effective advice can be commissioned and provided in a confidential setting to the Prime Minister (who is ultimately responsible for such appointments) and until

such time that it is judged necessary to make information regarding appointments public.

138. Furthermore, the Cabinet Office explained that there is regular transparency about ministerial misconduct in the form of detailed reports made public by the government.
139. In addition, the Cabinet Office contend that there has also been specific transparency on Mr Bone's misconduct in the Report which it believes satisfies any public interest in this matter.
140. The Cabinet Office are also of the view that the circumstances of this case are not exceptional, as they were regarded in the Chris Pincher case. In that case the Cabinet Office state it was specifically about how that appointment directly correlated to the resignation of Boris Johnson as Prime Minister.
141. Therefore, the Cabinet Office argues that it should not reasonably be expected to undermine Mr Bone's personal data rights or the necessary confidentiality around handling ministerial appointments. The Cabinet Office explained that this is especially the case as here the Report detailing the allegations was published after Mr Bone's ministerial appointment had concluded.
142. Therefore, the Cabinet Office conclude that the public interest clearly weighs in favour of neither confirming nor denying whether information is held in scope of this request.

Balance of the public interest

143. In considering where the balance of the public interest lies the Commissioner recognises as reasonable the opinion that confirming or denying whether relevant information is held would be likely to result in media speculation, comment about the ministerial appointments process, and officials' roles within this. He has therefore afforded this due weighting in the balancing test.
144. However, the Commissioner considers that any harm which would result from confirmation or denial would be limited as it would simply reveal the fact of whether the requested information is or is not held in this specific case without confirming the nature, and details of that assessment/guidance (if held). This would not provide any more than a limited degree of useful or insightful information as to the processes of the Cabinet Office in terms of its advice facility to the Prime Minister and Cabinet Secretary.
145. Further, the Cabinet Office argued that the public interest in this case has been met by the Report and so this means the Cabinet Office should not consequently confirm or deny whether it holds information on

assessments of Mr Bone's suitability for ministerial appointment. The Commissioner disagrees. Confirming or denying whether it holds the requested information, while not materially adding to the public interest in or knowledge of the suitability of Mr Bone for ministerial appointment, will materially add to the public interest in knowledge of any PET assessments of Mr Bone's suitability for ministerial appointment.

146. In relation to the public interest in confirming or denying whether information is held, the Commissioner is mindful that there are a number of strong factors, notably:

- The information request relates to the ministerial appointment process involving the appointment of a ministerial role, Deputy Leader of the House of Commons, and to judgements made at a senior level of public life.
- The wrongdoing upheld in relation to Mr Bone is very serious, as demonstrated by the Report's findings (made public one day before the request was made in this case), his suspension from the House of Commons and Mr Bone's removal as a MP.
- This is not a case involving mere rumour or speculation of misconduct. Given the evidence and history of events set out in the Report, there is a strong public interest in transparency regarding the existence or otherwise of assessments/guidance provided to Boris Johnson by PET regarding Mr Bone's appointment.
- There is information in the Report stating that that the member of staff in Mr Bone's office who made the complaints had previously complained about the events in a signed statement and letter to the then Prime Minister (Teresa May) in November 2017 and in December 2015, his father had complained to Prime Minister David Cameron on his son's behalf (page 17 of the Report). In addition, a Conservative Party investigation started in February 2018 and was revived in August 2022.
- It is not unreasonable to expect the Cabinet Office to have some accountability for any such assessments or guidance or for a Prime Minister, serving or former, to be held accountable for their choice of minister when serious misconduct has been raised many years previously and then later upheld against them.
- The Commissioner therefore questions whether, as part of the consideration of the public interest test, it is tenable to maintain a 'neither confirm nor deny' response for section 36(3) given the information in the public domain at the time of the request through the Report.

- Although there are differences with the specifics of the Chris Pincher case referred to above, based on the very specific circumstances of this case, the Commissioner also regards this case to merit departure from the NCND approach, with an increased public interest in shedding light on the ministerial appointment process at that particular time, including in respect of the then Prime Minister.

147. The Commissioner considers that these are very strong public interest arguments in favour of accountability and transparency in the circumstances of this case. Whilst he has acknowledged what he considers to be the factors in favour of maintaining the exemption he considers that these are more than offset by the public interest in transparency around these matters, as informed by the nature of the case with its very specific circumstances, and the interests of public confidence in the ministerial appointments process.

148. In conclusion, and particularly because of the limited weight that the Commissioner has concluded should be attributed to the public interest arguments in favour of maintaining the exemption, the Commissioner considers that the public interest in knowing whether or not the requested information is held is greater than that in maintaining the exemption from the duty to confirm or deny. It follows that the Commissioner's decision is that the Cabinet Office was not entitled to maintain an NCND response under section 36(3) (by virtue of section 36(2)(c)) of FOIA. The Cabinet Office must now therefore take the steps specified in the decision section of this notice.

Procedural matters

149. Section 10(1) of FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".

150. Under section 17(1) a public authority that is relying on an exemption to withhold information should give the applicant a refusal notice stating that fact within the same timescale.

151. The complainant made his request on 17 October 2023 but did not receive a refusal notice until 13 December 2023. The Commissioner finds that the Cabinet Office breached sections 17(1) by failing to issue a refusal notice within 20 working days. As a result of his substantive investigation, the Commissioner has also found that the Cabinet Office breached section 10(1) by not providing a confirmation or denial as to whether the requested information is held.

Other matters

152. FOIA does not contain a time limit within which public authorities have to complete internal reviews. However, the Commissioner's guidance⁵ explains that in most cases an internal review should take no longer than 20 working days, or 40 working days in certain circumstances unless there are legitimate reasons why a longer extension is necessary.
153. In this case, as noted above, the Cabinet Office failed to meet these timescales and took over 70 working days to complete its internal review response. Judged against his guidance, the Commissioner considers this to be excessive.

⁵ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>

Right of appeal

154. 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

155. 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.

156. 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